

BEFORE THE PUBLIC EMPLOYEE RELATION BOARD
OF THE STATE OF KANSAS

Melanie A. Purrington, et al.,)
)
 Petitioners,)
)
 vs.) Case No. 75-UDE-2-1991
)
)
 City of Hutchinson and the)
 Communications Workers of)
 America,)
)
 Respondent.)
 _____)

INITIAL ORDER

Now on this 14th day of January, 1991, the above captioned Petition for Unit Decertification comes on for review by presiding officer, Monty R. Bertelli pursuant to K.S.A. 77-508.

FINDINGS OF FACT

1. The Communications Workers of America is the certified employee representative for the Emergency Services Dispatchers employed by the City of Hutchinson, Kansas.
2. The Communications Workers of America and the City of Hutchinson, Kansas executed a memorandum of agreement on August 15, 1989 covering the period of January 1, 1990 through December 31, 1990.
3. The Communications Workers of America executed a new memorandum of agreement for 1991 on or about November 28, 1990.
4. Petitioner Melanie A. Purrington filed a petition for unit decertification on November 8, 1990.

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CONCLUSIONS OF LAW AND OPINION

Unit decertification elections are controlled by K.S.A. 75-4327. K.S.A. 75-4327(d) states in pertinent part:

". . .the public employee relations board, at the request of the public employer or on petition of employees, shall investigate questions and certify to the parties in writing, the names of the representatives that have been designated for an appropriate unit. . . .the board is authorized to hold elections to determine whether: (1) A 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 form representative of employees in a unit; (3) a recognized employee organization should be decertified".

Here Petitioner filed a petition for unit decertification on November 8, 1990 seeking to have the Communications Workers of America decertified as the representative of the Emergency Services Dispatchers employed by the City of Hutchinson, Kansas. Respondent Communications Workers of America argues the petition is not timely filed and should be dismissed.

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

"Any petition calling for an election in accordance with this section shall be dismissed by the board without determining the questions raised therein if such petition is filed more than 150 days or less than 90 days prior to the expiration date of an existing memorandum of agreement which governs the terms and conditions of employment of the employees within the appropriate unit".
(emphasis added)

The word "shall" in the phrase "shall be dismissed" when used in a statute is generally imperative or mandatory. It excludes the idea of discretion on the part of the board.

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Given the December 31, 1990 expiration date of the memorandum of agreement between the Communications Workers of America and the City of Hutchinson, Kansas existing at the time of the filing of the petition at issue here, a petition for decertification to be timely filed must be filed no earlier than August 3, 1990 and no later than October 2, 1990. The decertification petition was filed November 8, 1990; 37 days beyond the October 2, 1990 limit. Accordingly Petitioner's petition for unit determination is not timely filed and pursuant to K.S.A. 75-4327(d) must be dismissed.

ORDER

IT IS THEREFORE ORDERED the above captioned petition for unit decertification be dismissed this 14th day of January, 1991.



Monty R. Bertelli, Senior Labor Conciliator
Employment Standards & Labor Relations
1430 SW Topeka Blvd., Third Floor
Topeka, KS 66612-1853

This is an initial order of the presiding Officer. It will become a final order fifteen (15) days after service unless a petition for review is filed with the Public Employee Relations Board in accordance with K.S.A. 77-527.

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CERTIFICATE OF MAILING

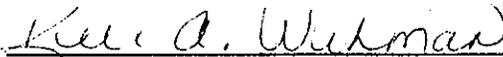
I, Kele A. Wichman, Employment Standards & Labor Relations Section of the Kansas Department of Human Resources, hereby certify that on the 14th day of January, 1991, a true and correct copy of the above Initial Order, Case No. 75-UDE-2-1991, was deposited in the U.S. Mail, first class, postage prepaid, addressed to:

Melanie A. Purrington
104 West 15th Avenue
Hutchinson, KS 67501

Phil Alexander
City of Hutchinson
125 East Avenue B
Hutchinson, KS 67501

Bill Wildoner
Communications Workers of America
530 East Harry
Wichita, KS 67211

*Copies have also been sent to each Public Employee Relations Board member



Kele A. Wichman