

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

Rhonda J. Vitatoc-Nunn et al.,)
 Petitioners,)
and)
))
Kansas State Troopers Association,)
 Intervenor,)
v.)
))
State of Kansas, Department of)
Administration; Kansas Highway)
Patrol; and Kansas Association of)
Public Employees,)
 Respondents.)

Case No. 75-UCA-2-1995

Pursuant to K.S.A. 75-4321 *et seq.* and
K.S.A. 77-501 *et seq.*

FINAL ORDER

NOW on the 21st day of August, 1996, this matter came before the Public Employee Relations Board of the State of Kansas (hereinafter the "PERB") during its regularly scheduled meeting. An Initial Order in the above-captioned unit clarification and amendment case was issued by the presiding officer, Don Doesken, on May 3, 1996. On May 15, 1996, the PERB voted to review the Initial Order on its own motion. The PERB, now having received briefs and heard oral arguments by the parties, finds as follows:

In the Initial Order of May 3, 1996, the presiding officer ordered that the existing unit of uniform police employees employed by the Kansas Highway Patrol be amended "to include not only Troopers I and II and Master Troopers, but also Communications Specialists I and II." Further, the presiding officer ordered that the Kansas State Troopers Association was to be certified as the exclusive bargaining representative for all of the employees in the aforesaid

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classifications, and that the Kansas Highway Patrol and the Kansas Department of Administration were to meet and confer in good faith with the Association.

This case began when a petition for Unit Clarification and Amendment was filed on November 16, 1994, by Rhonda J. Vitatoc-Nunn, *et al.* Sometime in March of 1995, the Kansas State Troopers Association was allowed to file a Brief as the Intervenor in the matter. Based on briefs submitted by the parties, the presiding officer issued an "Order Removing Highway Patrol Dispatchers from their Existing Bargaining Unit and Scheduling a Further Pre-Hearing Conference to Determine an Appropriate Unit" on March 31, 1995. Respondents Kansas Department of Administration and Kansas Highway Patrol filed a Petition for Review of Initial Order, but were informed on April 28, 1995, by the Executive Director of PERB that the case was still pending before the presiding officer, and, therefore, review was premature. Respondent KAPE filed a Motion to Reconsider with the presiding officer, which was denied on April 26, 1995. On January 22, 1996, the presiding officer issued an "Order Scheduling a Pre-Election Conference on February 21, 1996 to Prepare this Case For a Self-Determination Election." Respondents filed an objection to such Order and addressed their concerns to the PERB on February 21, 1996, wherein the board voted not to entertain the appeal. On March 15, 1996, ballots were mailed to those employees eligible to vote, and the Communications Specialists I and II (hereinafter "dispatchers") voted to be added to the existing unit of Highway Patrol Troopers and to be represented therein by the Kansas State Troopers Association. The presiding officer issued an Initial Order on May 3, 1996, finding that the dispatchers should be added by accretion to the existing unit.

Although there appear to be some procedural shortcomings in this case, the only issue raised by the Respondents, and before the Board, is as follows:

WAS IT A VIOLATION OF THE KANSAS PUBLIC EMPLOYEE EMPLOYER RELATIONS ACT, SPECIFICALLY K.S.A. 75-4327(f)(2), TO PLACE THE COMMUNICATIONS SPECIALISTS INTO THE EXISTING UNIT OF UNIFORM POLICE EMPLOYEES?

In the April 3, 1995, "Order Removing Highway Patrol Dispatchers from their Existing Bargaining Unit and Scheduling a Further Pre-Hearing Conference to Determine an Appropriate Unit," the presiding officer stated the following:

This question has been submitted to the presiding officer on stipulated facts. The parties have agreed that the Communication Specialists employed by the Kansas Highway Patrol are required to wear uniforms, and that they are employed by the Kansas Highway Patrol.

In his January 22, 1996, "Order Scheduling a Pre-Election Conference on February 21, 1996 To Prepare this Case For a Self-Determination Election," the presiding officer stated the following:

At that [prehearing] conference, the parties discussed the matter at length, and all of the parties, with the exception of KAPE, eventually reached agreement that the Communications Specialists should be merged or "accreted" into the existing unit of Highway Patrol Troopers...Counsel for the Department of Administration and the Kansas State Troopers Association have stipulated that the existing trooper unit should be amended to add the classifications of Communications Specialists I and II, and that such a unit as amended would be an appropriate bargaining unit under the criteria set forth in K.S.A. 75-4327(e).

