



UDC 9-1977

Public Employee Relations Board  
JUN 28 1977

STATE OF KANSAS

## Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topoka, Kansas 66612

Curt T. Schneider  
Attorney General

June 24, 1977

ATTORNEY GENERAL OPINION NO. 77- 211

Mr. Jerry Powell  
Executive Director  
Kansas Public Employee Relations Board  
701 Jackson  
Topeka, Kansas 66603

RE: Public Officers and Employees -- Public  
Employer-Employee Relations Act --  
Recognition Procedure

SYNOPSIS: An election by public employers, other than the state and its agencies, to bring the employer under the act is required before the provisions of K.S.A. Supp. 75-4329 apply.

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Dear Mr. Powell:

We have your letter of May 24, 1977. You inquire relative to the applicability of the provisions of K.S.A. Supp. 75-4329 to public employers, other than the state, where no election has been made to bring the employer under the provisions of the act. K.S.A. Supp. 75-4321(5)(c) provides:

"The governing body of any public employer, other than the state and its agencies, by a majority vote of all the members may elect to bring such public employer under the provisions of this act, and upon such election the employer and its employee shall be bound by its provisions from the date of such election. Once an election has been made to bring the public employer under the provisions of this act it continues in effect unless rescinded by a majority vote of all members of the governing body. No vote to rescind shall take effect until the termination of the next complete budget year following such vote."

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You direct our attention to K.S.A. Supp. 75-4329, which provides:

"Every public agency, other than the state, acting through its governing body, may establish procedures, not inconsistent with the provisions of sections 7(75-4327) and 8(75-4328) of this act and, after consultation with interested employee organizations and employer representatives, may resolve disputes concerning the recognition status of employee organizations composed of employees of such agency. In the absence of such procedures, such disputes shall be submitted to the public employee relations board in accordance with section 7(75-4327) of this act."

In an opinion issued by this office to you dated March 18, 1976, we concluded:

"In light of the foregoing we are constrained to the view that the provisions of the act are not to be expanded beyond its clearly expressed terms."

As to local units of government, K.S.A. Supp. 75-4321(5)(c) set out above, clearly conditions jurisdiction of the board and indeed the applicability of the act itself to the employer-employee relations of local units of government after the election to come under the law is unequivocally made by the governing body. In construing the provisions of K.S.A. 75-4335 we stated:

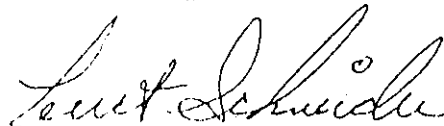
"This section, in our opinion, should not be read as implying the laws application to public employers or employees other than the state without the election discussed above. The section merely allows for local legislation and substitution of provisions by local governing bodies after the election to come under the act has been made."

In our opinion, K.S.A. Supp. 75-4329 is nothing more than a continuation of the manifest legislative policy to insure local units of government a full measure of local autonomy. (See K.S.A. 75-4323(e)). There is no indication that K.S.A. 75-4329 deals with a subject more unique than other sections of the act, all of which require the election to come under the act. Certainly we must conclude as we did in our earlier

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opinion that as to employers, other than the state, an unequivocal election is required.

Very truly yours,



CURT T. SCHNEIDER  
Attorney General

CTS:DRH:gw

Human Resources

PUBLIC EMPLOYEE RELATIONS BOARD

701 JACKSON TOPEKA, KANSAS 66603  
913-296-3094

July 28, 1977

Mr. Charles W. Kiffin  
Stinson, Mag, Thomson, McEvers & Fizzell  
P. O. Box 19251  
TenMain Center  
Suite 2100  
Kansas City, MO 64141

Dear Mr. Kiffin:

The Public Employee Relations Board met at its regular meeting July 21, 1977 and the following action was taken in Case UDC-1977:

With respect to the letter dated April 18, 1977, from Mr. Charles W. Kiffin, and the Attorney General's opinion No. 77-211, that;

"Under the circumstances, the Public Employee Relations Board is not in any position to consider dismissing the Unions' request for reconsideration of the petition."

*Herefore, we consider this case closed*  
If you have any questions, please contact this office. Thank you for your cooperation.

Sincerely,

*Jerry Powell*

Jerry Powell  
Executive Director

JP:ml

cc: Mr. Eugene V. Clarke

Human Resources

PUBLIC EMPLOYEE RELATIONS BOARD

701 JACKSON TOPEKA, KANSAS 66603

913-296-3094

August 1, 1977

Mr. Eugene V. Clarke - 760376  
Business Representative  
International Association of Machinists  
and Aerospace Workers  
1113-15 East 47th Street  
Kansas City, Missouri 64110

Dear Mr. Clarke:


This letter is to replace an earlier letter dated July 28, 1977, mailed to you and concerned action taken by the Public Employee Relations Board at its meeting July 21, 1977.

