STATE OF KANSAS

Public Employee Relations Board
535 Kansas, Room 1102
Topeka, Kansas 66606

NATIONAL ASSOCIATION OF GOVERNMENT EMPLOYEES, (NAGE) COMPLAINT AGAINST EMPLOYER, Complainant, vs. STATE OF KANSAS, SOCIAL & REHABILITATION SERVICES, TOPEKA STATE HOSPITAL, Respondent.	CAE 12-1976

FINDINGS OF FACT - CONCLUSIONS OF LAW ORDER

COMES NOW this 4th day of April, 1977, the above-captioned case for hearing. The complainant appears by its counsel, Mr. Ira Dennis Hawver, Attorney at Law, First National Bank Tower, Topeka, Kansas.

The respondent appears by its counsel, Mr. John Badger, Attorney at Law, Department of Social and Rehabilitation Services, State Office Building, Topeka, Kansas, and

Mr. Thomas J. Pitner, Chief Attorney, Department of Administration, Statehouse, Topeka, Kansas.

The hearing is conducted before Jerry Powell, the duly appointed hearing examiner for the Public Employee Relations Board.

The case comes before the Board on complaint filed September 20, 1976 by National Association of Government Employees (NAGE) charging Topeka State Hospital with violations of K.S.A. 75-4333 subsections (b)(1), (2), (3), (4) and (5).

Procedures Before the Board

1. Charge filed September 20, 1976 by NAGE.
2. Request for extension of time filed October 1, 1976 by Mr. John Badger on behalf of Topeka State Hospital and request granted by Public Employee Relations Board (PERB) until October 14, 1976.

3. Answer by Topeka State Hospital received October 1, 1976 and respondent denies all charges.

4. Motion for dismissal filed October 11, 1976 on behalf of respondent.

5. Petition for intervention filed October 14, 1976 by Mr. Thomas J. Pitner on behalf of the State Department of Administration.

6. Motion for dismissal and brief in support, thereof, filed October 14, 1976 on behalf of State Department of Administration.

7. Letter from NAGE Business Agent requesting that case be passed on PERB monthly agenda in order to give complainant's attorney an opportunity to respond to Department of Administration's Motion to Intervene; letter filed October 20, 1976.

8. Complainants request for extension granted by PERB.

9. Motion to Intervene filed by Department of Administration and granted by PERB; Motion to Dismiss filed by Department of Administration denied by PERB at meeting January 27, 1977.

10. Hearing conducted April 4, 1977 at Topeka State Hospital.

Findings of Fact

1. The non-professional employees of Topeka State Hospital were found to constitute an appropriate unit of employees by the May 16, 1974 PERB Order.

2. NAGE was certified September 12, 1974 as representative for certain employees of Topeka State Hospital.

3. The complainant is timely and is properly before the PERB.

4. Mr. George Meinholdt held the position of Chief Engineer at Topeka State Hospital on September 9, 1976. (T-11)

5. Mr. Meinholdt exempted from unit as a supervisory employee by agreement of parties on May 30, 1974.

6. Mr. Charles Price was a Union Steward for NAGE. (T-139)

7. Dr. Eberhard Burdzik serves as appointing authority for Topeka State Hospital. (T-12)

8. Only the appointing authority has the ability to hire and fire employees. (T-12)

9. Department heads at Topeka State Hospital can recommend hiring and firing of subordinate employees. (T-12)

10. Dr. Burdzik almost always follows the recommendations of department heads in regard to hiring and firing. (T-12)

11. On September 9, 1976, Mr. Meinholdt made a statement to Mr. Price to the effect; "What do you think the most of, the Union or your job?" (T-12-134)

12. Mr. Price, acting as union steward, left the job site to process a greivance without informing his supervisor (Mr. Meinholdt) as required by the memorandum of agreement. (T-142-3)

13. Dr. Burdzik, Superintendent of Topeka State Hospital, provided a copy of the memorandum of agreement to all supervisors and instructed the supervisors to keep track of the amount of time the union stewards spend on union business. (T-31) (T-26)

