

STATE OF KANSAS
BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

IN THE MATTER OF :

Petition for Unit Determination
and Certification of Certain
Employees of Shawnee County :

CASE NO: UDC-3-1979
UDC-4-1979
UDC-5-1979
UDC-6-1979
UDC-7-1979

ORDER

Comes now on this 16th day of August the above captioned cases for consideration by the Public Employee Relations Board. The examiner consolidated the above cases for hearing since all five cases were filed by the same employee organization and all five groups of employees are employed by Shawnee County.

The petitioner, Teamsters Union Local 696, has ask the Public Employee Relations Board to determine five appropriate units for employees for bargaining purposes.

The units petition for are as follows:

UDC-3-1979 - Certain employees of the Motor Vehicle Department of
Shawnee County

UDC-4-1979 - Certain employees of the Zoning Department of Shawnee County

UDC-5-1979 - Certain employees of the Maintenance Department - Shawnee
County Courthouse

UDC-6-1979 - Certain employees of the Purchasing Department of Shawnee County

UDC-7-1979 - Certain employees of Data Processing Department of Shawnee
County

The hearing was conducted on 19th day of March before the executive director of the Public Employee Relations Board.

A P P E A R A N C E S

Petitioner, Teamsters Local 696, appears by Mr. Bill Moore, Business Agent for the Local, 1231 N. W. Eugene, Topeka, Kansas.

Respondent, Shawnee County Commissioners, appears by and through its counsel, Mr. Frank Johnson, County Counselor, Shawnee County Courthouse, 200 East Seventh Street, Topeka, Kansas.

Procedures before the Board:

1. Petitions filed January 26, 1979 by Mr. Bill Moore.
2. Answers to petition received February 2, 1979.
3. Hearing conducted March 19, 1979 in County Commissioner's Chambers.

75- UDC-(3-7)-1979

before the executive director of the Public Employee Relations Board.

FINDING OF FACTS

1. That Shawnee County is an appropriate public employer within the meaning of K.S.A. 75-4322 (b).
2. That the petitions are timely and within the jurisdiction of the Public Employee Relations Board.
3. That the petitioner, Teamsters Local 696, has asked the Public Employee Relations Board to establish five separate and distinct units of employees, all of whom are located within the county courthouse.
4. That Shawnee County Commissioners are asking the Public Employee Relations Board to dismiss all five (5) unit determination cases now pending as inappropriate.
5. That UDC-3-1979 asks for the establishment of a unit consisting of nine (9) employees of the Motor Vehicle Department.
6. That the Motor Vehicle Department is a part of the County Treasurer's office.
7. That the County Treasurer is an elected official.
8. That there are twelve (12) full-time and two (2) part-time employees in the Motor Vehicle Department.
9. That employees in the Motor Vehicle Department are clerical or white collar workers.
10. That all employees of the Motor Vehicle Department are located in the county courthouse.
11. That UDC-4-1979 seeks to establish a unit consisting of two (2) employees of the Zoning Department.
12. That all Zoning Department employees are located in the county courthouse.
13. That the Zoning Department consists of a department head and two (2) employees.
14. That UDC-5-1979 seeks to establish an appropriate unit of employees consisting of eighteen (18) employees of the Maintenance Department.
15. That there are twenty-one (21) part-time and ten (10) full-time employees in the Maintenance Department.
16. That there are six (6) clerical workers employed in the Maintenance Department.

17. That all thirty-one (31) of the employees of the Maintenance Department are located in the county courthouse.
18. That UDC-6-1979 seeks to establish an appropriate unit consisting of three (3) employees of the Purchasing Department.
19. That there are three (3) employees and a Purchasing Director employed in the Purchasing Department.
20. That all employees of the Purchasing Department are located in the county courthouse.
21. That UDC-7-1979 seeks to establish an appropriate unit for twenty (20) employees of the Data Processing Department.
22. That there are twenty-two (22) temporary and permanent employees in the Data Processing Department.
23. That all employees of the Date Processing are located in the county courthouse.
24. That some of the employees in the Data Processing Department may fall within the definition of professional employees contained at K.S.A. 75-4322 (d), thus requiring special consideration in unit placement as specified at K.S.A. 75-4327 (f) (1).
25. That there are approximately 500 county employees.
26. That there are currently five (5) recognized bargaining units in Shawnee County.
27. That the road and bridge unit excludes clerical employees although there are clerical employees in the department.
28. That at least two clerical employees of the Road and Bridge Department are located at the courthouse.
29. That the park and recreation unit excludes clerical employees although there are clerical employees in the department.
30. That the Refuse Department excludes clerical employees with the exceptions of way keeper, waymaster, and storeroom clerk who are considered white collar workers.
31. That the Shawnee County Youth Center unit excludes clerical employees but includes some white collar workers.
32. That there are two (2) clerical employees at the Youth Center who are excluded from the appropriate unit because of the confidential nature of their employment.

