

Mar 8, 1973
Complaint

State of Kansas
Before The Public Employee Relations Board

PUBLIC SERVICE EMPLOYEES *
UNION LOCAL 1132, AFL-CIO *
Complainant *
vs *
UNIVERSITY OF KANSAS *
Respondent *
* * * * *

CASE NO. CAE 2-1973

Findings Of Fact And Conclusions
Of Law - Order

Comes now on the 28th day of March, 1973 the above captioned case for hearing. The complainant appeared by and through its attorney, Mr. Henry Wilson. The respondent appeared by and through its attorney, Mr. Charles Oldfather. Permission was granted by the Board for the Kansas Association of Public Employees (KAPE) to participate during the hearing as their interest may appear. It appeared by and through its attorneys Charles D. McAtee and William G. Haynes of the firm of Edison, Lewis, Porter and Haynes, Topeka, Kansas.

The hearing was conducted before the Public Employee Relations Board.

The case comes before the Public Employee Relations Board upon complaint of Public Service Employees Union Local 1132, AFL-CIO under date of March 8, 1973 by Mr. Carl Bradshaw, International Representative, Laborer's International Union of North America. The complaint alleges that the respondent, University of Kansas, has engaged in "prohibited practices" as follows:

X

"The employer through the officers and agents has interfered, restrained and coerced public employees, continues to dominate, interfere and has assisted other organizations, discouraged membership in the Public Employees Local 1132, AFL-CIO."

The matter was set down for hearing March 15, 1973 to be heard along with another complaint filed by Local 1132 which challenged the status under the Act of the Kansas Association of Public Employees, Case No. CAEO 1-1973. Pursuant to a conference on that date with all parties concerned, the Public Employee Relations Board ordered substantially as follows:

1. That neither the respondent in the instant case or respondent (University of Kansas) in Case CAE 2-1973 were prepared to adequately offer a defense to the allegations of complaintant's petitions.
2. That the election scheduled at the University of Kansas for March 22, 1973 be set aside until a proper adjudication of the issues raised in complaintant's original petition challenging KAPE's status could be made.
3. That adjudicative hearings on the complaints be separated.

Thereupon the instant hearing was ordered and held. Thereafter, on April 26, 1973 the Public Employee Relations Board issued its Findings Of Fact And Conclusions Of Law - Order (See CAEO 1-1973).

Findings Of Fact

The Board finds as follows:

1. Local 1132 has been actively engaged in informal representation of K.U. employees since February of 1970 (prior to enactment of Public Employer-Employee Relations Act).
2. Pursuant to the informal arrangement, Local 1132 has represented certain employees in the handling of grievances.
3. That a working understanding or informal agreement existed between certain managerial officials of the University and Local 1132 to the effect that employee organization officials could meet with employees on campus during the employees' 'free time'. 'Free time' included lunch breaks in areas where the employees were located.
4. That on one such organizational visit to the campus on February 14, 1973, Local officials Bradshaw and Rose were ordered out of the lunch room area by the 'construction crew foreman' - Mr. Joe Christy.

Mr. Oldfather, University Attorney, also participated. These University officials restated the standing policy that local officials could meet with employees during 'free time'. Request was made, however, that local officials check in with the 'campus' before proceeding.

9. On March 6, 1973 Bradshaw and Rose attempted to speak to approximately 10 food service employees in a campus cafeteria. They were prevented from speaking to the group by Mrs. Davenport who was in charge of the dining room. She advised the men that they were not allowed to speak to employees during lunch breaks.
10. Mr. Wilson, Director of Housing, later advised Rose and Bradshaw that Mrs. Davenport was in error but before this could be accomplished the employees who had been present had left the area.
11. The confrontation between Mrs. Davenport and the local officials was overheard by the employees present.
12. That on February 21, 1973 Gilbert Tolbert, Assistant Custodial Supervisor, asked Floyd I. Craig to sign a document in behalf of Kansas Association of Public Employees (KAPE). When

Mr. Christy had previous to the incident abruptly shut the door separating two lunch rooms where the local officials were speaking to members of the 'garden crew' prior to attempting to address the 'construction crew'.

5. Later Mr. Ranken, KU Personnel Director, advised Rose and Bradshaw that they were permitted to visit with employees during lunch breaks. (Rose and Bradshaw had protested to Mr. Ranken concerning their treatment by Christy.)
6. The employees involved in the lunch room incident later signed a statement to the effect that a "voice vote" had been taken by those present to ask the Local's officials to leave the room (Exhibit #1). The Board finds, however, that no actual vote was ever taken.
7. Subsequently, Mr. Bueholtz, Chief of Building and Grounds Department, objected to Rose and Bradshaw's presence near the clock-in area for University housekeeping employees. Rose and Bradshaw were there to speak to certain employees before they started their work shift.
8. Later that day, after protesting Mr. Bueholtz's conduct, a meeting was held in which Mr. Keith Nitcher, Chancellor for Business Affairs participated.