14. Mr. Price's supervisor recorded time spent on processing grievances. (T-101)

15. Mr. Meinholdt never recommended either termination or suspension of Mr. Price. (T-29)

Conclusion of Law & Discussion

The National Association of Government Employees (NAGE) alleged violations of K.S.A. 75-4333 (b)(1), (2), (3), (4) and (5) by agents of Topeka State Hospital. The allegations are as follows:

1. "The public employer's representatives have conducted surveillance of protected union activities carried out by Mr. Charles Price for the purpose of interfering, restraining and coercing a lawfully elected Union official in the exercise of the rights granted in Section 4 (75-4324) of the Act..."

The only reference to any form of surveillance in the record is that of various supervisors keeping track of the time Mr. Price utilized in performing his duties as a union steward. Article XII section 2(a) of the memorandum of agreement reads in part:

...."Stewards will be allowed reasonable time during working hours, without loss of pay or leave, for the purpose of discussing grievances or other appropriate matters directly related to the work of employees in the area of the appropriate unit represented by the steward. Reasonable time for this purpose shall be interpreted to mean no more than two (2) hours per week total for all grievance handling in the area." .....

Dr. Eberhard Burdzik, Superintendent of Topeka State Hospital, testified that he provided copies of the agreement to his supervisory personnel along with instructions for each supervisor to see that stewards did not abuse the time allotted for such activities. Supervisory personnel testified that they had, in fact, kept track of the time Mr. Price spent on processing union grievances. K.S.A. 75-4326 (d) reserves to management the right to "maintain the efficiency of governmental operation." There is no evidence or testimony in the record to indicate that the supervisor's actions were for any purpose other than to see that the time provisions for handling grievances were not violated. Therefore, the Board is of the opinion that such actions by the supervisors do not constitute an act of unlawful surveillance. Rather, the supervisors were merely carrying out routine duties well within the scope of K.S.A. 75-4326.

2. "The public employers representatives have by words and actions sought to interfere with the existence and administration of the Union in violation of KSA 75-4333 (b)(2), by threatening Union officials, specifically Assistant Chief Steward Charles Price with dismissal if he didn't stop performing union activities."......

Mr. George Meinholdt, Chief Engineer, was exempted from the appropriate unit of non-professional employees of Topeka State Hospital because management of the hospital indicated his job held supervisory status. This exemption was set out in a listing of eligible employees furnished to the Public Employee Relations Board by Topeka State Hospital on May 30, 1974, under the signature of Dr. Burdzik.

Supervisory employees are defined at K.S.A. 75-4322 (b) as follows:

"(b)"Supervisory employee" means any individual who normally performs different work from his subordinates, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or responsibly to direct them, or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. A memorandum of agreement may provide for a definition of "supervisory employees" as an alternative to the definition herein."

In addition, Dr. Burdzik testified that he almost always follows his supervisor's recommendations in matters of hiring and firing. Thus, there seems little doubt as to Mr. Meinholdt's authority to discipline or discharge employees.

Mr. Meinholdt testified that he made a statement to Mr. Price to the effect: "What do you think the most of, the union or your job?" Counsel for Topeka State Hospital argues that this statement was made to Mr. Price after Mr. Menholdt was informed that Mr. Price had left his job site to pursue union activities without first informing his supervisor. Mr. Meinholdt then viewed Mr. Price's actions as a violation of the memorandum of agreement. Rather than being a threatening statement, Mr. Meinholdt was simply inquiring whether or not Mr. Price was placing the mission of the hospital ahead of his union activities. Article XII section 2 of the Memorandum of Agreement states in part:

..."Before leaving their assigned work area, the steward will request permission of the immediate supervisor and advise (1) that the absence will involve union business; and (2) the location to which the steward is going".....

