

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

IN THE MATTER OF THE PETITION)
FILED FOR UNIT CLARIFICATION)
AMENDMENT:)

CASE NO: 75-UCA-2-1988

Michael Shook, Terry Brinker,)
Dan Morris, Dave Hanna and)
Boyd Carr)

vs.)

City of Coffeyville, Kansas;)
International Union Of Operat-)
ing Engineers, Local 123; and)
International Brotherhood of)
Electrical Workers, Local 1523.)

Comes now this 21st day of September, 1988, the above captioned matter for consideration by the Public Employee Relations Board.

APPEARANCES

Petitioner, Michael Shook, Terry Brinker, Dan Morris, Dave Hanna, and Boyd Carr appeared through Michael Shook.

Respondent, City of Coffeyville appeared through Mary Martin, Attorney at Law.

Respondent, International Union of Operating Engineers, Local 123 appeared through Stanley L. Basler, Attorney at Law.

Respondent, International Brotherhood of Electrical Workers, Local 1523 appeared through Duane R. Nordick, Business Manager, IBEW Local 1523.

PROCEEDINGS BEFORE THE BOARD

1) Petition for unit clarification and/or amendment filed by petitioner on September 25, 1987.

2) Petition sent to respondents for answers on September 25, 1987.

3) Answers received:

City of Coffeyville - September 30, 1987

IBEW Local 1523 - September 29, 1987

IUOE Local 123 - October 5, 1987.

- 4) Answers exchanged with all parties on October 9, 1987.
- 5) Duplicate copies of all pleading submitted to all parties October 15, 1987.
- 6) Pre-hearing scheduled for December 2, 1987. (Cancelled by hearing examiner).
- 7) Pre-hearing rescheduled for January 26, 1988. Notice to parties sent on December 21, 1987.
- 8) Pre-hearing conducted on January 26, 1988. All parties in attendance.
- 9) Formal hearing scheduled for May 4, 1988. Notice of hearing sent to parties on April 8, 1988.
- 10) Formal hearing conducted on May 4, 1988. Motion to Amend Response received from City of Coffeyville at formal hearing and granted.

FINDINGS OF FACT

- 1) That the City of Coffeyville, Kansas is a public employer as that term is defined in K.S.A. 75-4321 et seq.
- 2) That Michael Shook is a public employee as that term is defined in K.S.A. 75-4321 et seq.
- 3) That the International Union of Operating Engineers Local 123 is a recognized employee organization as that term is defined in K.S.A. 75-4321 et seq.
- 4) That the International Brotherhood of Electrical Workers Local 1523 is a recognized employee organization as that term is defined in K.S.A. 75-4321 et seq.
- 5) That this matter is properly before the Public Employee Relations Board for determination.
- 6) That the power plant and the electrical distribution warehouse are located in the same geographical area. (T-18, 19)
- 7) That Gale Bradley is the director of electric utilities. (T-14).

8) That the efficient administration of government would not be affected by the amendment sought nor by the creation of an entirely new unit of city employees. (T-31, 32)

9) That the City of Coffeyville employs people in several departments who operate and maintain equipment. (T-41, 42, 43, 44)

10) That all of the people referred to in finding of fact number 9 are currently represented by the IUOE Local 123. (T-39, 40, 41)

11) That the employees included within the unit represented by the IBEW Local 1523 are employed to construct, repair, and maintain high voltage electric lines. (T-32)

12) That the IUOE Local 123 and the City of Coffeyville concluded their negotiations on the .88 contract through the attainment of a tentative agreement on July 24, 1987. (T-50)

13) That power plant employees have been included in the bargaining unit represented by IUOE Local 123 since 1955. (T-58)

14) That both the power plant employees and the electrical distribution employees are and have been funded through a common budget since 1976. (T-59)

CONCLUSIONS OF LAW/DISCUSSION

The instant case comes before the examiner on petition of five employees of the City of Coffeyville seeking the amendment of a bargaining unit consisting of city employees.

The City of Coffeyville currently bargains with four units of employees under the provisions of K.S.A. 75-4321 et seq. Those units are: the police unit, the fire unit, a unit of power distribution employees, and a comprehensive unit of employees of other departments of city government. The petition on file seeks to remove power plant employees from the "citywide" unit and place them in the unit consisting of electrical distribution employees. It should be noted that there are two ways in which the parameters of a bargaining unit may be established. The first is through the mutual agreement of the parties and assuming the Public Employee Relations Board finds no illegality in the scope of the proposed unit, a unit determination order will be issued. The second method

is through an order of the board which is issued subsequent to an evidentiary hearing conducted pursuant to the authority vested in the board by the act.

In the instant case, the two units which are impacted by this order were framed by the mutual agreement of the parties. The importance in that fact is that the board has never previously reviewed the facts surrounding the statutory criteria to be utilized in framing a unit when mutual agreement has been attained by the parties. In that regard, the board recognizes that problems may have existed in the original scope of the unit which were never considered or presented to the board. Had the board defined the unit subsequent to a hearing it would be more inclined to focus on changes which have occurred since the unit was established rather than simply on an overall factual understanding of conditions as they now exist. Stated simply, since the board has not previously reviewed comprehensive evidence in the issuance of their order they similarly do not feel as constrained by its terms.

