

STATE OF KANSAS
PUBLIC EMPLOYEE RELATIONS BOARD
DEPARTMENT OF HUMAN RESOURCES
535 KANSAS, ROOM 1102
TOPEKA, KANSAS

TOPEKA PRINTING PRESSMEN & ASSISTANTS
UNION NO. 49,

Complainant,

vs.

STATE OF KANSAS, DEPARTMENT OF
ADMINISTRATION, DIVISION OF PRINTING

Respondent.

Case CAE 1-1978

O R D E R

Comes now this 9th day of November, 1977, the complaint against employer for hearing. The hearing was conducted by Jerry Powell, the duly appointed hearing officer for the Public Employee Relations Board (PERB).

Complainant appears by and through its counsel, Mr. David Heath.

The respondent appears by and through its counsel, Mr. Darrell McNeil.

Complaint form was filed with PERB July 20, 1977 by Mr. Calvin Wolfe, Business Agent and Chief Negotiator for Union #49, alleging that the respondent committed an unfair labor practice during the meet and confer process as the division of printing made no concessions or deviated from its original position, thus violating K.S.A. 76-Supp. 75-4333 (b) (5).

Answer to complaint was filed with PERB August 2, 1977 by Mr. William T. Smith, Jr., Director of the Division of Printing, denying all allegations contained in said complaint.

The hearing was conducted November 9, 1977; briefs were filed by the parties December 14, 1977; and an Amicus Curiae brief was filed by Mr. Wesley A. Weathers, Counsel for the Kansas Higher Education Association on December 14, 1977.

CAE-1-1978

FINDINGS OF FACT

1. THAT THE State of Kansas, Department of Administration, Division of Printing, is the appropriate public employer within the meaning of K.S.A. 75-4321 et seq.
2. That the Topeka Printing Pressmen and Assistants Union, Local 49 was certified by PERB March 26, 1973.
3. That there having been no objections filed, this matter is properly before PERB.
4. That the memorandum of agreement provides for a timely reopener on wages on or before December 1, 1976. (See T-23 and T-41)
5. That the union requested to meet and confer on the issue of wages by letter dated December 8, 1976. (See T-23 and Respondents Exhibit #C)
6. That the union letter dated December 8, 1976 proposed to discuss economic provisions. (See T-23 and Respondents Exhibit #C)
7. That management agreed on January 3, 1977 to meet and confer with the union. (See T-42 and Respondents Exhibit #D)
8. That the union and management did meet and confer over the issue of wages on numerous occasions. (See T-21 and T-43)
9. That management was involved in wage discussions with two other employee groups represented by unions during December, 1976 and January, 1977. (See T-50)
10. Wage discussions were concluded with the typographical union and the bookbinders union sometime in late January or early February, 1977. (See T-51)
11. Management testified that no offer was made by management at the first meeting. (See T-45)
12. That management testified that a one cent (.01¢) an hour offer for pressmen and a twenty-five cent (.25¢) an hour cut for assistant pressmen was made at the second meeting. (See T-45)
13. That the cut in hourly wages was based on an error in computing assistant pressmen's compensation as required in the memorandum of agreement. (See T-45)
14. That management testified it made an offer of twenty-three cents (.23¢) an hour for pressmen and a five cent (.05¢) an hour wage cut for assistant pressmen at a meeting subsequent to the second meeting. (See T-46)
15. That management testified it made a final offer of twenty-three cents (.23¢) an hour for pressmen and no cut in pay for assistant pressmen. (See T-46)

16. That the union testified there was no offer of one cent (.01¢) an hour ever made by management. (See T-14 and T-83)

17. That the union testified an offer of twenty-three cents (.23¢) an hour was made by management at the initial meeting of the parties. (See T-14 and T-83)

18. That management believed the twenty-three cents (.23¢) an hour increase or \$6.70 an hour was the legal limit for compensation under K.S.A. 76-Supp. 75-1017. (See T-18 and T-54)

19. That neither the first meeting nor subsequent meetings were tape recorded or transcribed by a court reporter. (See T-13)

20. That Article 28 of the memorandum of agreement entered into between the State of Kansas, Office of the State Printer and Topeka Printing Pressmen and Assistants Union, Local 49, AFL-CIO, provides an impasse procedure.

