

COPY SENT TO
The Public Employee Relations Board
Hearing Room

STATE OF KANSAS
BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

AFSCME, AFL - CIO

Complainant,

v.

CASE NO: 75-CAE-5-1980

Parsons State Hospital & Kansas Department of Social and Rehabilitation Services

Respondent.

O R D E R

Complainant, AFSCME, AFL-CIO, appears by and through its counsel, Terry D. Watson, Attorney-at-Law, 1507 South Topeka, Topeka, Kansas 66601. Respondent Parsons State Hospital and Kansas State Department of Social and Rehabilitation Services, appears by and through its counsel, Don Frigon, Attorney-at-Law, Kansas Department of Social and Rehabilitation Services.

This case comes before the Board on petition of Earl W. Hupp alleging that respondent has engaged in prohibited practices within the meaning of K.S.A. 75-4333 (b) (1), (2), (3), (6). Specifically Complainant has requested a personnel listing from Parsons State Hospital and that such request has been denied.

PROCEDURES BEFORE THE BOARD

1. Complaint filed October 22, 1979 by Mr. Earl W. Hupp, organizing representative for American Federation of State, County and Municipal Employees, AFL-CIO.
2. Answer to complaint filed November 5, 1979 by Mr. Charles V. Hamm on behalf of Parsons State Hospital and the Kansas Department of Social and Rehabilitation Services.
3. Pre-hearing conference conducted by Jerry Powell at 610 West Tenth, Topeka, Kansas, on January 9, 1980.
4. Hearing conducted January 21, 1980 at 610 West Tenth, Topeka, Kansas before the Public Employee Relations Board. Board Members in attendance were:
 - a. James Mangan
 - b. Louisa Fletcher
 - c. Lee Ruggles
 - d. Art Veach

75-CAE-5-1980

FINDING OF FACTS

1. That Parsons State Hospital and Kansas Department of Social and Rehabilitation Services are appropriate employers within the meaning of K.S.A. 75-4322 (f).
2. That AFSCME is an employee organization as defined at K.S.A. 75-4322 (i).
3. That Earl W. Hupp is a business agent for AFSCME.
4. That certain non-professional classified employees of Parsons State Hospital were found to constitute an appropriate bargaining unit by the Public Employee Relations Board on order dated May, 1974.
5. That AFSCME has not been certified by the Public Employee Relations Board to represent a unit of employees at Parsons State Hospital.
6. That parties entered the following stipulation of fact.
 - a) That there are approximately 390 classified employees at Parsons State Hospital.
 - b) That all bargaining unit employees work on the grounds of Parsons State Hospital.
 - c) That respondent has the names and addresses of all classified employees in at least two types of records; 1) Personnel file on each employee.
7. That on or about July 20, 1979 AFSCME organizing representative, Earl Hupp, requested a personnel list of Parsons State Hospital employees.
8. That on August 13, 1979 Robert C. Harder, Secretary of State Department of Social and Rehabilitation Services rejected Mr. Hupp's request for a personnel listing of employees of Parsons State Hospital.
9. That respondent will not release or allow anyone access to employee records.
10. That complainant alleges payroll information and personnel files maintained by Parsons State Hospital and Social and Rehabilitation Services is subject to K.S.A. 45-201 (public records law).
11. That respondent alleges personnel information kept by Parsons State Hospital and Social and Rehabilitation Services is not required by law to be kept and maintained by Parsons State Hospital or Social and Rehabilitation Services. Rather such personnel information is required to be maintained by the Director of Personnel of the State Department of Administration.
12. That respondent alleges payroll information kept by Parsons State Hospital and Social and Rehabilitation Services is exempted from coverage of K.S.A. 45-201.

CONCLUSIONS - DISCUSSIONS - ORDER

This case comes before the Public Employee Relations Board on the heels of a similar charge brought against the Kansas Department of Transportation. One must keep in mind, however, one basic difference in the cases. The charging party in the Department of Transportation case was a certified representative of employees. Complainant in this case has not been certified to represent employees at Parsons State Hospital and, in fact, has stated its desire to utilize the names and addresses of employees for organizational purpose. In the Department of Transportation case the Board found an obligation placed upon the certified organization to represent all employees within a given unit thus necessitating the knowledge of the names and addresses of all employees within the unit.

K.S.A. 75-4333 (b) (1) states:

"It shall be a prohibited practice for a public employer or its designated representative willfully to:

(1) Interfere, restrain or coerce public employees in the exercise of rights granted in section 4 (75-4324) of this act;"

K.S.A. 75-4333 (b) (2) states:

"(2) Dominate, interfere or assist in the formation, existence, or administration of any employee organization;"

K.S.A. 75-4333 (b) (3) states:

"(3) Encourage or discourage membership in any employee organization, committee, association or representation plan by discrimination in hiring, tenure or other conditions of employment, or by blacklisting;

K.S.A. 75-4333 (b) (6) states:

"(6) Deny the rights accompanying certification or formal recognition granted in section 8 (75-4328) of this act;"

The Board finds it impossible for respondent to have violated the provisions of K.S.A. 75-4333 (b) (6) since complainant stipulates that it has not been certified or recognized to represent employees of Parsons State Hospital.

The Board finds no evidence, testimony or even the allegation that respondent has discriminated in hiring, tenure, or other conditions of employment or by blacklisting. Thus respondent could not have violated the provisions of K.S.A. 75-4333 (b) (3).

The Board finds no evidence, testimony or allegations that respondent has interfered, restrained or coerced public employees in the exercise of their right to form, join or participate in activities of employee organization of their own

choosing. Therefore, respondent could not have violated the provisions of K.S.A. 75-4333 (b) (1).

It would appear that the basis of this charge is found at K.S.A. 75-4333 (b) (2). That is, has the employer interfered with the formation, existence, or administration of an employee organization by their refusal to provide Mr. Hupp with the list of employees' names and addresses? Basically there are two questions raised by this case. Is there a requirement under the Public Employer-Employee Relations Act that an employer provide names and addresses of employees to a non-certified or non-recognized employee organization? Secondly, lacking such a requirement under Public Employer-Employee Relations Act; are personnel files and payroll data subject to K.S.A. 45-201 and if so has the employer willfully withheld the requested information from the employee organization's representative?

The Public Employee Relations Board finds no requirement under the Public Employer-Employee Relations Act that an employer provide listings of employees' names and addresses to a non-certified or non-recognized employee organization. If the records are public, respondent must allow the union free access as they would any citizen. Respondent has stated their belief that such records were not public and that respondent does not allow access to anyone.

Complainant, of course, contends that personnel records and payroll data are subject to the public records act. Complainant, however, has not contested respondent's position that respondent does not allow anyone access to such records. It is difficult to comprehend how respondent could have willfully withheld information from Mr. Hupp when such information has not been available to the general public.

In summary the Board finds no requirement to provide names and addresses of employees to a non-certified employee organization. The Board finds no evidence to support an allegation that respondent acted willfully in its refusal to provide access to records. Therefore, 75-CAE-5-1980 is dismissed.

IT IS SO ORDERED THIS 18th DAY OF February 1980, BY THE PUBLIC EMPLOYEE
RELATIONS BOARD.

James J. Mangan
James J. Mangan, Chairman, PERB

Louisa A. Fletcher
Louisa A. Fletcher, Member, PERB

Urbano L. Perez
Urbano L. Perez, Member, PERB

Lee Ruggles
Lee Ruggles, Member, PERB

ABSENT
Art Veach, Member, PERB