Mr. Craig advised Mr. Tolbert that he did not wish to sign. Mr. Tolbert stated in substance that he (Mr. Craig) "would be sorry later on."

13. That Tolbert's remark resulted Mr. Craig being apprehensive about his job.
14. On February 21, 1973 Gilbert Tolbert asked Gilbert W. Knight, Custodian, to sign a petition for KAPE near the clock-in area. After reading the document, Knight refused to sign. Mr. Knight was apprehensive about this incident.
15. No memorandum of agreement was in effect for the University employees involved in this dispute.

Conclusions Of Law

1. The Public Employee Relations Board has jurisdiction over the parties and the subject matter of the dispute.
2. That KAPE was allowed to participate in the hearing by special permission granted by the Board. Accordingly, any motions, objections or statements made on behalf of KAPE are advisory only. KAPE was not a party in interest to the hearing.
3. The Public Employee Relations Board does not require that legal technicians practice before it. It finds that the complaint filed on behalf of

Public Service Employees Union Local 1132 and the subsequent statement of facts submitted states an action under the prohibited practices section of the Act, KSA Supp. 75-4333. Further, the Board is satisfied that the respondent had ample opportunity to meet and respond to the allegations stated in the complaint. Specifically, the Board finds that the respondent was in no way prejudiced by evidence allowed to be introduced concerning an incident which occurred February 14, 1973 on the KU campus. Such evidence will be considered by the Board in this case along with other relevant evidence found in the record.

4. The Board finds that the substantive issue in dispute in this case is the accountability of the public employer for the acts and omissions of certain of its employees. The record discloses that the principle management-level personnel at the University maintained an enviable position of neutrality during the period in question. Further, personnel at this level made numerous efforts to correct situations as they occurred. There can be little doubt, however, that the conduct alleged

by the complaintant and found by the Board to have occurred tended to interfere, restrain or coerce as set forth in the Act, notwithstanding the efforts of such high level personnel. If the employees responsible for the conduct are found to be 'supervisory employees' as defined by the Act, their conduct can and will be imputed to the public employer. If on the other hand, the employees are not 'supervisors' but rather mere 'work leaders' their conduct will not be imputed for the purpose of determining whether a prohibited practice occurred.

KSA 75-4322(b) defines 'supervisory employee' as follows:

"any individual who normally performs different work from his subordinates, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. A memorandum of agreement may provide for a definition of 'supervisory employees' as an alternative to the definition herein."

The Board finds from a review of the record as a whole, that the following employees involved in the dispute were acting at the time in question as 'supervisory employees'.

1. Mr. Joe Christy
2. Mr. Gilbert Tolbert
3. Mrs. Davenport

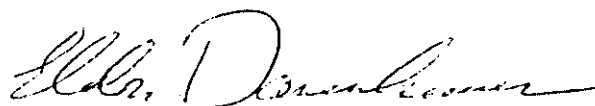
It is further found by the Board that the conduct of these named employees constitutes a 'prohibited practice' as defined by KSA Supp. 75-4333(b)(1). The Board finds that there is no basis in the record to support a finding of a 'prohibited practice' as defined at KSA Supp. 75-4333(b)(2). The Board finds that the allegations made by complaintant cannot be expanded beyond these innumarated sections even when construed in the broadest possible manner. Accordingly, only KSA 75-4333(b)(1) and (b)(2) have been considered by the Board herein.

The Board finds that the prohibited practice established in this case is not of such magnitude that it cannot be easily remedied by the University through a concerted educational program designed to inform supervisory employees of their responsibilities under the Act. The public employer involved is one of the largest in the state. The record discloses a good faith effort on behalf of principle administration officials to create an atmosphere in which its public employees could exercise their assured rights under the Act. Lower ranking 'supervisory personnel', however, are often in positions where their conduct as herein relates adversely to and tends to overshadow positions taken by the more obvious administration officials. Within the structure of the University, it is the lower ranking supervisor with whom the employee organization

must often work. The low-ranking supervisor's conduct in dealings with the employee and employee organizations cannot be overlooked.

It is therefore ordered by the Board that the respondent cease and desist from future prohibited practices and the University is further ordered to provide assurances to the satisfaction of the Board that 'supervisory personnel' of the level described herein are fully advised of the University's policies in regard to such matters. The University is granted leave until the August meeting of the Board to provide the Board with such a statement.

