

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
FOR THE STATE OF KANSAS

| | | | |
|-------------------------------|------------|---|-------------------|
| THE FRATERNAL ORDER OF POLICE | Claimant |) | |
| | |) | |
| AND | |) | No. 75-UDE-1-1981 |
| | |) | |
| CITY OF CHANUTE, KANSAS | Respondent |) | |
| <hr/> | | | |

FINDINGS OF FACT, CONCLUSION AND ORDER

Now on this 18th day of May, 1981, the above-entitled matter comes on before the Board, requesting decertification of the International Brotherhood of Electrical Workers as employee-representatives and the certification of the Fraternal Order of Police as the new employee-representative. The Fraternal Order of Police will be hereinafter described as FOP, and the International Brotherhood of Electrical Workers will be hereinafter described as IBEW.

Thereupon, the Board after due deliberation finds as follows:

1. IBEW, as the employee-representative, entered into a memorandum of agreement with the City of Chanute. The termination date of this agreement is December 31, 1982.
2. A petition for unit decertification election was filed by FOP on November 18, 1980.
3. Following required proceedings, the election was conducted on May 11 and 12, 1981. There were approximately eighteen eligible voters. Fourteen votes were cast for FOP, zero (0) votes for IBEW, and four (4) not voting.

Thereupon, the Board comes to the following conclusion:

1. FOP should be certified as the employee-representative, effective as of May 12, 1981; and IBEW should be decertified as of the same time.
2. The memorandum of agreement entered into by the City of Chanute and IBEW remains in existence until terminated in accordance with the conditions stated therein.
3. IBEW entered into said agreement as the agent of the Public Employees and its obligations to administer and enforce said

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agreement terminated as of May 12, 1981. At that time the obligation of FOP to administer and enforce said agreement commenced. The Board's reasoning is as follows:

a. Public employees elect an employee representative to represent them relative to relations and dealings with public employers as to grievances and conditions of employment (K.S.A. 75-4322 (i) and K.S.A. 75-4327 (a)). Further, employee representatives may enter into memorandums of agreement with the public employer (K.S.A. 75-4327 (b) and K.S.A. 75-4331).

As stated, the act of the employee representative in entering into a memorandum of agreement is the act of an agent for the public employees, and employee representatives have the fiduciary duty to enforce and administer such agreements, acting always in the interest of the employees. However, this agency can be terminated under the provisions of K.S.A. 75-4327 (d) and a new agent elected by the employees. The pertinent parts of this Statute read as follows:

"The board is authorized to hold elections to determine whether: (1) An employee organization should be recognized as the formal representative of employees in a unit; (2) an employee organization should replace another employee organization as the formal representative of employees in a unit; (3) a recognized employee organization should be decertified.

"If the board has certified a formerly recognized representative in an appropriate unit, it shall not be required to consider the matter again for a period of one (1) year, unless the board determines that sufficient reason exists."

K.S.A. 75-4328 states that a public employer shall extend to a certified or formerly recognized employee organization the right to unchallenged representation status, consistent with K.S.A. 75-4327 (d) during the twelve (12) months following the date of certification of formal recognition.

b. It is obvious that the legislative intent was to give the recognized employee organization at least one (1) year to perform its required duties and to free all parties from numerous elections at the whim or caprice of the public employer or public employee, subject however to the Board's

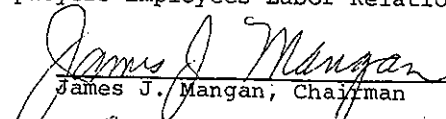
authority to hold an election if it determined sufficient reason existed and subject to the provisions of 75-4327 (g) concerning budget matters.

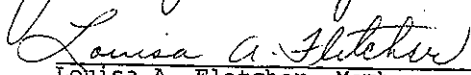
Thereupon, in open session Board members, James J. Mangan, Louisa A. Fletcher, Lee Ruggles and Urbano L. Perez, vote in favor of the above Findings of Fact and Conclusions, and in favor of the following Order. Member Art Veach dissents and states in the record that he desires to file a dissenting opinion.

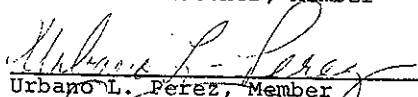
NOW, THEREFORE, on this ~~16~~¹⁶ day of ~~May~~^{June}, 1981, IT IS THE ORDER OF THE BOARD, subject to the dissent of Mr. Veach, as follows:

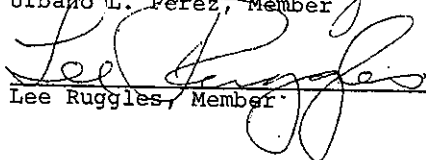
1. FOP is recognized as the formal representative of said public employees, effective as of May 12, 1981; and IBEW is decertified as such formal representative at the same time.

2. FOP has the duty and responsibility to enforce and administer said memorandum of agreement in accordance with its terms as long as FOP is the formally recognized employee representative under the provisions of the Public Employers-Employees Labor Relations Act.


James J. Mangan, Chairman


Louisa A. Fletcher, Member


Urbano L. Perez, Member


Lee Ruggles, Member

Dissenting opinion of Board Member Art J. Veach concerning
PERB No. 75-UDE-1-1981.

On May 18, 1981, the PERB took action on the above referenced case and certified the Fraternal Order of Police and ordered the following:

1. F.O.P. is recognized as the formal representative of said public employees, effective as of May 12, 1981, and the International Brotherhood of Electrical Workers is decertified as such formal representative at the same time.

2. F.O.P. has the duty and responsibility to enforce and administer said memorandum of agreement in accordance with its terms as long as F.O.P. is the formally recognized employee representative under the provisions of the Public Employers-Employees Labor Relations Act.

