

6. Motion to Reopen hearing filed December 29, 1975 by Complainant;
7. Motion to Quash the "Application to Reopen Hearing" filed January 12, 1976 by Respondent;
8. Motion to Reopen hearing denied by Hearing Examiner January 15, 1976.

FINDINGS OF FACT

1. City of Wichita, by a majority vote of the governing body, elected to bring the public employer under the provisions of K.S.A. 75 Supp. 75-4321, et seq;

2. That Service Employees International Union Local 513 is the certified representative of certain employees of the City of Wichita, certified June 21, 1974;

3. The designated certified unit; Service Employees International Union Local 513, represents all non-professional employees (excluding supervisory, confidential, police, and fire employees) of the City of Wichita, Kansas. There are approximately 874 employees in the unit;

4. That on July 28, 1975, Service Employees International Union Local 513 and the governing body of the City of Wichita, entered into a memorandum of agreement for the period July 1, 1975 through December 31, 1975;

5. An organization known as the Employees' Council was created by city resolution and is "recognized" by the city to "represent" all employees of the City of Wichita who were not determined by the Public Employee Relations Board to be included in the unit represented by Service Employees International Union Local 513 or the police or fire units. This "representation" is for the stated purpose as set out in Respondent's Exhibit No. 1 (Resolution 79595 published in the Daily Record Newspaper, Wichita, Kansas, June 21, 1974) from the subject case and as follows:

"1. To investigate, consider and report or make recommendations on matters pertaining to the general welfare of employees represented by the Employees' Council;

"2. Upon request of any appointing authority to advise the appointing authority concerning personnel problems;

"3. To consider personnel policies and problems submitted to it by the Personnel Director; and

"4. To elect a representative to the Personnel Advisory Board."

An interpretation of the stated functions of the Employees' Council may or may not border on the fine line of "bargaining" or meeting and conferring as defined by K.S.A. 75-Supp. 75-4322(m);

6. On or about April 11, 1975, certain city employees requested from the Public Employee Relations Board petition forms for the purpose of decertifying Service Employees International Union Local 513. The transcript is void of any evidence to indicate that any employee, other than those employees designated to be within the appropriate unit represented by Local 513, actually solicited signatures for the decertification petition;

7. The record in the instant case is void of evidence or testimony to show that any member of Local 513 raised the issue of management participation in the decertification drive prior to the filing of the prohibited practice complaint on August 12, 1975;

8. That on at least two occasions, employees solicited signatures for the decertification petition in the lobby of the City Build. Annex, (T-94);

9. That on at least three occasions city employees may have solicited signatures for the decertification petition on city property during regular working hours. (T-119) (T-149) (T-220);

10. City employee, Jerry Howe, was listed as a supervisory employee in the stipulation signed by the city and union representatives submitted to the Public Employee Relations Board May 14, 1974;

11. Jerry Howe was removed from the "Jackhammer Crew" and placed as a "Drott Operator" during the month of October 1974 - specific day is not set out;

12. The record and the Public Employee Relations Board files are void of evidence to show whether or not the classification of "Drott Operator" is supervisory;

13. The record and the Public Employee Relations Board files are void of evidence as to whether or not all Equipment Operator II's are supervisory;

14. That Mr. Howe was under the impression that he was not a supervisory employee and that he was represented by Service Employees International Union Local 513 at the time he requested decertification petitions from the Public Employee Relations Board;

15. That Mr. Howe "talked" with other city employees concerning the decertification petition while on the job during working hours;

16. That on August 1, 5, and 7, 1975, at least three separate articles were published in the Wichita Eagle Newspaper concerning the decertification drive. However, the only statement attributed to a city official was made by City Commissioner, Jim Donnell: "That's the choice of the city employees," he replied. "The union that can represent them best, obviously is the union they should have;"

17. There is insufficient evidence in the record to indicate management's position in regard to the original June 13, 1974 election campaign conducted by Service Employees International Union Local 513;

18. That on August 1, 1975 an article was published in the Wichita Eagle Newspaper quoting an open letter to all employees of the city and under the signature of Ralph Wulz, City Manager of Wichita;