IT IS SO ORDERED BY THE PUBLIC EMPLOYEE RELATIONS BOARD



Eldon Danenhauer, Chairman



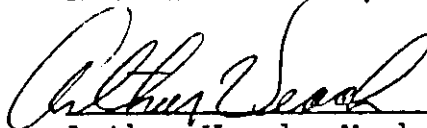
Alan Neelly, Member



Merle Staats, Member



Nathan Thatcher, Member



Arthur Veach, Member

Date: JUL 16 1973

(Commissioner's Office)
Apr 26, 73

State of Kansas
Before The Public Employee Relations Board

IN THE MATTER OF THE COMPLAINT *
AGAINST EMPLOYER FILED BY *
*
SERVICE EMPLOYEES INTERNATIONAL *
UNION, AFL-CIO, Complainant *
*
vs *
BOARD OF ELLIS COUNTY COMMIS- *
SIONERS, Respondents *
*
* * * * *

CASE NO. CAE 1-1973

Findings Of Fact And Conclusions
Of Law - Order

On the 2nd day of March, 1973 the above captioned case came on for hearing. The complainant appeared by its representative, Mr. Harry Helser, Field Staff Representative, AFL-CIO. The respondent appeared by its attorney, Mr. Simon Roth, Jr., County Attorney of Ellis County.

The hearing was conducted before Board members Mr. Alan Neelly and Mr. Merle Staats. Board member Mr. Art Veach was present but disqualified himself from any participation in the determination of the dispute.

The case comes before the Public Employee Relations Board upon complaint of Service Employees Local 513, AFL-CIO under date of January 26, 1973 by Mr. Harry Helser, Field Staff Representative, AFL-CIO. The complaint alleges in substance a "prohibited practice" as defined by KSA Supp. 75-4333(b)1 and 3 as follows:

"Since on or before August 1, 1972 the Board of Ellis County Commissioners through its officers and agents has coerced, restrained and interfered, discouraged membership by denying conditions of employment and discriminated against employees for their activity in behalf of Service Employees Union Local 513 AFL-CIO. On December 22, 1972 the employer did deny all the employees one-half day off. On December 12, 1972 the employer suspended three employees, Ralph Kinderknecht, Alexius Walters and Raymond Kuhn, two weeks without pay (later reducing this to a one week suspension without pay). The employer on December 28, 1972 denied all County Road and Bridge Crew one-half day off for President Harry S. Truman's funeral. This activity of the employer has been because of the employees activities for and in behalf of Service Employees Union Local 513 AFL-CIO. The employer has ever since refused to grant these employees the time off and/or loss of pay."

The following is a summary of major procedural and substantive actions taken by the Public Employee Relations Board and the parties in the instant case:

1. Resolution No. 1 of the Board of County Commissioners of Ellis County dated June 19, 1972 electing to bring the county as a public employer under the provisions of the Public Employer-Employee Relations Act.
2. Petition for unit determination filed with the Public Employee Relations Board under date of October 20, 1972 by Local 513.
3. Order of Public Employee Relations Board under date of November 7, 1972 determining the appropriate unit as petitioned for.
4. Order of Public Employee Relations Board under date of November 30, 1972 calling election for employees in appropriate unit. Date for the election set for December 15, 1972.

5. Certification of election results and meet and confer order issued by the Public Employee Relations Board under date of December 26, 1972.
6. Complaint filed with the Public Employee Relations Board January 26, 1973.
7. Answer to complaint by respondent filed February 2, 1973.
8. Amendment to complaint filed by complainant February 2, 1973.
9. Notice of hearing to parties issued by Public Employee Relations Board under date of February 22, 1973.

Findings Of Fact

Upon report made by the Public Employee Relations Board members at the hearing and upon reviewing the evidence and transcript, the Board finds:

1. That prior to January 8, 1973 the Board of County Commissioners of Ellis County was composed of Mr. Ted Gerber, Mr. Otto Rohleder, and Mr. Nick Ruder. From January 8, 1973 to present time the Board is composed of Mr. Ted Gerber, Mr. Harold J. Kraus and Mr. Eugene Schmeidler.

2. That for at least six years prior to 1972 a Christmas party was authorized and encouraged by the Ellis County Commissioners. The parties held in 1970 and 1971 were held off county property at the local hall.
3. That on November 27, 1972 Mr. Ted Gerber orally authorized a Christmas party to be held in December, 1972 for county employees of the Road & Birdge Crew at the county yard during working hours.
4. That subsequently the employees were notified that the Commissioners would not support or help with the Christmas party as originally approved or as the practice had been in the past, nor could any party be held during working hours.
5. That a group of employees agreed that a party during non-working hours, off county property should be held/notwithstanding the decision of the Commission. Shortly thereafter, employees Alexius Walters and Raymond Kuhn commenced a solicitation campaign visiting various business locations within the county, seeking donation funds for the party. Later employees Ralph Kinderknecht, Freddie Rohr, Donnie Dinkel and Kenny Werth also accompanied Alexius Walters on

his visitations. County vehicles were used and the solicitations occurred during normal working hours.