I agree with the action taken by the board as set-forth in paragraph 1. above of the board order in that F.O.P. is now the formally recognized employee organization and I.B.E.W. is now decertified; however, I totally disagree with the boards action as outlined in paragraph 2. of the board order for the following reasons:

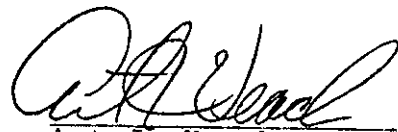
A. Under the current PERA, there are no provisions for a contract bar, and therefore, the PERB board has no authority to order the current contract remain in effect until 1982, and that F.O.P. be responsible to administer this agreement.

B. In paragraph 1. the PERB board certified F.O.P. as the recognized formal representative and then removed this recognition in paragraph 2. which is contrary to KSA 75-4327 (b) which states "where an employee organization has been certified by the board pursuant to the provisions of this act, the appropriate employer shall meet and confer in good faith with such employee organization." As outlined in paragraph 2. of the board's order, you have removed F.O.P.'s rights as a certified organization to meet and confer on an agreement.

Conclusion of my dissenting opinion:

1. That I.B.E.W. should be decertified as provided in KSA 75-4327 (d) (2).

2. That F.O.P. should be certified as provided in KSA 75-4327 and be afforded all rights accompanying formal recognition including the right to negotiate a new agreement.



Art J. Veach

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. 75-408-1-1981
 Date Filed 11-18-80

INSTRUCTIONS: File an original and five copies of this Petition to the Public Employee Relations Board, 610 West Tenth, Second Floor, Topeka, Kansas 66612 by Certified Mail. If more space is required for any item, attach additional sheets, numbering them 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)

Public Employee Relations Board
 NOV 18 1980

2. Name and Address of Petitioner Fraternal order of Police
 (Affiliation, if any)

and So. Santa Fe Chanute, Ks Phone 431-1700

3. Name and Address of Employer City of Chanute 1st and Lincoln Chanute, Ks
 Phone _____

4. Employer Representative to Contact Lucio P Dela Torre- Pres. Fraternal Order of Police 1125 S. Garfield Chanute, Ks
 Phone 431-6019

5. Type of Establishment Police Department

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

INCLUDE: Patrolman, Dispatchers, Corporals, Seargents, Detective, Meter Maid.

EXCLUDE: Chief and Assistant Chief

6a. Number of employees in unit 10

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.

See attached report that is included.

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- 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 _____
- 10. 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>International Brotherhood</u> | _____ | <u>Union Representative</u> |
| <u>of Electrical Workers</u> | _____ | _____ |
| _____ | _____ | _____ |

- 13. Include a clear and concise statement of any other relevant facts:
See attached statement
- 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.

Fraternal Order of Police 2nd and S. Santa Fe Chanute, Ks 66720
Petitioner & Affiliation, if any

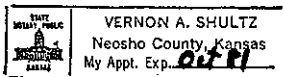
BY Lucio P Dela Torre Pres. Fraternal Order of Police
Representative or Person Filing Title, if any
Petition

Date Oct 22, 1980

Subscribed and sworn to before me this 21st day of October, 1980.

Vernon A. Shultz
Notary Public

SEAL



2 pages My commission expires _____

ORDINANCE NO. 1760

AN ORDINANCE GRANTING AND CONFERRING ON THE GOVERNING BODY OF THE CITY OF CHANUTE, KANSAS, AUTHORITY TO HOLD AND CONDUCT AN ELECTION FOR THE PURPOSE OF DETERMINING A BARGAINING AGENT FOR THE EMPLOYEES OF THE CITY OF CHANUTE, TO RECOGNIZE SUCH AGENT UNDER CERTAIN CIRCUMSTANCES, AND TO MEET, CONFER AND NEGOTIATE TOWARD A CONTRACT WITH EMPLOYEES OF THE CITY OF CHANUTE, AND SUCH BARGAINING AGENT, IF RECOGNIZED.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF CHANUTE, KANSAS:

SECTION 1.

The Governing Body of the City of Chanute, finds and determines:

- (a) By the power and authority of Article 15, Section 12, and Article 12, Section 5, of the Constitution of the State of Kansas, said City has authority to recognize, meet and confer with, and negotiate with its employees, and bargaining agents, toward a contract covering wages, hours, terms and conditions of employment.
- (b) The laws and Constitution of the State of Kansas neither specifically authorize nor prohibit such action.
- (c) It is advisable and in the best interests of the citizens and residents of the City of Chanute that the Governing Body of the City of Chanute, Kansas, resolve and settle disputes between the said City and its employees.

SECTION 2.

The Governing Body of the City of Chanute hereby grants unto itself, under its Home Rule Powers, authority:

- (a) To agree upon an election to determine the recognition or non-recognition of a bargaining agent of its employees under such terms and conditions as the Governing Body of the City of Chanute shall determine;
- (b) To recognize a bargaining agent in the event such election shall be favorable to the designation of such a bargaining agent;
- (c) Upon any such recognition, to meet, confer and negotiate with such bargaining agent and employees of the City of Chanute, toward a contract covering wages, hours, terms and conditions of employment, and
- (d) To enter into such contract as may be agreed upon and approved by the Governing Body of the City of Chanute.

SECTION 3.

This ordinance shall be subject to all future legislative enactments which may change, modify or invalidate the provisions hereof.

SECTION 4.

This ordinance shall take effect and be in full force from and after its publication in the official city paper.

PASSED BY THE GOVERNING BODY OF THE CITY OF CHANUTE, KANSAS, THIS 23rd DAY OF NOVEMBER, 1970.

ATTEST:


Bonnie L. Moffatt
BONNIE L. MOFFATT, City Clerk

(SEAL)

Reuben J. Burkman, M.D.
REUBEN J. BURKMAN, M. D., Mayor