19. That on August 1, 1975 an open letter to city employees, signed by Wichita City Manager, was distributed to all city employees. The letter outlined the 1976 "betterments" for city employees except those represented by Service Employees International Union Local 513. The letter contained the following statement: "However, I would be less than candid if I did not point out that employees within the bargaining unit of the Service Employees Union have not been voted any 1976 betterments by the City Commission. This is because, to date, the SEU has rejected the same basic package of improvements which was accepted by Fraternal Order of Police and the International Association of Firefighters and the Employees Council. Therefore, until a settlement is reached, those employees who are covered under the SEU bargaining unit can receive no across the board pay increase, and no additional fringe benefits." The letter also contained the statement: "Employees can determine which bargaining unit they are in by looking at their August 1 payroll check stubs. Across the bottom will be printed one of the

following four lines:

Representation--Fraternal Order of Police
Representation--International Assn. of Firefighters
Representation--Service Employees Union
Representation--Employees Council."

20. That on July 3, 1975 a letter under the signature of the City Manager of Wichita, was distributed to all city employees. This letter was in regard to the upcoming city sales tax referendum. The letter explained the cost of the tax and stated in part: "Wichita commissioners have stipulated that 50% of the sales tax revenue would be used to lower local property taxes. The remaining 50% will help provide improved city services and city employee salary increases. It is important to you, as a city employee, to vote on this issue." The letter further stated: "If you have other questions on the half-cent sales tax, please contact the Public Information Office, Ext. 330. And remember, it is very important to vote on this issue Tuesday, July 15;"

21. That early in July several employees were approached while on the job and reminded to register so as to be eligible to vote in the upcoming sales tax referendum. Some employees were given the impression that they would not receive a raise in the event the sales tax referendum failed;

22. That a document entitled, "Memo of Agreement by and between the City of Wichita, Kansas and Service Employees International Union Local 513, AFL-CIO," which was signed by the parties on July 28, 1975 and listed the legal holidays observed as:

New Year's Day
Washington's Birthday
Memorial Day
Independence Day
Labor Day
Columbus Day
Veteran's Day
Thanksgiving
Christmas Day;

23. That both the Employees' Council and Service Employees International Union Local 513 supported the exchange of Columbus Day for the day following Thanksgiving. (T-169)(T-239);

24. That two memorandums both under the signature of City Manager of Wichita, dated August 27, 1975 and September 3, 1975, stated that it

would be desirable to retain the Columbus Day Holiday for 1975. Copies of at least one of the memorandums were furnished to representatives of unions representing employees;

25. That some type of correspondence was issued by management of the city, subsequent to the August 27 and September 3, 1975 memorandums, which stated that the day after Thanksgiving would be the legal holiday for city employees. (T-172) (T-174).

CONCLUSIONS OF LAW

The City of Wichita is a public employer within the meaning of K.S.A. 75-Supp. 75-4321 et seq;

The instant case is properly before the Public Employee Relations Board;

The Public Employee Relations Board recognizes that there are issues presently before the Board which were not contained in the original complaint filed by Service Employees International Union Local 513. However, the Board has interpreted the policy and objectives of K.S.A. 75-Supp. 75-4321 et seq. as an attempt to create a harmonious and cooperative relationship between government and its employees. Therefore, the Board would be remiss in its duties if an attempt were not made to resolve all stated problems as expeditiously as possible. The Board has expanded the original complaint to include all issues raised in the hearings conducted October 29 and 30, 1975;

Respondent, the City of Wichita, is not required by K.S.A. 75-Supp. 75-4325 to recognize or meet and confer with any employee who is deemed to be outside an appropriate unit of employees as determined by the Public Employee Relations Board. However, nothing in the law can be construed as limiting the right of the public employer to recognize a group of employees who are outside the scope of any appropriate unit. K.S.A. 75-Supp. 75-4321(a)(2), which states: "The denial by some public employers of the right of public employees to organize and the refusal by some to accept the principle and procedure of full communication between public employers and public employee organizations can lead to various forms of strife and unrest;" would indicate that such "recognition"

will promote a harmonious and cooperative relationship between government and its employees. The stated functions of the Employees' Council seem to order on the functions of meeting and conferring. However, there is no stated impasse procedure nor is there a requirement that the public employer "endeavor to reach agreement on conditions of employment."