33. That the janitors at the Youth Center are included within the appropriate unit.

34. That the professional employees i.e., social workers at the Youth Center are excluded from the appropriate unit at the Youth Center.

35. That there is a personnel policy manual covering terms and conditions of employment of all employees who are not represented by an employee organization in one of the five organization units.

36. That there are differences between the personnel policy manual and the labor contracts under which the existing five (5) units are operating.

37. That there are numerous elected officials who serve as department heads.

38. That the elected officials must seek budget approval of the county commission, as does any other appointed official.

39. That any department head and the personnel director may terminate an employee without approval from the county commission.

40. That there is no salary plan or merit evaluation procedure contained in the personnel policy manual.

CONCLUSION OF LAW DISCUSSION

The criteria for determining an appropriate bargaining unit are set out at K.S.A. 75-4327 (e) which states:

"Any group of public employees considering the formation of an employee organization for formal recognition, any public employer considering the recognition of an employee organization on its own volition and the board, in investigating questions at the request of the parties as specified in this section, shall take into consideration, along with other relevant factors: (1) The principle of efficient administration of government; (2) the existence of a community of interest among employees; (3) the history and extent of employee organization; (4) geographical location; (5) the effects of overfragmentation and the splintering of a work organization; (6) the provisions of K.S.A. 1972 Supp. 75-4325; and (7) the recommendations of the parties involved."

K.S.A. 75-4327 (c) states:

"A recognized employee organization shall represent not less than a majority of the employees of an appropriate unit. When a

question concerning the designation of an appropriate unit is raised by a public agency employees organization or by five (5) or more employees, the public employees relations board, at the request of any of the parties, shall investigate such question and, after a hearing, rule on the definition of the appropriate unit in accordance with subsection (3) of this section."

K.S.A. 75-4327 (c) must be read in conjunction with K.S.A. 75-4327 (e) in order to correctly interpret the intent of the legislature in regard to unit questions. That is, the Board is persuaded that the criteria listed in subsection (e) are intended as criteria for appropriate units rather than the formation of employee organizations. It must be noted that the legislature has directed the Board, in subsection (c), to investigate questions raised regarding an appropriate unit and to rule on the definition of the appropriate unit in accordance with subsection (e). Historically there are two questions raised in regard to appropriate units. That is, what constitutes an appropriate unit of employees of a public employer as opposed to the most appropriate unit of employees of a public employer. The Board interprets the Kansas law as allowing an employer and an employee organization, acting on behalf of employees, to determine an appropriate unit. This concept is embraced by the board since it is the employer and the certified or recognized employee organization, not the Board, who must work within the confines of an appropriate unit during the negotiations process and subsequent contract administration. There are, of course, limitations to this agreement on scope of units which necessitates involving the Board. The Board must be notified of agreements concerning the scope of appropriate units and in fact must approve such agreements since there are statutory provisions to exclude certain classes of employees from appropriate units (see K.S.A. 75-4327 (f)). The Board views its role as a watch dog to insure that these statutory provisions are not violated. Additionally, the Board is charged by the legislature with resolving disputes between public employers and employees. The Board would find it most difficult, if not impossible, to fulfill this legislative directive if it had previously failed to set out in order form any agreement creating or changing the scope of an appropriate unit.

The Board views its role in determining appropriate units, when there is no agreement between the parties, in a different light. The legislature had directed the Board to investigate and rule on the most appropriate unit for employees of an employer considering the criteria contained at K.S.A. 75-4327 (e).

Since the public employer and employee organizations have previously agreed upon certain appropriate units it now becomes the responsibility of the Board to fashion the most appropriate units from the remaining Shawnee County employees.

Petitioner has asked for appropriate units of certain employees following the previously established pattern of departmental lines. Respondent has stated that the creation of five additional, rather small units would hinder the principle of efficient operation of government. It is entirely possible that the Board, if petitioned, would have carved out appropriate units for employees of Shawnee County which would little resemble the existing appropriate units. Since the mold has been cast by the parties the Board is hard pressed to deny units based along departmental lines solely on the strength of respondents efficiency of operation theory.

