

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

Norman Caulfield and Thomas O. Guss)
)
 Petitioners,)
 v.)
 Fort Hays State University (FHSU);)
)
 Respondent)
 _____)

Case No.: 75-CAE-3-2002

and

Norman Caulfield and Thomas O. Guss)
)
 Petitioners,)
 v.)
 FHSU Chapter of the American)
 Association of University Professors)
)
 Respondent)
 _____)

Case No.: 75-CAEO-1-2002

**ORDER GRANTING MOTION FOR JOINDER AND
MOTIONS TO DISMISS FOR FAILURE TO STATE A
CLAIM UPON WHICH RELIEF CAN BE GRANTED**

NOW on this 24th day of April, 2002, a Motion for Joinder and Motions to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted came on for consideration in the above-captioned matters before presiding officer Douglas A. Hager.

APPEARANCES

Petitioners Norman Caulfield and Thomas O. Guss appear *pro se*. Employer Fort Hays State University appears through Kim Christiansen, General Counsel. Respondent Fort Hays State University Chapter of the American Association of University Professors appears through counsel Steve A.J. Bukaty, Attorney at Law, and Lawrence Rebman, Attorney at Law, Steve A.J. Bukaty, Chartered.

75-CAE-3-2002
75-CAEO-1-2002

PROCEEDINGS

On September 11, 2001, two members of the Fort Hays State University bargaining unit, Professor Norman Caulfield and Professor Thomas O. Guss, (hereinafter "Petitioners"), filed a Complaint Against Employer alleging that Fort Hays State University, (hereinafter "Employer"), violated the Public Employer-Employee Relations Act, (hereinafter "PEERA"), at K.S.A. 75-4333(b)(1), by closing meet and confer sessions to the public. This complaint was docketed by the Kansas Department of Human Resources Office of Labor Relations as docket number 75-CAE-3-2002. A subsequent amendment to the complaint alleges that the closing of meet and confer sessions violates the Kansas Open Meetings Act, K.S.A. 75-4317, in addition to constituting a prohibited practice under the PEERA.

In a separate action on September 17, 2001, Petitioners filed a Complaint Against Employee Organization alleging that the Fort Hays State University Chapter of the American Association of University Professors, (hereinafter "Respondent"), violated the PEERA in the same manner as alleged against the Employer in the complaint described in the preceding paragraph above. This complaint was docketed as case number 75-CAEO-1-2002. A subsequent amendment similar to that described above was filed in this matter as well.

Both Employer and Respondent timely filed their answers to the complaints and the Employer subsequently filed a Motion for Joinder, alleging that both the Employer and the Fort Hays State University Chapter of the American Association of University Professors were necessary parties to the adjudication of Petitioners' complaint "since the challenge is to the parties' meet and confer process . . . [and b]oth parties mutually agreed to the process followed in meeting and conferring under the auspices of" PEERA. Motion to Dismiss, filed November 19, 2001, p. 3. Employer and Respondent also sought dismissal of the complaints for the Petitioners' failure to state a claim upon which relief can be granted, on October 10, 2001 and October 22, 2001, respectively. *See also*, Respondent's Letter, January 29, 2002, p. 2.

The presiding officer took the complaints, motions and responsive pleadings under advisement and researched the parties' respective legal arguments. On March 6, 2002, the parties conferred with the presiding officer by telephone and the presiding officer announced that he was granting the Motions for Joinder and the Motions to Dismiss and advised the parties that if they wished to submit a proposed order as is appropriate under applicable provision of the Kansas Administrative Procedure Act, K.S.A. 77-501 *et seq.*, they would have until April 5, 2002 to do so. None of the parties elected to submit anything further. The presiding officer considers this matter to be ripe for determination and issues this, his dispositive order.

MOTION FOR JOINDER

As a means of furthering the administrative efficiency of addressing these matters, the presiding officer agrees to consolidate or join these two docket numbers for purposes of an order granting the motions to dismiss. *See* K.S.A. 60-220(a).

MOTIONS TO DISMISS

As noted above, both the Employer and Respondent have requested that this complaint be dismissed for Petitioners' failure to state a claim upon which relief can be granted by the Public Employee Relations Board. When considering such a motion,

“[t]he question for determination is whether in the light most favorable to [petitioner], and with every doubt resolved in [petitioner's] favor, the petition states any valid claim for relief. Dismissal is justified only when the allegations of the petition clearly demonstrate [petitioner] does not have a claim.”

Weil & Associates v. Urban Renewal Agency, 206 Kan. 405, 413 (1971). Based upon a thorough review of the petitioners' allegations contained in their original complaints, and in all subsequent amendments to said complaints, it is the presiding officer's conclusion that petitioners have failed to allege any state of facts which would constitute a prohibited

practice under applicable law. The agreement reached by the Employer and Respondent employee organization to close their meet and confer sessions is not in violation of the Kansas Open Meetings Act, and does not otherwise constitute a prohibited practice under the Act. For an extensive discussion of applicable law, *see* Initial Order, City of Junction City, Kansas v. Junction City Police Officers Association and Junction City Police Officers Association v. City of Junction City, Kansas, 75-CAEO-2-1992 and 75-CAE-4-1992, July 31, 1992, pp. 36-52 (concluding that “[w]hile the Open Meetings Law contained in K.S.A. 75-4317 *et seq.* manifests a general policy that all meetings of a governmental body should be open to the public, meet and confer sessions under PEERA are not subject to the Act.”)

CONCLUSION

Based upon a careful review of the pleadings in this matter, and after due consideration of the parties’ arguments, it is the conclusion and recommendation of the presiding officer that the Petitioners’ complaints in the above-captioned matters must be, and are hereby, dismissed for failure to state a claim upon which relief can be granted.

IT IS SO ORDERED.

Dated this 24th day of April, 2002.



Douglas A. Hager, Presiding Officer
Public Employee Relations Board
1430 SW Topeka Blvd.
Topeka, Kansas 66612
(785) 368-6224

NOTICE OF RIGHT TO REVIEW

This Order is your official notice of the presiding officer's decision in this case. The order may be reviewed by the Public Employee Relations Board, either on the Board's own motion, or at the request of a party, pursuant to K.S.A. 77-527. Your right to petition for a review of this order will expire eighteen days after the order is mailed to you. See K.S.A. 77-527(b), K.S.A. 77-531 and K.S.A. 77-612. To be considered timely, an original petition for review must be received no later than 5:00 p.m. on May 13, 2002, addressed to: Public Employee Relations Board, 1430 SW Topeka Blvd., Topeka, Kansas 66612-1853.

CERTIFICATE OF SERVICE

I, Sharon Tunstall, Office Manager for PERB, Kansas Department of Human Resources, hereby certify that on the 25th day of April, 2002, a true and correct copy of the above and foregoing Order was served upon each of the parties to this action and upon their attorneys of record, if any, in accordance with K.S.A. 77-531 by depositing a copy in the U.S. Mail, first class, postage prepaid, addressed to:

Dr. Norman Caulfield
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Russell, KS 67665

Ms. Allison Kelso and Mr. Les Hughes
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Mr. Larry Rebman and Mr. Steve Bukaty
Steve A.J. Bukaty, Chartered
8826 Santa Fe Drive, Ste. 218
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And to the members of the PERB on June, 4th 2002.

Sharon A. Tunstall
Sharon Tunstall