The only evidence in the record that the parties may have stipulated to any facts is in the Briefs of the parties. The Kansas State Troopers' Association (hereinafter "KSTA") stated in their Brief dated March 9, 1995, that

The unit currently represented by the KSTA includes uniformed highway patrol personnel classified as Troopers 1 and 2 and Master Troopers ... Communication Specialists have been required to wear highway patrol uniforms in their work ... Communication Specialists ... are employees of a Kansas law enforcement agency whose mission is to enforce the laws, deter crime and investigate accidents on state roadways.

The Department of Administration's February 16, 1995, Brief stated that "The current unit represented by the Kansas Troopers Association only includes Troopers I and II and Master Troopers." The Brief of the Kansas Association of Public Employees (hereinafter "KAPE") refers to the "55 dispatchers (Communications Specialists I and II) employed by the Kansas Highway Patrol" and the "existing bargaining unit for state troopers (Troopers I and II and Master Troopers) now represented by the Kansas State Troopers Association."

In fact, Respondents Department of Administration and Kansas Highway Patrol filed a Motion for A Nunc Pro Tunc Order on February 15, 1996, stating "Respondents stipulated that *if* the Communications Specialists are determined to be 'uniform police employees' following a final order and expended appeal rights, then the KSTA would be an appropriate unit." [Emphasis added] The Respondents stated further that a final order had not been entered and that they intended to appeal any final order determination that Communication Specialists are "uniform police employees." The Respondents requested, therefore, that a Nunc Pro Tunc Order be issued correctly reflecting "the stipulations provided at the May 30, 1995, and later hearings." The record in this matter contains no evidence that a Nunc Pro Tunc Order was ever signed and issued by the presiding officer as requested. In the Pre-election Conference transcripts, pp. 34-35, February 21, 1996, the presiding officer clarified stipulations and noted the Respondents'

continuing objection to defining Communications Specialists as "uniform police employees." In their June 14, 1996, Brief to the PERB, the Respondents continue to contend that the presiding officer misstated such stipulations.

No formal hearing was ever held in this matter, and therefore, no other evidence of any existing facts was submitted or considered.

K.S.A. 75-4327(f)(2) provides, in part:

A recognized employee organization shall not include: ... (2) uniform police employees and public property security guards with any other public employees, but such employees may form their own separate homogenous units.

The statute does not define "uniform police employee." Petitioner basically contends that under the Public Employee Employer Relations Act a "uniform police employee" should include any employee of a law enforcement agency who is provided a uniform. The presiding officer, in his Order of March 31, 1995, agreed with Petitioner, stating

It appears to this presiding officer that the category of 'uniform police employees' includes a broader group of workers than police officers with arrest powers. Since the petitioners in the case are employees of a state police agency and are required to wear uniforms to carry out their jobs, they are 'uniform police employees' and cannot remain in the Statewide Technical Unit with non-police employees.

All of the parties in this matter have gone into extensive discussions and arguments about statutory interpretation. It is uncontroverted that the PERB has the authority to define the term "uniform policy employee" as used in K.S.A. 75-4327(f)(2). Petitioners argue that the statute is clear and should be given its plain ordinary meaning, because there is no evidence that the

legislature specifically set out, or intended to set out, a different definition of the term "uniform." Respondents Department of Administration and Kansas Highway Patrol contend that legislative intent should be considered and that, as stated in their Brief of June 14, 1996, the "Kansas legislature clearly intended a prohibition on the co-mingling of civilian employees and uniform police employees." They argue, further, that the Legislature intended "uniform police employees" to be similarly situated protection based employees ("uniform" versus "uniformed") and that the presiding officer's conclusion would lead to unreasonable and impracticable results.

KAPE's position, according to statements made by counsel in oral argument before the PERB, is also that legislative intent does not need to be considered and the language "uniform police employee" should be given its plain ordinary meaning. However, KAPE disagrees with the Petitioner's interpretation of that plain ordinary meaning, arguing that it does not mean that any employee of a law enforcement agency who wears a uniform is a "uniform police employee." This Board agrees with KAPE. Emphasis on the language "uniform" has been misplaced and the emphasis should be on the language "police," or rather the *entire* term "uniform police employees." As Respondent Department of Administration stated in its Brief of March 17, 1995,

The plain meaning of the word 'police' is defined in Websters Dictionary as the body of individuals established and maintained to maintain order, law, health, morals and safety of a community. There can be no doubt but that communications operators do not fit within the definition of police. Pure and simple, communications operators do not perform police work, but rather perform communications, dispatch work.