It would seem that the rather small units petitioner has requested would tend to overfragmentize or splinter the work force, thus lessening the bargaining power of the affected employees. Currently there are five (5) units that represent a total of 268 of the approximately 500 county employees. The five (5) new units would, if established, include only 50 additional employees. The Public Employee Relations Board can foresee the problems inherent in underwriting this type of subdivision. The approval of units of this type can only lead to the creation of mass confusion due to the hodgepodge composition of the resulting units. The sheer number of potential units could approach 20-30 if this process were to continue and the efficient operation of government would obviously be hampered. The Public Employee Relations Board does not wish to further subdivide the county into more small units, thus creating unworkable numbers of units. If a true distinction exists between departments, this fact must be substantiated before the Board can determine a number of separate units.

Respondent argues that the appropriate unit should consist of all employees located in the county courthouse. Certainly the geographical location of employees must be considered. However, testimony shows that existing appropriate units are made up of at least a few employees who are located in diverse areas. The existence of a personnel policy manual which sets out many terms and conditions of employment for all unorganized employees of Shawnee County would at first blush, seem to indicate a community of interest among all employees located at the courthouse. However, this manual also covers many employees located away from the courthouse. That is, the clerical employees of the Road and Bridge Department, Refuse Department, Park and Recreation Department and the Youth Center are excluded from the established appropriate units and are therefore governed by the manual.

While the efficiency of operation and geographical location are important criteria they carry no more weight than the other criteria set out in the law. There is little if any evidence to indicate any past history of employee organization among the employees as requested by petition to be included within the five alleged appropriate units. Petitioner has submitted an alleged showing of employee interest indicating a desire by employees to organize and to be represented by the Teamsters organization. There is, however, no testimony within the record to indicate the employees desires for unit placement.

Testimony in the record alludes to certain employees within the requested units who may meet the definition of professional employees contained at K.S.A. 75-4322 (d). In the event certain employees were determined to be professional employees within the defined meaning, such a determination would necessitate a separate election to ascertain such employees desires to be included within the appropriate unit with non-professional employees. It is impossible, from the record, to determine the professional status of any of the mentioned employees.

There is little evidence or testimony in the record to indicate the latitude given an elected official in determining terms and conditions of employment of such elected official's employees. Testimony does indicate that there are more employees in some departments than were listed by petitioner. The Board must also consider the amount of autonomous authority given a department head to determine terms and conditions of employment. The record indicates that a department head can successfully recommend merit increases. Department heads can also terminate employees without full commission approval.

While the Board does not wish to hinder the organization desires of any public employees, it is imperative that the board create the most workable units for both the employer and the employees. It is difficult, therefore, to consider including clerical employees in one unit of non-professionals and to exclude them from other non-professional units. The same logic holds true for professional employees. As stated earlier in this order, no one criterion listed at K.S.A. 75-4327 (e) carries more weight than another. Rather all criteria must be considered and delicately weighed. The record in this matter is sparse and in many regards incomplete. Therefore, the Board has no alternative but to deny the establishment of appropriate units as petitioned for in Public Employee Relations Board cases:


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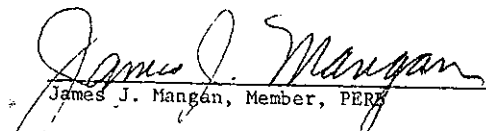
The Board further advises the parties that by this action the Board has not found one unit of county courthouse employees to constitute the most appropriate unit. Rather that the units petitioned for in UDC 3 thru 7 inclusive, have not been shown by facts in existence to constitute appropriate units within the stated purpose and intent of the law.

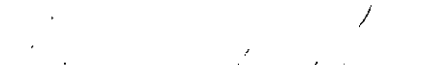
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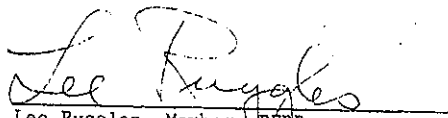
are hereby dismissed.

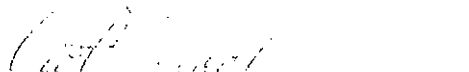
IT IS SO ORDERED THIS 17 DAY OF Sept 1979, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.


Louisa A. Fletcher, Member, PERB


James J. Mangán, Member, PERB


Urbano L. Perez, Member, PERB


Lee Ruggles, Member, PERB


Art Veach, Member, PERB