BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

Troy Griggs and Terrell Brown, Petitioners,	)	
v.	)	Case Nos: 75-CAE-4-2006 and 75-CAE-5-2006
City of Park City, KS – Police Dept., Respondent.	)	

ORDER TO DISMISS FOR
LACK OF SUBJECT-MATTER JURISDICTION

NOW, on this 12th day of June, 2006 the Respondent's Motion to Dismiss in the above-captioned matter comes on for consideration before presiding officer Douglas A. Hager.

APPEARANCES

The Petitioners, Troy Griggs and Terrell L. Brown, appear by and through counsel, Sean M. Dwyer, Attorney at Law. Respondent, City of Park City, Kansas, appears by counsel, David G. Seely, Attorney at Law.

PROCEEDINGS

In late December , 2005, Petitioners Troy Griggs and Terrell L. Brown filed prohibited practice complaints against the Park City, Kansas Police Department. *See* Prohibited Practice Complaint Against Employer, 75-CAE-4-2006, December 23, 2005; Prohibited Practice Complaint Against Employer, 75-CAE-5-2006, December 27, 2005. Said complaints allege violations of K.S.A. 75-4333(b)(1), (b)(2), (b)(3) and (b)(4). In

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attachments to their complaints, Petitioners Griggs and Brown allege that they were terminated by the City of Park City, Kansas Police Department in retaliation for filing a grievance and for their other actions undertaken as representatives and officers of the Park City Fraternal Order of Police. As President and Vice-President of the F.O.P., Griggs and Brown had actively sought formal recognition from Park City's governing body and in December, 2004, a motion to opt in to coverage under the Kansas Public Employer-Employee Relations Act, (hereinafter "PEERA" or the "Act"), was denied by the Park City City Council. *See* Prohibited Practice Complaint Against Employer, 75-CAE-4-2006, December 23, 2005, attachment, p. 1.

Respondent timely filed its responses to Petitioners' complaints on February 8, 2006. *See* Answer, 75-CAE-4-2006, filed February 8, 2006; Answer, 75-CAE-5-2006, filed February 8, 2006. Respondent denied that any disciplinary action was taken against Officers Griggs or Brown in retaliation for their labor organizing activities. *See generally* Employer's Answers, filed February 8, 2006.

On March 17, 2006, Respondent filed a Motion to Dismiss. In its motion, Respondent avers that the Kansas PEERA, K.S.A. 75-4321 *et seq.*, does not apply to the facts and circumstances of this case. This is so, argues Respondent, because the governing body of the City of Park City, Kansas has never voted to subject the City to the Act. *See* Respondent's Motion to Dismiss, 75-CAE-4-2006, 75-CAE-5-2006, March 17, 2006. Hence, the Public Employee Relations Board, (hereinafter "PERB"), lacks the authority to hear and decide this matter and it must be dismissed.

In their response, Petitioners assert that the Act's non-interference, non-retaliation and non-discrimination provisions expressly by definition apply to protect employees in a union even one that has not been formally recognized. After drawing a distinction between the Act's definitions of "employee organization" and "recognized employee organization" and the specific protections applicable to each, Petitioner states that:

> "it is very clear from reading the entire statute and the specifics of the statute that such legal duties to meet and confer and discuss mandatory subjects of bargaining are required only for a 'recognized employee organization.' It makes perfect sense that the non-retaliation, non-interference, non-discrimination provisions should apply to protect members of all employee organizations. Otherwise, there could never be any formally recognized employee organizations if an employer could legally fire anyone attempting to start a union, present grievances, etc. There protections are very basic and are likewise found in federal labor law . . ."

Complainant's Response in Opposition to Motion to Dismiss. 75-CAE-4-2006, 75-CAE-5-2006, filed March 28, 2006. Petitioner goes on to urge that this precise question has never been addressed by the courts of this state, and thus, Respondent's case law citations are not determinative of the issue.

ISSUE OF LAW

The sole issue of law to be resolved in the case *sub judice* is whether the Kansas Public Employee Relations Board possesses statutory authority under the Kansas Public Employer-Employee Relations Act to exercise jurisdiction over the subject matter of this action.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND DISCUSSION

A court's or administrative tribunal's authority to issue orders or grant judgments requires both subject-matter jurisdiction and personal jurisdiction. *Pierron-Abbott v. Kansas Department of Revenue*, 279 Kan. 83, 92 (2005). Subject-matter jurisdiction is vested by statute and establishes the court's or administrative tribunal's authority to hear and decide a particular type of legal action. *Id.* Where the record discloses a lack of subject-matter jurisdiction the tribunal is without authority to take any action, save to dismiss the matter and it is the duty of the tribunal to so act, even in the absence of a motion for same from a party. See, e.g., *University of Kansas v. Kansas Department of Human Resources, Division of Workers Compensation*, 20 Kan.App.2d 354, 356 (1995); *Little v. State*, 34 Kan.App.2d 557, 566 (2005).