In acting on case UDC 9-1977, the Board took the following action:

"Under the circumstances, the Public Employee Relations Board is not in any position to consider the union's request for reconsideration of the petition." The case, therefore, is closed.

We sincerely apologize for the error and ask that you contact this office if you have any questions. Thank you for your patience in this matter.

Sincerely,

  
Jerry Powell  
Executive Director

JP:tb

cc: Mr. Charles W. Kiffin - 760377  
Stinson, Mag, Thomson, McEvers & Fizzell  
P. O. Box 19251  
TenMain Center  
Suite 2100  
Kansas City, Missouri 64141

State of Kansas  
PUBLIC EMPLOYEE RELATIONS BOARD

P E T I T I O N

- Filed By:  Employer  
 Employee Organization  
 Employees (must be signed by five employees)

Do Not Write In This Space
Case No. <u>UDC 9-1977</u>
Date Filed <u>2-17-77</u>

INSTRUCTIONS: File an original and five copies of this Petition to the Public Employee Relations Board, 701 Jackson, Rms 204-206, Topeka, Kansas 66603 by Certified Mail. If more space is required for any item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the Public Employee Relations Board proceed under its proper authority.

1. Purpose of this Petition (Check appropriate box)

- Unit Determination (UD)  
 Unit Certification (UC)  
 Unit Determination and Certification (UDC)  
 Unit Decertification (UDE)

2. Name and Address of Petitioner INTERNATIONAL ASSOCIATION OF MACHINISTS  
(Affiliation, if any)

AND AEROSPACE WORKERS, AFL-CIO Phone 753-2125

3. Name and Address of Employer KANSAS CITY BOARD OF PUBLIC UTILITIES  
7TH & MINNESOTA, KANSAS CITY, KANSAS Phone \_\_\_\_\_

4. Employer Representative to Contact MR. JESS E. FLESCHITE  
DIRECTOR OF PERSONNEL Phone 281-8040

5. Type of Establishment POWER PLANTS

6. Description of unit alleged to be appropriate (be complete and specific, using job titles):

INCLUDE:

EXCLUDE:

6a. Number of employees in unit 120

6b. If filing for Unit Certification or Decertification, is this Petition supported by 30% or more of the employees in the unit?

YES  NO  If "YES", please attach signature petitions or authorization cards.

7. Is there agreement by all parties on the appropriate unit?

YES  NO

8. Give statement to the effect the governing body of the public employee is under the provisions of the Public Employer-Employee Relations Act either by virtue of the public employer being with the state or one of its agencies, or if not with the state or a state agency, that said public employer has elected to come under the provisions of said Act, and include evidence to that effect.

ISSUE TO BE DECIDED

9. Is there a work stoppage or picketing in progress at the establishment involved? YES  NO  If "YES", state date of work stoppage and number of employees involved \_\_\_\_\_

Has an appropriate unit been determined by the Public Employee Relations Board? YES  NO  If "YES", attach details of unit: \_\_\_\_\_

11. If Petitioner is representative in behalf of employee organization, is that representative duly licensed under the laws of the state of Kansas? YES  NO

12. Name(s) of other persons or employee organizations, known to Petitioner, who claim to represent any employees, or other employee organizations known to have an interest in representing employees in the alleged appropriate unit: (If none, so state)

Name	Address	Affiliation
<u>NONE WITHIN UNIT INVOLVED</u>		

13. Include a clear and concise statement of any other relevant facts: \_\_\_\_\_

14. If Petition for Unit Decertification is filed by public employees or employee organization, complete and attach Form PERB 002.

Note: Any answer to this Petition is to be filed with the Public Employee Relations Board within seven days after receipt of said Petition. The Board will consider failure to answer Petition as an admission of the allegations of said Petition, particularly the Unit Determination.

DECLARATION

I declare that I have read the above Petition and that the statements herein are true to the best of my knowledge and belief.

International Association of Machinists & Aerospace Workers  
Petitioner & Affiliation, if any

BY Eugene V. Clarke Business Representative  
Representative or Person Filing Title, if any  
Petition

Date: Feb. 16, 1977

Subscribed and sworn to before me this 16<sup>th</sup> day of February, 1977.

Marian G. Lacy  
Notary Public

SEAL

My commission expires December 19, 1977