

027-11

State of Kansas  
Before The Public Employee Relations Board

IN THE MATTER OF THE COMPLAINT  
AGAINST THE EMPLOYEE ORGANIZATION  
FILED BY

KANSAS ASSOCIATION OF PUBLIC  
EMPLOYEES (KAPE), Complainant

vs

PUBLIC SERVICE EMPLOYEES UNION  
LOCAL 1132, AFL-CIO, Respondent

CASE NO. UE 6-1973

\* \* \* \* \*

Findings Of Fact And Conclusions  
Of Law - Order

On the 11th day of January, 1974, the above captioned case came on for hearing. The complainant appeared by its counsel, Eidson, Lewis, Porter and Haynes, Attorneys at Law, 1300 Merchants National Bank Building, Topeka, Kansas, by Mr. William G. Haynes and Mr. Robert Bloomer.

The respondent appeared by its counsel, Mr. Henry T. Wilson, 909 - 16th Street, Washington, D. C.

The hearing was held before Mr. Donald R. Hoffman, Hearing Examiner for the Board.

The case comes before the Public Employee Relations Board upon complaints filed by Kansas Association of Public Employees (KAPE) under date of October 19, 1973, signed by Mr. William G. Haynes, Attorney for KAPE.

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Complainant alleges misconduct on the part of Respondent centering on events which occurred prior to and during the representation election held at the University of Kansas on October 17, 1973. Complainant and Respondent were participants in the election. Complainant alleges that Respondent's misconduct constitutes a prohibited practice as defined at KSA Supp. 75-4333(c) (1) and as a result the election should be set aside.

The following is a summary of the procedural background in the case. The Board takes notice of its official file regarding this unit.

1. On December 18, 1972, Respondent petitioned the Board for Unit Determination for certain employees at the University of Kansas, Lawrence Campus.

2. On December 19, 1972 the employer responded that the unit was inappropriate.

3. On January 15, 1973 the employer and Respondent agreed to the employees to be included in the appropriate unit.

4. On January 18, 1973 the Board determined what employees would be included in the unit.

5. On February 23, 1973 Complainant presented a sufficient showing of interest to be included on the ballot.

6. On August 27, 1973, the Board set the election for October 17, 1973 and appointed Carol J. Wampler as Board Agent to conduct the election. Board member Arthur J. Veach assisted. The election was to be held from 12:00 Noon to 7:30 p.m. The choices to

be designated on the ballot were: (1) Representation by Public Service Employees Union Local 1132, AFL-CIO; (2) Kansas Association of Public Employees (KAPE); or, (3) No Representation.

7. On October 17, 1973 the election was held with the following results:

- (a) Approximate number of eligible voters, 406.
- (b) Void ballots, 10.
- (c) Votes cast for Local 1132, 157.
- (d) Votes cast for KAPE, 99.
- (e) Votes cast for No Representation, 41.
- (f) Total of valid votes counted, 297.

No irregularities in the count of the ballots or the conduct of the election were reported to the Board by the Board Agent or the Board Member who was present the day of the election.

8. On October 19, 1973 complaints were filed challenging Respondent's conduct and requesting the election be set aside.

9. The Public Employee Relations Board set a hearing on the complaint for 9:00 a.m., December 18, 1973 and appointed a Hearing Examiner.

10. On December 14, 1973 Complainant moved that the hearing be continued.

11. On December 19, 1973 the Board set the hearing for 9:00 a.m., January 11, 1974.

Findings Of Fact

1. On September 15, 1973 a meeting was held at the University of Kansas, Lawrence Campus to discuss ground rules for the forthcoming election. Representatives from both competing employee organizations were present. The meeting was called by a ranking KU official.

2. Complainant's Exhibit #2 was discussed and agreed to by all parties.

3. The parties agreed not to engage in campaign activity on the day of the election.

4. Prior to the election KAPE made only two mailings of material to members of the appropriate unit. KAPE did not physically campaign on campus after the September 15, 1973 meeting.

5. Complainant's Exhibit #2 does not relate to campaign or election activity specifically.

6. The letter sent to the Chairman of the Public Employee Relations Board under date of September 17, 1973, signed by Mr. Lloyd Rose on behalf of Respondent, Mr. Gary Reser on behalf of Complainant, and Dr. Charles Oldfather on behalf of the University does not purport to describe or limit campaign or election activity.

