

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

IN THE MATTER OF THE COMPLAINT *
AGAINST EMPLOYER FILED BY: *

Teamsters Local 696, *

Petitioner, *

vs. *

Board of Shawnee County *
Commissioners *

Respondent. *

CASE NO. 75-UD-2-1988

ORDER

Comes now this 18th day of May, 1988, the above captioned matter for consideration by the Public Employee Relations Board.

APPEARANCES

Teamsters Local, 696, appears through Michael T. Manley, Attorney at Law.

Board of Shawnee County Commissioners, appears through Joseph W. Zima, First Assistant County Counselor.

PROCEEDINGS BEFORE THE BOARD

- 1) Petition for unit determination filed by petitioner on November 16, 1987.
- 2) Petition submitted to respondent for answer on November 16, 1987.
- 3) Extension of time in which to answer granted to respondent on December 15, 1987.
- 4) Respondent's answer received on December 18, 1987.
- 5) Respondent's answer submitted to petitioner on December 21, 1987.
- 6) Pre-hearing conducted on February 9, 1988. All parties in attendance.

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- 7) Brief of petitioner received on March 1, 1988.
- 8) Brief of respondent received on March 3, 1988.
- 9) Reply brief of petitioner received on March 9, 1988.

FINDINGS OF FACT

- 1) That the Teamsters Local 696 is an "employee organization" in accordance with K.S.A. 75-4322 (i).
- 2) That the Board of Shawnee County Commissioners is a "public employer" in accordance with K.S.A. 75-4322 (f).
- 3) That this matter is properly before the Public Employee Relations Board for consideration.
- 4) That K.S.A. 75-4327 deals with, among other things, the determination of appropriate bargaining units.

CONCLUSIONS OF LAW/DISCUSSION

In the instant case the petitioner has asked the Public Employee Relations Board to determine an appropriate bargaining unit of employees at the Shawnee County Expo Centre. In its response, the respondent has alleged that: "before an appropriate unit determination can be made by the Public Employee Relations Board over the objection of an employer, there must first be a sufficient showing by the employee organization of representation or legitimate interest amongst the employees sought to be organized."

At the pre-hearing conference on this matter it was determined that the issue raised by the respondent could best be addressed as a question of law as opposed to a question of fact. In that regard the parties have provided the examiner with briefs on this issue.

As the examiner considers this question he takes note of the fact that the statute fails to define the terms "bargaining unit" or "appropriate bargaining unit". In accepted labor relations terminology a bargaining unit and an appropriate bargaining unit are both collections of job classifications. The difference is that an "appropriate bargaining unit" is one which fulfills the

mandates of the statute. Under K.S.A. 75-4321 et seq., and more particularly under K.S.A. 75-4327 those mandates are expressed as criteria to be considered by the board in the determination of an "appropriate bargaining unit". K.S.A. 75-4327 (e) 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. 75-4325; and (7) the recommendations of the parties involved."

K.S.A. 75-4327 (f) then states:

"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 firemen 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."

The examiner notes the importance accorded to the repeated use of the term "appropriate" for a very real reason. If the act were read in such a way so as to require the submission of a "showing of interest" or a "showing of representation" prior to the acceptance of a petition to determine an appropriate bargaining unit, the application of the requirement would be both nonsensical as well as impossible to enforce.

By way of explanation the examiner believes it is important to first define certain labor relations terms. An "appropriate bargaining unit" has been defined as the grouping of job classifications of the employer who meet particular statutory mandates thus allowing them the potential for representation by an employee organization. The "unit inclusions" (not to be confused with organizational members) may then be defined as all of the employees who occupy job classifications within the scope of the

"appropriate bargaining unit". A "showing of interest" is a statement which is signed and dated by an employee (logically a "unit inclusion") expressing an intent to be represented by a specific employee organization. A showing of interest which is "sufficient" to bring about a representation election is one which is supported by not less than thirty percent (30%) of the unit inclusions.

In a petition seeking the determinations of an "appropriate bargaining unit", the classifications to be included are an unknown quantity. If the classifications are an unknown quantity, then the number of incumbents in those classifications is also an unknown quantity. And logically, it is impossible to accurately determine if any given number of "showing of interest" cards or signatures constitutes thirty percent (30%) of an unknown quantity. In order to find a showing of interest to be sufficient or insufficient, one must begin with "real" numbers rather than algebraic equations.