PRELIMINARY ISSUES

There were two issues raised in this hearing which the examiner feels compelled to address. The first was Mr. Michael Shook's standing to represent anyone other than himself in proceedings before the board. An objection to Mr. Shook representing anyone other than himself was raised by the attorney for the respondent IUOE Local 123. The examiner reserved ruling at the hearing but now overrules the objection based on the following. First, in the opinion of the examiner, K.S.A. 75-4327(c) contemplates the filing of unit determination petitions by five or more employees wherein it states:

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

K.A.R. 84-1-1(c) then defines "party" to include any public employee filing a petition under the act. And finally, K.A.R. 2-2(c)(5)(a) specifically states:

"Any party shall have the right to appear at any hearing in person, by counsel, or by other representative, and any party and the board or its agent shall have the power to call and examine witnesses, and to introduce into record documentary and other evidence." (Emphasis added)

Based on the foregoing, it is the opinion of the examiner that Mr. Shook should be allowed to represent the other signators to the petition.

The second item to be addressed as a preliminary issue is the motion made by the attorney for the respondent IUOE Local 123 that the petition be dismissed due to the fact that only four of the five petitioning employees remained employed by the city on the date of the hearing. Once again, the examiner reserved ruling on the motion at the time of the hearing but now denies the motion based on the following. In the experience of the examiner, the requirement that a unit determination petition be filed by five or more employees was implemented to insure that there was some reasonable method for employees not choosing to affiliate with an employee organization to pose the questions raised by the petition. And further to insure that a single employee could not initiate such a costly and time consuming exercise to satisfy his singular interest. At the time of petition filing, all 5 signators were employees of the City of Coffeyville.

The time necessary to advance a case from petition filing to hearing date is largely out of the hands of any particular party. To now dismiss a petition because one of the original signators to the petition is no longer employed would send a dangerous message to all respondents, specifically, to delay proceedings as long as possible and perhaps they will go away. Similarly, if petitions could be dismissed so easily, an unscrupulous employer could rid himself of unwanted petitions through termination of their authors. The examiner points out these pitfalls in contrast to a lack of statutory language addressing this subject. It is

reasonable to the examiner that the critical test is the petitioner's status at the time of petition filing. The signators the time of petition filing were all employees of the City of Coffeyville and the examiner, therefore, views the petition as properly before him for determination and recommendation.

UNIT AMENDMENT

The process involved in the amendment of an appropriate unit is not unlike the one followed in the original determination of an appropriate unit. Within that process, the Public Employee Relations Board is provided with statutory guidance in arriving at a determination of the scope of the appropriate unit. The guidance is outlined at K.S.A. 75-4327(e) and (f) which state:

"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. 75-4325; and (7) the recommendations of the parties involved."

"A recognized employee organization shall not include: (1) Both professional and other employees, unless a majority of the professional employees vote for inclusion in the organization; (2) uniform police employees and public property security guards with any other public employees, but such employees may form their own separate homogeneous units; or (3) uniformed fireman with any other public employees, but such employees may form their own separate homogeneous units. The employees of a public safety department of cities which has both police and fire protection duties shall be an appropriate unit."

In the instant case no question has been raised which would bring the provisions of K.S.A. 75-4327(f) into play. The question to be answered hinges squarely on the criteria listed in K.S.A. 75-4327(e), and for purposes of clarity, each will be addressed separately.

(1) The principle of efficient administration of government.

There was nothing offered in the record to show that the efficient administration of government was currently being hampered by the existing composition of the bargaining units. Similarly, no evidence or testimony was provided to show that the efficient administration of government would be enhanced by the granting of the amendment sought by the petitioner. In fact the only testimony given by the chief administrative officer of the city, the city manager, was that it made no difference in his opinion. The city negotiates with four units and where the employees are represented is of no concern to the city manager. The testimony presented fails to show that the efficient of governmental administration would be altered by the proposed amendment.

(2) The existence of a community of interest among employees.

Some considerable time was spent by the petitioner in attempting to demonstrate the difficulty, complexity, and worth of the work of power plant employees as compared to that of electrical distribution employees. The examiner does not contest the value of the work performed by the power plant employees. His review, however, depends little on the value of the work to be performed but rather on the nature of the duties to be performed. The petitioner provided very little in regard to the duties to be performed and the few examples provided which did demonstrate a similarity of work was work which is outside of the regular duties expected of the distribution employees. The respondent, IUOE Local 123, did provide information in regard to the duties performed by maintenance and operational employees in other departments of the city and was able to demonstrate a greater similarity between those employees and employees of the power plant. The similarities, however, go beyond a generic comparison of job duties to other conditions of employment. Operators in the various departments primarily work indoors in one location while electrical distribution employees work outside all over town.