21. That such impasse procedure was utilized by the parties and resulted in the fact-finding report. (See Petitioners Exhibit #1)

22. That the fact-finding board recommended a rate of compensation of \$6.90 an hour for pressmen. (See Petitioners Exhibit #1)

CONCLUSIONS OF LAW - OPINION

The question in this case appears to be twofold. First, what is the obligation or "duty to bargain," imposed on an employer by K.S.A. 75-4321 et seq. Secondly, did the employer (Kansas State Division of Printing) in good faith fulfill that obligation.

K.S.A. 75-4321 (b) states:

"(b) Subject to the provisions of subsection (c), it is the purpose of this act to obligate public agencies, public employees and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment, acting within the framework of law. It is also the purpose of this act to promote the improvement of employer-employee relations within the various public agencies of the state and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and be represented by such organizations in their employment relations

and dealings with public agencies." (Emphasis added)

The definition of meet and confer in good faith is defined at K.S.A. 75-4322 (m):

"(m) "Meet and confer in good faith" is the process whereby the representative of a public agency and representative of recognized employee organizations have the mutual obligation personally to meet and confer in order to exchange freely information, opinions and proposals to endeavor to reach agreement on conditions of employment." (Emphasis added)

K.S.A. 75-4327 (b) states:

"(b) Where an employee organization has been certified by the board as representing a majority of the employees in an appropriate unit, or recognized formally by the public employer pursuant to the provisions of this act, the appropriate employer shall meet and confer in good faith with such employee organization in the determination of conditions of employment of the public employees as provided in this act, and may enter into a memorandum of agreement with such recognized employee organization." (Emphasis added)

The utilization of language such as "disputes relating to conditions of employment," "exchange freely information, opinions and proposals," "to endeavor to reach agreement," and "determination of conditions of employment," indicate that much more is required of an employer than simply an "attempt by both parties to desire to answer questions and demands and give information on a free-flowing basis between the two." Additionally, K.S.A. 75-4332 provides a procedure to be invoked in the event of impasse. It is most difficult to conceive of an impasse or "dispute over terms and conditions of employment" arising unless there is some requirement for give-and-take negotiations.

The board takes notice of the absence of such terminology as "negotiations" and "bargaining." However, one must consider the similarity between K.S.A. 75-4321 et seq., and K.S.A. 72-5413 et seq.

At K.S.A. 72-5413 (g) professional negotiations is defined as follows:

"(g) "Professional negotiation" means meeting, conferring, consulting and discussing in a good faith effort by both parties to reach agreement with respect to the terms and conditions of professional service."

Both laws establish a framework for recognized employee organizations and public employers to "endeavor" or make an "effort" to reach an agreement.

These laws - Public Employer-Employee Relations Act and the Professional Negotiations Act - are comparable in that they provide impasse resolution techniques of mediation and fact-finding for resolving disputes over terms and conditions of employment. The laws are open-ended. That is to say that the employer may after a good faith "effort" or "endeavor" to reach agreement, "take such action as it deems in the public interest."

It is sometimes argued that an open-ended law cannot require good faith negotiations. There is little doubt, however, that K.S.A. 72-5413 et seq., requires a negotiation process. Since both laws are substantially the same, the PERB does not consider that one law requires a greater "duty to bargain" than the other law.

Perhaps the lack of terms such as "negotiation" or "bargaining" tends to lessen the employers requirement or duty to bargain. The Kansas Agricultural Labor Relations Act, K.S.A. 44-818 defines meet and confer in good faith as:

"(h) "Meet and confer in good faith" is the process whereby the representatives of an agricultural employer and representatives of recognized employee organizations have the mutual obligation personally to meet and confer in order to exchange freely information, opinions and proposals to endeavor to reach agreement on conditions of employment, but such obligation shall not compel either party to agree to a proposal or require the making of a concession."

