

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD  
OF THE STATE OF KANSAS

IN THE MATTER OF THE PETITION )  
FILED BY: )  
Kansas Association of Public )  
Employees (KAPE), )  
Petitioner, ) CASE NO: 75-UDC-4-1988  
vs. )  
State of Kansas - Adjutant )  
General Department, )  
Respondent. )

ORDER

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

APPEARANCES

Petitioner, Kansas Association of Public Employees (KAPE), appears through Brad Avery, Attorney at Law.

Respondent, State of Kansas - Adjutant General Department, appears through Phil Finley, Adjutant General for the State of Kansas and Alan Nauman, Personnel Director, Kansas Adjutant General Department.

PROCEEDINGS BEFORE THE BOARD

- 1) Petition for unit determination and certification filed on November 25, 1987.
- 2) Petition submitted to Respondent for answer on November 25, 1987.
- 3) Request for extension of time in which to answer granted to Respondent on December 4, 1987.
- 4) Respondent's answer received on December 15, 1987.
- 5) Respondent's answer submitted to Petitioner on December 17, 1987.
- 6) Reply to Respondent's answer received on December 21, 1987.

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7) Reply to Respondent's answer submitted to Respondent on December 22, 1987.

8) Informational "brief" received from Respondent on February 23, 1988.

9) Reply to Respondent's informational "brief" received from Petitioner on March 3, 1988.

10) Executive Director of the Public Employee Relations Board reports on case status to Board on March 2, 1988. Board member Ruggles requests information from Respondent at Board meeting.

11) Information as requested by Board member Ruggles received on April 8, 1988.

12) Board meeting conducted on April 20, 1988. Petitioner moves for receipt of copy of all information submitted by Respondent to Board and opportunity to respond prior to any Board action. Motion approved.

13) Information requested by Board member Ruggles submitted to Petitioner on April 25, 1988.

14) Copy of entire case file forwarded to Board member Cavell on April 25, 1988.

15) Petitioner's response to Respondent's reply to Board members Ruggles' request for information received on May 6, 1988.

16) Board meeting conducted on May 18, 1988. Board considers previously submitted briefing material and directs parties that all pleadings for Board consideration must be submitted not later than June 1, 1988.

17) Board meeting conducted on June 15, 1988. Board instructs Executive Director to conduct evidentiary hearing on the sole issue of jurisdiction.

18) Formal hearing on jurisdiction scheduled for July 10, 1988. Notice of Hearing sent on June 21, 1988.

19) Formal hearing conducted on July 20, 1988. All

parties in attendance.

FINDINGS OF FACT

- 1) That the Petitioner is an "employee organization" as that term is defined within K.S.A. 75-4321 et seq.
- 2) That the Adjutant General's Department is an office or agency of state government and as such is a "public employer" as that term is defined within K.S.A. 75-4321 et seq.
- 3) That the issue in this hearing is limited to a determination of the jurisdiction of the Public Employee Relations Board to entertain the petition of certain employees of the Adjutant General's Department as employees of the State of Kansas.
- 4) That the issue of jurisdiction is properly before the Public Employee Relations Board for determination.
- 5) That the Adjutant General's Department employs both state and federal employees.
- 6) That the Petitioner in this matter seeks to represent only those individuals employed by the Adjutant General's Department as firefighters.
- 7) That firefighters in the Adjutant General's Department are employed in the state unclassified service.
- 8) That firefighters in the Adjutant General's Department are funded entirely with Federal funds.
- 9) That appointments to state unclassified positions in the Adjutant General's Department are made by the Governor upon the recommendations of the Adjutant General.
- 10) That firefighters in the Adjutant General's Department receive all of the same benefits as other state employees.
- 11) That firefighters in the Adjutant General's Department are not required to be, or to become, members of the National Guard as a condition of continued employment.
- 12) That Federal regulations establish some conditions of

employment which apply to firefighters in the Adjutant General's Department.

13) That firefighters in the Adjutant General's Department are carried in the agency budget as state unclassified employees.

14) That firefighters in the Adjutant General's Department are assigned state job titles and state position numbers.

CONCLUSIONS OF LAW/DISCUSSION

The instant case comes forth as a jurisdictional issue arising from a petition filed by the Kansas Association of Public Employees seeking to represent a group of firefighters employed by the Adjutant General's Department of the State of Kansas. The issues raised by the petition deal with the determination of an appropriate bargaining unit and the certification of a representative for that unit. Those issues will not be addressed by this order. The purpose of this order is to determine the status of the employees petitioned for as either state or federal employees, and therein the jurisdiction of the Public Employee Relations Board.

The information necessary to allow the examiner to rule on this issue is gained not only from the formal hearing conducted on July 20, 1988 but also from the briefs and information submitted by the parties prior to the formal hearing.

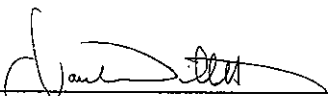
In a review of the status of the firefighters of the Adjutant General's Department it is readily apparent that their purpose in existing is to provide support to the National Guard by providing fire fighting protection. The record also indicates that there may be some preference that the employees hired for these jobs have prior military experience although no such formal prerequisite exists. It is also apparent that many duties and procedures required of the firefighters exist through Federal requirements. Items which have a greater impact on the

examiners recommendation, however, are the facts indicating that employment decisions for these employees are made by state officials rather than federal officials. In addition, while money to pay these employees comes from federal sources, it is administered by the State of Kansas and these employees are paid on state warrants. These employees are covered by the state health insurance plan and the state retirement plan. They are entitled to all the benefits accorded to all other unclassified state employees.

Quite obviously, if these firefighters were federal employees it would make little sense to accomplish a unit determination/certification process and order a state agency to bargain with them. That, however, is simply not the case. These employees are not national guardsmen who serve as firefighters but rather are firefighters employed by the state who are also, in some cases, members of the national guard.

The examiner is convinced that the firefighters petitioned for by the Kansas Association of Public Employees are public employees under the provisions of K.S.A. 75-4322 (a). the examiner is further convinced that processing of this petitions falls within the jurisdiction of the Public Employee Relations Board as granted within K.S.A. 75-4321 et seq. The examiner recommends, therefore, that the Public Employee Relations Board exert its jurisdiction and order the commencement of unit determination/certification proceedings as prescribed by the Act.

It is so recommended this 9<sup>th</sup> day of September,  
1988.


  
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Paul K. Dickhoff, Jr.  
Hearing Examiner

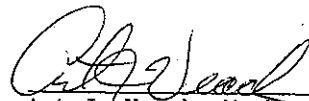
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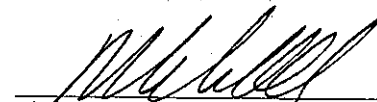
The hearing examiner's report and recommended findings are hereby approved and adopted as a final order of the Board.

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

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Dorothy N. Nichols, Member, PERB

  
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Lee Ruggles, Member, PERB

  
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Art J. Veach, Member, PERB

  
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Michael C. Cavell, Member, PERB

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