Operators work shift work around the clock while distribution employees work a regular shift. Operators may or may not be required to possess any sort of occupational certificate of competency while electrical distribution employees must either possess their skills at time of employment or complete an apprenticeship program to provide them with the skills.

The one area where there was a marked similarity in the conditions of employment between operators and distribution employees was in the area of supervision. As the electrical department exists today it appears that both groups of employees share common supervision. The record, however, becomes unclear on this point and it is impossible to determine whether this condition is unique or has existed periodically in the past. The business agent for the IUOE Local 123 testified that common supervision was the standard practice during all of his tenure while the city manager testified that the two departments were operating under separate supervision upon his employment with the city approximately two and one-half years ago. While this question of common supervision would be inadequate on its own to establish a community of interest, its lack of clarity on the record negates any potential value it may have had. The evidence and testimony presented fails to demonstrate a more persuasive community of interest between power plant employees and electrical distribution employees, than that between power plant employees and other city employees.

(3) The history and extent of employee organization.

Certainly the conditions which exist under this heading tend toward the maintenance of the status quo. The Public Employee Relations Board clearly has the right to determine the scope of a bargaining unit and to amend that unit as conditions dictate. The board, however, recognizes that once a unit is represented, any action to amend that unit impacts significantly on that representative. The board, therefore, must be convinced that the proposed amendment would be a clear improvement from existing conditions or that the existing conditions create a difficult or unworkable situation. The two units as they now exist have functioned without significant difficulty for many, many years.

Even now there is no evidence that the proposed change would remedy any particular problems. It is possible that the power plant employees could be represented in the same unit as the electrical distribution employees. There is nothing in the record, however, to indicate that such a change would improve anything other than the perceptions of the petitioning employees. To amend the citywide unit, however, would negatively impact the IUOE Local 123. The evidence on the record fails to convince the examiner that the potential harm caused by the proposed amendment would be offset by any corresponding gains. The long history of the unit's operating in their current form without problems, and the lack of any alleged improvement which the amendment would bring, indicates to the examiner that the proposed amendment would be of no benefit.

(4) Geographical location.

The record fails to indicate that the geographical location of the power plant in relation to electrical distribution would be a significant reason to adopt the proposed amendment. Testimony shows that the electrical distribution warehouse is in the same general location as and separated from the power plant by 25 to 30 feet according to the estimate of one witness. Testimony from a different witness, however, indicates that the sewer maintenance department and water distribution are also in the same general vicinity and were estimated to be only 15 feet from the power plant.

In the opinion of the examiner the most important geographical consideration is that all are within the City of Coffeyville, whether separated by 1 foot or 1,000 feet. It should be remembered that the Public Employer-Employee Relations Act applies not only to cities but also to counties, the state and its agencies, special boards, and many other sub units of government. Often the work sites of those entities are separated by many miles. In those cases the geographical locations take on greater significance. In the instant case there is no evidence that the location of the work sites is a factor of any significant consequence in the unit determination process in this particular case.

(5) The effects of overfragmentation and splintering of a work organization.

Both "overfragmentation" and "splintering" are conditions dealing with the number of units being considered. The instant petition does not seek to change the number of units in Coffeyville, only their composition. For that reason, this criteria has no application to this particular case.

(6) The provisions of K.S.A. 75-4325

"Supervisory employee not prohibited from membership in employee organization. Nothing herein shall prohibit any individual employed as a supervisory employee from becoming or remaining a member of an employee organization, but no public employer subject to this act shall be compelled to deem individuals defined herein as supervisory employees as public employees for the purposes of this act."


None of the issues under consideration in this case have any bearing on anyone's status as a supervisor. For that reason, this criteria has no application to this particular case.

(7) The recommendations of the parties involved.

In this case there are four parties to this matter; the petitioner, the IUOE Local 123, the IBEW Local 1523, and the City of Coffeyville. Both the IBEW Local 1523 and the City of Coffeyville have adopted a neutral position in regard to the requested amendment. Obviously, the petitioner favors the amendment while the IUOE Local 123 opposes it. The recommendations of the parties, therefore, serve to negate one another and for that reason provide the examiner with nothing in terms of persuasive evidence.

When viewed in total, the record lacks any sufficient evidence which would dictate the amendment of the unit. Therefore, for all the above stated reasons, it is the recommendation of the examiner that the amendment sought by the petitioner in this case be denied.

It is so recommended this 2nd day of August, 1988.

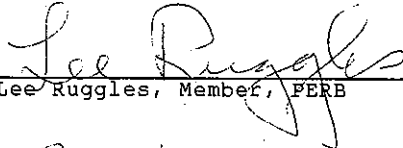


Paul K. Dickhoff, Jr.
Hearing Examiner

The hearing examiner's report and recommended findings are hereby approved and adopted as a final order of the Board.

IT IS SO ORDERED THIS 21st DAY OF September, 1988, BY
THE PUBLIC EMPLOYEE RELATIONS BOARD.

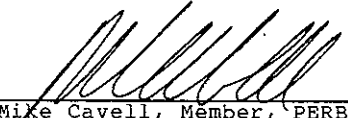
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