

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

IN THE MATTER OF THE COMPLAINT)	
AGAINST EMPLOYER FILED BY:)	
Irving Van Duyne for Custodians)	
vs.)	CASE NO. 75-CAE-10-1980
American Management Services and)	
the University of Kansas)	

Comes now this 18th day of August, 1980 the above captioned matter for determination by the Public Employee Relations Board.

Proceedings Before the Board

1. Complaint filed by Mr. Irving Van Duyne in behalf of several members of the Custodians' Action Committee on November 20, 1979.
2. Complaint submitted to employer for answer on November 26, 1979.
3. Seven day extension granted to University General Counsel for answer of complaint on 3 December 1979.
4. Answer received from employer on December 7th, 1979.
5. Answer submitted to Mr. Van Duyne for perusal on 12 December 1979.
6. Pre-hearing conference conducted by Mr. Jerry Powell, Executive Director of the Public Employee Relations Board on January 10, 1980.
7. Mr. Paul K. Dickhoff, Jr., Administrative Officer for the Public Employee Relations Board met with Mr. Van Duyne in Lawrence on March 13, 1980 to discuss amendment of the complaint i.e., his right to file only his own complaint.
8. Mr. Van Duyne contacted by certified letter on April 3, 1980 to remind him that his amended complaint had not yet been received in this office and to grant a ten day extension for same.
9. Mr. Dickhoff instructed by Board at April Board meeting to commence investigation on Mr. Van Duyne's complaint limited to allegations pertaining to Van Duyne.
10. Meeting conducted on May 8, 1980 to discuss allegations contained in Van Duyne's complaint. In attendance were Mr. Powell, Mr. Dickhoff and Mr. Davis.

Discussion

On November 20th, 1979, Mr. Irving Van Duyne filed a complaint against the University of Kansas and American Management Services in behalf of several service and maintenance employees at the University. The service and maintenance employees are currently represented by Local Union 1132 for the purposes of K.S.A. 75-4321 et. seq. Therefore, pursuant to the policy of the Board on the concept of "exclusivity" Mr. Van Duyne has no standing to bring a complaint before the Board in behalf of anyone other than himself. Based upon this policy I proceeded to investigate the allegations from the complaint which pertained specifically to Mr. Van Duyne. It was my determination that only four of the twenty-one allegations from the complaint pertained directly to Mr. Van Duyne, specifically items 1, 2, 6 and 15. It is Mr. Van Duyne's contention that the actions taken against him by the University as outlined in these allegations were not based upon his job performance but rather upon his affiliation with the Custodians' Action Committee thus denying him of his rights as guaranteed at K.S.A. 75-4325 and therefore constituting a prohibited practice as outlined at K.S.A. 75-4333 (b) (1), (2), (3) and (4).

Allegation number 1 revolves around a five day suspension of Mr. Van Duyne which occurred on May 21, 1979. In order to determine if there was a possibility that the University may have suspended Mr. Van Duyne because of his affiliation with the C.A.C. I researched past issues of two newspapers, the Oread Faculty News and the University Daily Kansan. The earliest reference to Mr. Van Duyne's connection with the C.A.C. was in the October 22nd, 1979 issue of the Daily Kansan. The article indicates that the C.A.C. began meeting in late August of 1979. Assuming that Mr. Van Duyne was identified publically in August, the meetings in question commenced nearly three months subsequent to his suspension and therefore could hardly be the basis of the action.

Allegation number 2 refers to a ten day suspension which occurred on July 3, 1979, based on a charge of sleeping on the job. This incident also occurred prior to the time Mr. Van Duyne was identified as a member of the C.A.C. Notwithstanding this fact, the University accepted medical evidence from Mr. Van Duyne, voluntarily revoked the suspension, and repaid him for all time lost. In light of these actions it is my opinion that the allegation lies moot.