In the instant matter, the Kansas Public Employer-Employee Relations Act, provides that:

> "[t]he governing body of any public employer, other than the state and its agencies, by a majority vote of all the members may elect to bring such public employer and its employees under the provisions of this act, and upon such election the public employer and its employees shall be bound by its provisions from the date of such election."

K.S.A. 75-4321(c). While the Presiding Officer is aware of no case law directly on point, it is difficult to conceive of this matter as one in which Petitioners can avail themselves of the protections afforded by the Act. The record is clear that the City of Park City has not opted in to coverage by the Act. Therefore, its protections are simply not available to employees seeking to exercise the rights granted by statute to employees of the state and

state agencies. This is clearly the consequence, harsh as it may seem, of the statutory scheme enacted by the legislature in 1971.[1] A remedy for this problem cannot be conjured up by administrative or judicial fiat; such remedy, if one is to be devised, is the sole province of the state's legislative body.

In a 1985 decision, the Kansas Supreme Court reached this same conclusion in an analogous decision. In *City of Kansas City v. Carpenters Dist. Council of Kansas City*, the Court held that an employer that failed to bring itself under the coverage of PEERA, denied itself remedies provided therein. *City of Kansas City v. Carpenters Dist. Council of Kansas City*, 237 Kan. 295, 301 (1985). Likewise, the City of Park City's failure to bring itself within PEERA's coverage acts as a limitation on the remedies available in this matter.

CONCLUSION

Based upon a careful review of the pleadings and documents filed in this matter, and after due consideration of the parties' arguments and applicable law, it is the conclusion of the presiding officer that the Petitioners request in the above-captioned

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[1] In his highly regarded article on the Act, then-University of Kansas Law Professor Raymond Goetz noted this disparity, opining that:

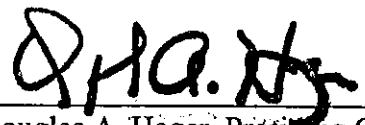
> "The predictable result has been that most municipalities have chosen to retain control over employee relations at the local level, without allowing for possible interference by the state. . . . By remaining outside the Act, a city can legally and with impunity turn a deaf ear on union requests for meeting and conferring, refuse to discuss employee grievances, take unilateral action on matters of mutual concern such as wages, promotions, transfers, layoffs, discipline, and working conditions, and perhaps even engage in discriminatory discharge or the discipline of union leaders. This result is contrary to the 1970 ACIR recommendations for uniform treatment of state and local government employees and for a single statute giving the same rights and privileges to all."

Raymond Goetz, *The Kansas Public Employer-Employee Relations Law*, 28 KAN. L. REV. 243, 248 (1980).

matter must be, and it is hereby, dismissed. Given that the protections of the Act are limited to the state and its agencies, as well as those municipalities opting in to its coverage, and given City of Park City's refusal to opt in to PEERA coverage, this agency is without jurisdiction over labor disputes involving Respondent and its employees. The Board thus has no authority in this matter, save to dismiss it for lack of subject-matter jurisdiction.

IT IS SO ORDERED.

Dated this 12th day of June, 2006.



Douglas A. Hager, Presiding Officer
427 SW Topeka Blvd.
Topeka, Kansas 66603-3182
(785) 368-6224

NOTICE OF RIGHT TO REVIEW

This Order is your official notice of the presiding officer's decision in this case. The order may be reviewed by the Public Employee Relations Board, either on the Board's own motion, or at the request of a party, pursuant to K.S.A. 77-527. Your right to petition for a review of this order will expire eighteen days after the order is mailed to you. See K.S.A. 77-527(b), K.S.A. 77-531 and K.S.A. 77-612. To be considered timely, an original petition for review must be received no later than 5:00 p.m. on June 30, 2006, addressed to: Public Employee Relations Board & Labor Relations, 1430 SW Topeka Blvd., Topeka, Kansas 66612-1853.

CERTIFICATE OF SERVICE

I, Sharon Tunstall, Administrative Officer, Kansas Department of Labor, hereby certify that on the 13th day of June, 2006, a true and correct copy of the above and foregoing Order was served upon each of the parties to this action and upon their attorneys of record, if any, in accordance with K.S.A. 77-531 by depositing a copy in the U.S. Mail, first class, postage prepaid, addressed to:

Sean M. Dwyer
111 S. Whittier
Wichita, Kansas 67207
(316) 689-4268

David G. Seely
Fleeson, Gooing, Coulson & Kitch, L.L.C.
P.O. Box 997
Wichita, KS 67201
(316) 267-7361

And to the members of the PERB on June, 20th 2006.

Sharon L. Tunstall
Sharon Tunstall, Administrative Officer