Mr. Price has admitted that he left his assigned work area without notifying his supervisor. Mr. Price attempts to excuse his actions by a lack of opportunity for such notification. While the Public Employee Relations Board was not created to "police" memorandums of agreement, nor is it desirous of such authority, it does appear that Mr. Price did not follow agreed-upon terms of the memorandum of agreement. Thus, Mr. Meinholdt's statement to Mr. Price may have been born of frustration at the union steward's actions.

There is little doubt then that Mr. Meinholdt had cause for some action against Mr. Price. In fact, it is incumbent upon supervisors, as first-line contract administrators, to insure that these types of infractions are not repeated. It must be remembered that Mr. Price's right to perform union activities is not in question; the infraction was in breaking the "rules" regulating the manner in which the activities are to be performed. K.S.A. 75-4326 reserves to management the right to demote, suspend, or discharge

employees for proper cause. The affected employee may then, pursuant to an agreed upon procedure, grieve the employer's action for a determination of proper cause. K.S.A. 75-4326 and the grievance procedure in a memorandum of agreement establish a framework in which both employer and employee are to resolve disputes. It is the opinion of the board that Mr. Meinholdt did not act within this framework and that his remarks were directed at the performance of union activities, rather than the manner in which these activities were performed. Further, the statement by Mr. Meinholdt or any supervisor to a subordinate employee could well have a chilling effect on that employee's statutory rights to form, join and participate in the activities of an employee organization.

A prohibited practice, as defined at K.S.A.. 75-4333 (b)(1), is as follows:

"(b) It shall be a prohibited practice for a public employer or its designated representative willfully to:

(1) Interfere, restrain or coerce public employees in the exercise of rights granted in section 4 (75-4324) of this act."

Employees' rights with respect to employee organizations are set out at K.S.A. 75-4324 as follows:

"75-4324. Employees' right to form, join and participate in employee organizations. Public employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing, for the purpose of meeting and conferring with public employers or their designated representatives with respect to grievances and conditions of employment. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations."....

The Board construes Mr. Meinholdt's statement as containing a threat, thus, interfering, restraining and coercing Mr. Price in the statutory right to form, join, and participate in an employee organization.

3. "By threatening Mr. Price as stated supra, the respondents of the public employer did intend to and did in fact discourage membership in the

union in violation of K.S.A. 75-4333 (b)(3)."

By its supervisor's statement, the employer has discouraged membership in an employee organization and has violated K.S.A. 75-4333 (b)(3).

4. "Mr. Price was discriminated against, harrassed, and threatened on his job by representatives of the public employer because of his union activities, all in violation of K.S.A. 75-4333 (b)(4)."

At K.S.A. 75-4333 (b)(4) it states:

"(b) It shall be a prohibited practice for a public employer or its designated representative willfully to:

(4) Discharge or discriminate against an employee because he his filed any affidavit, petition or complaint or given any information or testimony under this act, or because he has formed, joined or chosen to be represented by any employee organization;" .....

The board finds no evidence or testimony in the record to support the allegation that Mr. Price has been discharged or discriminated against in his conditions of employment.

5. "The representatives of the public employer did not meet and confer in good faith, but rather did use the meeting with Mr. Price to then and there threaten him with dismissal because of his union activities, all in violation of K.S.A. 75-4333 (b) (5).

IT IS, THEREFORE, THE ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD that :

(A) Complainant's allegations of violations of K.S.A. 75-4333 (b)(2), (4) and (5) are hereby dismissed;

(B) Topeka State Hospital, acting through its agents having been found in violation of K.S.A. 75-4333 (b)(1) and (3) in a manner described herein, is ordered to cease and desist from interference found in any like or related manner interfering with employees governed by the Public Employer-Employee Relations Act; and

(C) Respondent and intervenor's motions to dismiss are hereby denied.

IT IS SO ORDERED THIS [illegible] DAY OF [illegible], 1977.

Garold A. Been, Member, PERB

Louisa Fletcher, Member, PERB

E. J. Rennick, Member, PERB

Richard R. Rock, Member, PERB

John W. Smith, Member, PERB

cc: [illegible]