Additionally, if a showing of interest were required to raise a question regarding the scope of a bargaining unit that requirement could be easily circumvented by any organization wishing to do so. Any employee organization could simply petition for any portion of a unit in which they could acquire an adequate (30%) showing and allege that grouping to be the "appropriate unit." The Public Employee Relations Board would then be required to conduct complete unit determination proceedings in order to arrive at "real" numbers of "unit inclusions" against which to test the validity of the employee organization's alleged thirty percent (30%) support or interest. The Public Employee Relations Board might well anticipate the insufficiency of the showing of interest submitted, but in the absence of a complete unit determination proceeding the board could not rule on that sufficiency without the action being arbitrary in nature. By way of further example, in the instant case the petitioner has sought a unit which would include Laborers I, Laborers II, Custodians, and Ticket Sellers. The total number of employees sought to be in-

cluded in the bargaining unit is thirteen (13), or an average of slightly more than three (3) people in each classification. If the statute required a showing of interest to raise the unit determination issue, any employee organization wishing to circumvent that requirement could do so by acquiring a single showing of interest card in a classification containing three (3) or fewer employees, and then petitioning for a unit consisting of only that classification where the showing card was acquired. A requirement of that type would eliminate any inducement for the employee organization to petition for a unit of reasonable parameters since the addition of each classification would expand the showing of interest requirement necessary to even raise the question.

Certainly the legislature did not envision the creation of a statutory provision which would serve to polarize the parties rather than encourage them to achieve some common ground. Naturally, at the point in time when an employee organization wishes to become the certified representative of an "appropriate bargaining unit" that organization is required to submit a thirty percent (30%) showing of interest as an accompaniment to their petition for a certification election in accordance with K.S.A. 75-4327 (d). That statute, however, only imposes the requirement for a showing of interest, "Following determination of the appropriate unit of employees . . .". In accordance with the above stated statutory language the Public Employee Relations Board, through their rule making power outlined at K.S.A. 75-4327 (d), has further clarified the necessity for the submission of a showing of interest at K.A.R. 84-2-5 (a) which states in part; "Proof of interest shall not be required until after unit determination has been made by the board."

The only language, apparent to the examiner, which may give rise to a question of when an employee organization must demonstrate interest on the part of the employees at issue, appears

at K.S.A. 75-4327 (c) which states in part, "A recognized employee organization shall represent not less than a majority of the employees of an appropriate unit." The examiner notes that the above requirements for majority representation applies to a "recognized employee organization". In order to fully appreciate the consequence of the word "recognized", one must understand that a public employer may grant representation status to an employee organization without benefit of any unit determination or certification election proceedings whatsoever. The examiner is of the opinion that the language contained within the first sentence of K.S.A. 75-4327 (c) serves as a caution to public employers considering the granting of "voluntary recognition" to insure that the employee organization in question enjoys majority support among the public employees affected.

The argument was also raised that federal law and practices should be persuasive to the Public Employee Relations Board. The examiner is not opposed to a review of federal practices when statutory guidance is lacking and if the issues being addressed are substantially similar. In this case guidance is provided by the statutes and the issues are somewhat dissimilar. By dissimilar issues, the examiner refers to the fact that unit determinations and unit certification may be filed as separate actions under state statute where they traditionally appear as a single action under federal law. The petitions utilized by the Public Employee Relations Board also permit the filing of a joint petition for both unit determination and certification, and that petition does require the submission of a showing of interest. The required showing of interest, however, is not reviewed until after the unit has been determined.


In summary, there is nothing in the language of the statute or the regulations which would require the submission of a showing of interest with a petition for unit determination. Additionally, such a requirement would be counterproductive toward the development of harmonious and cooperative relationships between the

parties. And finally, the existence of such a requirement would simultaneously charge the board with the obligation of verifying the sufficiency or insufficiency of the showing of interest in an arbitrary manner.

The determination of the appropriate unit establishes a determinate number of unit inclusions from which a showing of interest may be drawn and under any set of circumstances must be accomplished prior to the time that the verification of the showing of interest may be accomplished. To require an employee organization to submit some symbolance of a showing of interest in order to initiate the unit determination process appears to the examiner to be a valueless exercise and an artificial impediment to the organizing efforts of public employees.

Based on all of the foregoing, it is the opinion of the examiner that a petition for unit determination may be filed by an employee organization without any accompanying showing of interest and that petition must be entertained and processed by the Public Employee Relations Board even over the objection of the employer. The examiner recommends, therefore, that the petition filed by Teamsters Local 696 in Public Employee Relations Board case number 75-UD-2-1988 be processed in accordance with existing board policy and statutory requirements regarding unit determination matters.

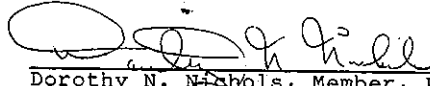
It is so recommended this 20th day of April, 1988.

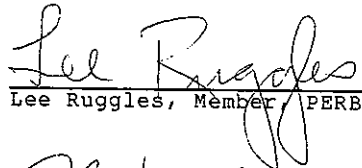


Paul K. Dickhoff, Jr.
Hearing Examiner

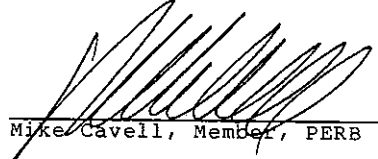
The hearing examiner's report and recommended findings are hereby approved and adopted as a final order of the Board.

IT IS SO ORDERED THIS 18th DAY OF May, 1988, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.


Dorothy N. Nichols, Member, PERB


Lee Ruggles, Member, PERB


Art J. Veach, Member, PERB


Mike Cavell, Member, PERB