This law requires both labor and management to "endeavor" to reach agreement. The Agricultural Labor Relations Act does not include terminology such as "negotiating" or "bargaining." However, the law does provide for binding arbitration of an interest or impasse dispute. That is, any disagreement over terms and conditions of employment which is not resolved by mediation and fact-finding under this "meet and confer law" is resolved by the Agricultural Labor Relations Board. (See K.S.A. 44-826 (d)) Thus, while the law is designated by the Kansas Legislature to be a "meet and confer" law, it provides for arbitration of interest disputes which certainly would be an added incentive for the parties to "bargain."

It is inconceivable to the board (PERB) that three laws enacted by the Kansas Legislature at approximately the same date in time, and which utilize substantially the same procedures could be so completely different in intent. Therefore, PERB can only conclude that the Kansas Public Employer-Employee Relations Act, K.S.A. 75-4321 et seq., requires a good faith effort by both labor and management through a negotiations process to reach agreement.

It is never an easy task to determine good faith bargaining. Historically two of the leading tests for good faith bargaining have been; (1) reasonableness of offers and demands and (2) movement on the issues by the parties. It must be remembered, however, that these tests are usually tempered by a statement that neither party is required to make a concession. Thus, the task of determining good faith bargaining by these tests is further complicated when a reopener of a single issue is involved.

Testimony in this case is, to say the least, confusing. Management testified that there was an evolution of offers made to the union. Management was unable to pinpoint exactly when the various offers were made. The union contended that only the one offer of twenty-three cents (.23¢) an hour was made on a take-it-or-leave-it basis. Further, the union contended that this offer was based on an offer made and supposedly accepted by two other unions within the state printing plant. Management contended that it was limited in its offer by K.S.A. 76-Supp. 75-1017. The PERB must consider this law which does place some limitations upon management. K.S.A. 76-Supp. 75-1017 states in part:

"75-1017. Employees of division of printing; compensation; payroll periods; pay dates. The compensation to be paid shall be no greater than that paid by other printing and binding offices employing the same class of labor."

PERB notes the absence of any formula for determining a "compensation rate." Therefore, we must assume the director of printing has the authority to "negotiate" this rate with the union within certain bounds. Perhaps management viewed the twenty-three cent (.23¢) offer to be the legal limit of compensation for all three competing unions. It is obvious the union thought otherwise. The Public Employer-Employee Relations Act provides a procedure for resolving such disputes. That is, an impasse procedure of mediation and fact-finding. Petitioner's Exhibit #1 is a fact-finding report by a tripartite fact-finding board and it indicates that such impasse resolution procedures were utilized.

The PERB notes that the fact-finding board unanimously recommended a rate of compensation higher than the rate offered by management. The PERB must then consider the relative "weight" to be placed on the fact-finding board's recommendations. It would seem that to determine good or bad faith of either party by considering the difference between an offer or demand and the recommendations of a fact-finding board would be to defeat the intent of the open-ended law. Rather, that procedure would provide for arbitration of sorts, by the PERB. The PERB cannot substitute its judgment for that of management in determining the legal limits for a compensation schedule. To do otherwise would require a finding of bad faith every time a fact-finding recommendation is issued.

Inasmuch as the PERB is unable to challenge the reasonableness of management's offer we must consider other factors. The question of original offers and movement is unclear. While we are certainly not suggesting that the principle of "Boulwerism" become an acceptable negotiations ploy in Kansas, we do feel that the disputed facts in this case are clouded to the extent that it is impossible to determine movement or a lack thereof by management. Considering management's agreement to meet and confer with the union over wages on an untimely request by the union, coupled with the clouded facts in the case leads the PERB to the following finding:

The Public Employee Relations Board finds that K.S.A. 75-Supp. 75-4321 et seq., requires a give-and-take "negotiation" process and hereby dismisses the complaint by the Topeka Printing Pressmen and Assistants Union No. 49 as there is insufficient fact to substantiate the allegation of failure to meet and confer in good faith.

IT IS SO ORDERED THIS 25th DAY OF January, 1978, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.