6. Foreman Bill Weigel knew of the solicitation campaign and recommended that employee Ralph Kinderknecht accompany Alexius Walters on one such trip since Ralph Kinderknecht knew many businessmen in the county. Alexius Walters checked in and out with Foreman Weigel before leaving and upon return.
7. That at various times prior to the occurrences complained of, employees of the Road & Bridge Crew utilized county equipment for other than county business during normal working hours under direction of their supervisors.
8. That on December 8, 1972 employees Alexius Walters, Raymond Kuhn and Ralph Kinderknecht were called before the Board of County Commissioners and suspended without pay for a period of two weeks (later reduced to one week).
9. That Mr. Gerber stated at the December 8, 1972 meeting that due to the trouble between the Commissioners and the men, there would be no Christmas party and that the offer of a local

business to provide food for the gathering had been rejected by the Board.

10. That the suspended employees were called back to work by Foreman Weigel.
11. Employee Eddie Frank attempted to speak for the Board of County Commissioners but his statements were clearly understood not to be relied upon. He in no way spoke for the Board.
12. That employees in the Road & Bridge Crew were not given time off for President Truman's funeral as were all other county employees. The Board of Commissioners voted not to give any compensatory time off for the Truman funeral.
13. That employees in the Road & Bridge Crew were not given time off for President Johnson's funeral as were all other county employees. The employees were offered a full day off in lieu of the half day off missed for the Johnson funeral. The employees refused to take the day offered because they were given no advance notice. They learned of the day off after reporting to work. Some employees had commenced performing their duties before they were told of the holiday.

14. That subsequent to employee organization efforts, funds derived from the sale of used batteries were no longer allowed to be used to purchase coffee for employee use.

Conclusions Of Law

1. The Public Employee Relations Board has jurisdiction over the parties and the subject matter of the dispute.
2. The complaintant's petition as amended states a claim upon which relief can be granted under the provisions of the Public Employer-Employee Relations Act.
3. The Board of County Commissioners is a continuing body and is bound by actions taken by a predecessor board.
4. Forman Bill Weigel is a "supervisory employee" within the meaning of the Act. Accordingly, his actions, knowledge, lack of action or conduct can be imputed to the public employer. He speaks for and on behalf of the "public employer" regarding the "public employees" involved in this dispute.

His position can be distinguished from that of employee Eddie Frank whose position is non-supervisory and whose actions may not be imputed to the public employer.

4. A review of the entire record in this case discloses a series of actions the net effect of which invidiously interfered with and discouraged membership in an employee organization during a critical stage of the organization process guaranteed under the Act. Clearly the conduct of the public employees subsequently suspended from employment was not wise or advisable under the circumstances. The Public Employee Relations Board does not endorse or condone such conduct. The Board finds, however, that the solicitation was in fact condoned by a responsible supervisory employee. The inference is unavoidable that during previous years the Board of County Commissioners had also relied upon local businesses to help provide for the party and had directly participated in its planning. No action was ever taken by the Board of County Commissioners repudiating or denouncing the approval of the

solicitation given by the supervisory employee in question. Instead, a harsh disciplinary sanction was ordered only for the low ranking public employees involved in the solicitation three days before the scheduled election. Under the circumstances, the Public Employee Relations Board finds this to be in the nature of a reprisal for the new independence shown by the public employees growing out of their organization efforts and was calculated to have a chilling effect on the election scheduled for December 15, 1972. The action of the Board of County Commissioners in regard to the time off granted to all other county employees for President Truman's funeral while partially motivated by business reasons also served as a reminder to the employees that organization would result in treatment different from that afforded other county employees.

Accordingly, it is the opinion of the Public Employee Relations Board that the Board of County Commissioners of Ellis County engaged in a "prohibited practice" as defined at KSA Supp. 75-4333(b) (1) and (3). It is therefore ordered that the Board of Ellis County Commissioners cease and desist from further conduct designed to coerce or

discourage public employee organization. It is further ordered that full restitution of pay be made to the three public employees suspended.

IT IS SO ORDERED BY THE PUBLIC EMPLOYEE RELATIONS BOARD

Eldon Danenhauer
Eldon Danenhauer, Chairman

Alan Neelly
Alan Neelly, Member

Merle Staats
Merle Staats, Member

Nathan Thatcher
Nathan Thatcher, Member

Arthur Veach, Member (Disqualified)

Date: April 26, 1973