It is not probable that an employee would be "interfered with, restrained or coerced" into joining one organization over another simply by the public employer recognizing more than one employee organization so long as no favoritism is shown by the employer to one or the other organization;

K.S.A. 75-Supp. 75-4327(d) authorizes the Public Employee Relations Board to conduct representation elections for the purpose of decertifying of employee organization K.A.R. 84-2-7 provides the procedure for employees to petition the Board for such an election. At least thirty percent of the employees of an appropriate unit must sign a petition calling for a decertification election before the Board will move to conduct the election. Management's participation in a decertification drive would constitute a per se violation of K.S.A. 75-Supp. 75-4333(b) (1). In the instant case, the only allegation of such participation was that of Mr. Jerry Howe. The question then presented is concerning Mr. Howe's employee status as of April 1975. Mr. Howe was exempted from the appropriate unit by mutual agreement of the parties in May 1974. However, Mr. Howe testified that he was removed from supervisory status during October 1974, with his removal from the "Jackhammer Crew" and subsequent placement as a "Drott Operator," thus placing him in the unit of employees represented by Local 513. In the absence of evidence to show that the classification of "Equipment Operator II -- Drott Operator" was considered to be supervisory in May 1974 or to show that all "Equipment Operator II's" are considered to be supervisory, the Board can only conclude that Mr. Howe was not considered as having supervisory status in April 1975;

Mr. Howe testified that he "talked" about the decertification petition with fellow employees during working hours. It would be unreasonable to assume that an employer is able to enforce a "gag rule" upon its employees

concerning union or anti-union activities. In fact, such a "gag rule" would seem to be a violation of rights guaranteed by K.S.A. 75-Supp. 75-4321 et seq. and the constitutions of the State of Kansas and the United States.

In the event rules and regulations governing union activities are set forth by an employer, they must be applicable to all employees and unions alike. However, it is unreasonable to assume that an employer the size of the City of Wichita is able, in all instances, to police the actions of its employees. There is no evidence to show that management participated in the decertification drive, nor was there any effort by the union to inform management that the petition was being circulated on city property during working hours. The Board can only conclude that management was unaware of the violation of rules;

Management cannot be held accountable for articles appearing in the news media, provided of course, the articles are products of the news media and not direct statements of management. The Board finds that the statement attributed to Mr. Jim Donnell and excerpts from the open letter by Ralph Wulz do not constitute a violation of K.S.A. 75-Supp. 75-4333;

The Board is persuaded that the intent of the open letter to employees distributed August 1, 1975, was to inform all employees, other than those represented by Local 513, of the 1976 "betterments." A key statement in that letter: "Therefore until a settlement is reached, those employees who are covered under the SEU bargaining unit can receive no across the board pay increase, and no additional fringe benefits.", leads one to believe that the employees represented by Local 513 could accept the same "betterments" as all other employees. However, it is evident that Local 513 representatives were seeking additional benefits. The Board, therefore, finds that the issuance of the open letter is within the scope of management's rights and contains no statements intended to interfere with or coerce employees represented by Local 513;

The Board finds that the July 3, 1975 letter concerning the city sales tax referendum was simply an explanation of the issue and was distributed for informational purposes and to urge employees to vote;

The entire issue of changing the holidays is clouded. However, since the Service Employees International Union Local 513 and the employees' council were agreeable to the change in holidays and all city employees were affected by the issuance of the numerous memorandums, the Board finds that there was no intent on the part of management to harass members of Service Employees International Union Local 513. Further, since the "informal" agreement of the parties was officially adopted in correspondence subsequent to the August 27 and September 3, 1975 memorandums, the Board rules this question moot;

THE BOARD FINDS INSUFFICIENT EVIDENCE TO SUBSTANTIATE THE ALLEGATION that the City of Wichita is guilty of prohibited practice within the meaning of K.S.A. 75-Supp. 75-4333(b)(1), (2), (3), (4), and (6).

THEREFORE, THE BOARD ORDERS AND ADJUDGES THAT the Complaint Against Employer, Case No. CAE 5-1975, be dismissed.

IT IS SO ORDERED.

DATE: March 18, 1976

Nathan W. Thatcher
Nathan W. Thatcher, Chairman, PERB

Garold A. Been
Garold A. Been, Member, PERB

Phyllis Burgess
Phyllis Burgess, Member, PERB

E. Jay Rennick
E. Jay Rennick, Member, PERB

Richard R. Rock
Richard R. Rock, Member, PERB

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