It is clear to this Board that the term "uniform police employees" should be interpreted as uniformed police officers, those individuals in uniform who have the duty to maintain order and

enforce the law in the community. Any other interpretation could lead to impracticable results contrary to public policy.

It is uncontroverted in the record that the Troopers have arrest powers, carry arms, and complete a twenty week law enforcement training course. It is also uncontroverted in the record that the dispatchers receive no formal law enforcement training, do not have arrest powers or carry arms, and perform work in transmitting and receiving messages to and from law enforcement or public safety personnel in accordance with regulations of the Federal Communications Commission. The dispatchers' work is extremely important as they maintain continuous communications with regard to the safety and needs of the troopers in the field and with the public. While both troopers and dispatchers are critical to the efficient operations of the Kansas Highway Patrol, the fact remains that they perform different functions.

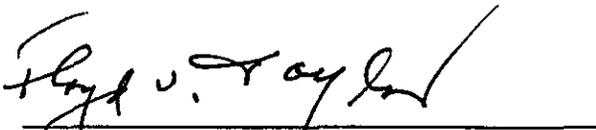
The mere fact that such a distinction has been made by the Kansas Legislature in K.S.A. 75-4327(f)(2), evinces a desire by the legislature to preclude a relationship between police employees and non-police employees, to avoid any potential conflict in loyalties. It is persuasive to note that the federal courts have recognized similar reasoning by Congress when it enacted 29 U.S.C.A. §159(b)(3), which precludes guards and non-guards from being in the same bargaining unit. See *NLRB v. Jones and Laughlin Steel Corp.*, 154 F.2d 932 (1946), reversed, 331 U.S. 416 (1947) and *United States Gypsum Co.*, 152 NLRB 624 (1965).

THEREFORE, it is concluded that there is insufficient evidence in the record of a community of interest between the Communications Specialists I and II, and the members of the existing unit consisting of Troopers I and II and Master Troopers. Furthermore, it is concluded

that the term "uniform police employees" was misinterpreted by the presiding officer and does not encompass the Communications Specialists I and II.

THEREFORE, it is determined that the Communications Specialists I and II should be excluded from the existing unit consisting of Troopers I and II and Master Troopers currently represented by KSTA and the Initial Order of May 3, 1996, and the intermediate orders incorporated therein, is hereby reversed, effectively placing the Communications Specialists I and II back into their previous unit, the Statewide Technical Unit represented by KAPE, as of the date of this Order.

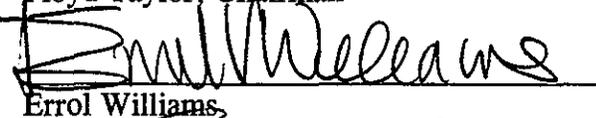
IT SO ORDERED this 18th day of September, 1996, by the undersigned members of the Public Employee Relations Board of the State of Kansas.



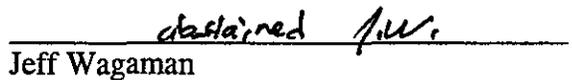
Floyd Taylor, Chairman



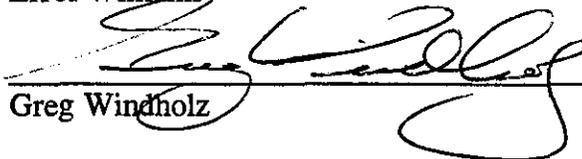
William Haynes



Errol Williams



Jeff Wagaman



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NOTICE OF RIGHT TO PETITION FOR JUDICIAL REVIEW

This is a Final Order of the Public Employee Relations Board. A petition for judicial review of the agency action in this case will not be considered timely unless it is filed with the district court within 30 days of service of this Final Order pursuant to K.S.A. 77-613. Notice of any petition for judicial review should be served upon this agency by sending a copy to: George Wolf, Executive Director of Labor Relations, 1430 SW Topeka Blvd., Topeka, Kansas 66612.

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of Sept., 1996, a true and correct copy of the above and foregoing Final Order was deposited in the United States Mail, postage pre-paid, addressed to the following:

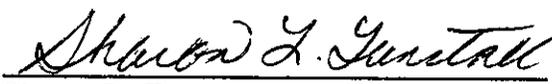
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