7. Mr. Francis Jacobs and Mr. Lloyd Rose did on various occasions campaign for Respondent on the KU Campus prior to the election. Such activity included the distribution of handouts and posting of material on bulletin boards. Employees within the appropriate unit also distributed material provided to them by Respondent employee organization.

8. Complainant's Exhibits #1, #4, and #5 were distributed on campus by one or more of the individuals named above prior to the election. Exhibit #1 was distributed as late as October 15, 1973.

9. Mr. Lloyd Rose participated in meet and confer sessions at the KU Medical Center on behalf of Respondent.

10. Agreement on the Memorandum of Agreement (Complainant's Exhibit #3) was reached on or about October 7, 1973.

11. Complainant's Exhibit #3 contains a wage reopener.

12. Initiation fees have never been charged by Respondent.

13. Mr. Rose was not on the Lawrence Campus on the date of the election prior to the ballot count.

14. Mr. Rose spoke to several employees during the morning of October 16, 1973 while they were seated in McCollum Hall eating and drinking coffee. The incident took place at approximately 9:45 a.m. A handbill was distributed to them at this time.

15. Complainant's Exhibit #1 describes and relates to Respondent's Exhibit #2.

16. No meeting was held by Respondent with members of the "unit" explaining the terms of Complainant's Exhibit #1 as it relates to Complainant's Exhibit #3 prior to the voting.

17. The University agreed to recommend benefits substantially equivalent to those stated on the face of Complainant's Exhibit #1.

Conclusions Of Law

1. The record discloses no evidence supporting Complainant's contention that "Representatives" of Respondent employee organization (Public Service Employees Union Local 1132, AFL-CIO) failed to comply with the provisions of KSA 1973 Supp. 75-4336 or that they were engaged in activities as defined by KSA 1973 Supp. 75-4322(k). No evidence was introduced concerning a "Mr. Bradshaw's" status other than he appears to have been present on several occasions.

2. The Act and Public Employee Relations Board rules contemplate a degree of campaigning on the part of participants competing for representation status. While agreements reached between the parties prior to the election on these issues are of probative value in determining whether a prohibited practice has occurred, they are not determinative of the issue. The same can be said of rules unilaterally established by the employer relative to working-time contacts with employees, use of bulletin boards and access to employer controlled property. In the instant case, the Board had at no time declared a moratorium on legitimate campaign activities either on or off of campus, short of the area designated "no electioneering" by the Board Election Agent. It was neither alleged nor proven that the Board was a party to any agreements reached by the parties.

3. The Public Employee Relations Board views its function in the conduct of elections as assuring to the employees involved an

opportunity to cast their ballots in an atmosphere free of elements which prevent or impede a reasoned choice. Respondent in the instant case, circulated material clearly designed to influence support for it and away from Complainant. From the record, however, it cannot be concluded that this material, admittedly propaganda, was intentionally designed to misrepresent facts as viewed by Respondent. Certainly the record discloses that management representatives at KU Medical Center did agree to "recommend" a four-point program for benefits for KU Medical Center employees. These points were concededly "won" by Respondent at the meet-and-confer sessions held in Kansas City. Whether they were formally spelled out in the Memorandum of Agreement (Complainant's Exhibit #3) is not material to the determination of this case. Of all of the material distributed by Respondent, Complainant's Exhibit #5 is the most aggressive. We find, however, from a review of the record that this material would reasonably be regarded by employees as mere propaganda. Employees must be presumed to have sufficient knowledge of existing conditions and of the nature of competing organizations so as not to be materially misled, especially in the absence of a showing that the material had a significant impact on the election. The record in this case is void of any such showing. While the Board in an appropriate case would not hesitate to set aside a representation election on the basis of misconduct of the parties prior to or during the election, it will not do so on the basis of the record before it in the instant case.

Accordingly, it is ordered that the complaints be dismissed and the election held on October 17, 1973 be certified. The Board's secretary is directed to notify the employer and employee organization.

IT IS SO ORDERED BY THE PUBLIC EMPLOYEE RELATIONS BOARD



Eldon V. Danenhauer, Chairman