Allegation number 6 refers vaguely to harassment of Mr. Van Duyne on October 5, 1979, by Ms. Connie Horn, a supervisor. To provide validity to this allegation Mr. Van Duyne refers to an attachment to the complaint. The attachments to the complaint however fail to mention Ms. Horn anyplace. One attachment vaguely refers to harassment by unnamed parties while the other speaks of surveillance of a C.A.C. meeting by Mr. John Coffman, Mr. John Jayeski and a secretary known only as Annette. Lacking further substantiation it is my opinion that this allegation be dismissed as generally unfounded.

Allegation number 15 concerns a five day suspension of Mr. Van Duyne which took place on October 30, 1979. Mr. Van Duyne was accorded due process in this matter pursuant to an appeal hearing conducted by the Civil Service Board. A complete record of that hearing is on file in this office. A brief review of that hearing reveals that a meeting of custodial personnel was scheduled by Mr. Van Duyne's supervisor. On the day of the meeting Mr. Van Duyne was reminded on two occasions to be present. Mr. Van Duyne appeared at the meeting place some forty minutes after the scheduled starting time of the meeting which had adjourned by the time of his arrival. These facts are uncontested by Mr. Van Duyne. His position was rather that he did in fact attempt to attend the meeting but did not succeed and therefore did not act in an insubordinate manner. At no time did Mr. Van Duyne indicate that his suspension was based upon anything other than his failure to attend the scheduled meeting. The crux of his appeal was that his attempt to be present at the meeting should indicate his good intentions and lack of insubordination. The Civil Service Board ruled that the suspension was justified and denied Mr. Van Duynes appeal. Mr. Van Duyne now asks the Public Employee Relations Board to reconsider the matter under the new premises that the action was taken in violation of K.S.A. 75-4321 et. seq. It is my opinion that to do so would work an injustice upon the University of Kansas. Assume for a moment that the Public Employee Relations Board ordered a hearing in the matter. This would not alter the fact that Mr. Van Duyne missed the meeting after being repeatedly informed of its scheduling, an offense for which the Civil Service Board has found a five day suspension to be appropriate. Logically, when an employee violates rules and regulations established by management there are certain penalties inherent therewith. While the "mind set" of the employer has not been established in this

case it is of little consequence at this point. The employee, through his own actions, has given the employer sufficient cause to envoke disciplinary action.

Conclusions and Recommendations

Throughout this investigation I have attempted to give Mr. Van Duyne every benefit of doubt. I have attempted to contact Mr. Van Duyne by telephone and through written correspondence to ascertain the possible existence of additional evidence to substantiate his allegations. These efforts have been to no avail. My final effort consisted of a certified letter to Mr. Van Duyne expressing my intention to recommend dismissal of this complaint based upon the evidence currently in my possession. To date, Mr. Van Duyne has not responded to this correspondence. It is, therefore, my recommendation that Mr. Van Duyne's complaint, 75-CAE-10-1980 be dismissed based upon my investigation.

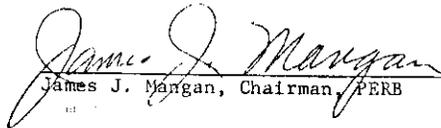
It is so recommended this 18th day of August, 1980.

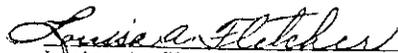


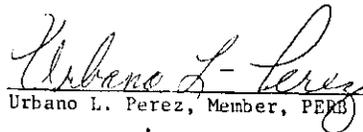
Paul K. Dickhoff, Jr.
Administrative Officer
Public Employee Relations Board
Investigator

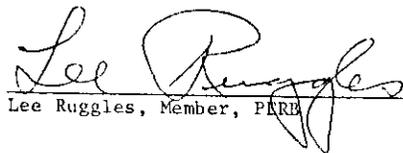
The investigator's report and recommended findings are hereby approved and adopted as a final order of the Board

IT IS SO ORDERED THIS 22 DAY OF Sept 1980, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.


James J. Mangan, Chairman, PERB


Louisa A. Fletcher, Member, PERB


Urbano L. Perez, Member, PERB


Lee Ruggles, Member, PERB


Art Veach, Member, PERB