

State of Kansas
Before The Public Employee Relations Board

PUBLIC SERVICE EMPLOYEES *
UNION LOCAL 1132, AFL-CIO *
Complainant *
vs *
KANSAS ASSOCIATION OF *
PUBLIC EMPLOYEES *
Respondent *
* * * * *

CASE NO. CAEO 1-1973

Findings Of Fact And Conclusions
Of Law - Order

Comes now on this 26th day of March, 1973 the above captioned case for hearing. The complainant appears by its attorney, Mr. Henry Wilson and Mr. Carl Bradshaw, Representative, National AFL-CIO. The respondent appears by its attorneys Mr. Charles McAtee and Mr. William G. Haynes.

The hearing is conducted before Mr. Donald R. Hoffman, Assistant Attorney General, State of Kansas, the duly appointed hearing examiner for the Public Employee Relations Board.

The case comes before the Public Employee Relations Board upon petition of Public Service Employees Union Local 1132, AFL-CIO under date of March 2, 1973 by Mr. Lloyd Rose, Business Manager of Local 1132. The complaint alleges that Kansas Association of Public Employees (KAPE) is not a "bona fide 'Employee Organization' in compliance with Section 2(i) of the Act, has and is continuing to receive assistance from the University of Kansas at Lawrence, Kansas in direct violation of Section 13(b) (1) and Section 13(b) (2) of the Act." The

CAEO-1-1973

matter was set down for hearing March 15, 1973 to be heard along with a Prohibited Practice complaint against the University of Kansas (CAE 2-1973) whereupon, pursuant to a conference, the Public Employee Relations Board ordered substantially as follows:

1. That neither the respondent in the instant case or respondent (University of Kansas) in Case CAE 2-1973 were prepared to adequately offer a defense to the allegations of complaintant's petitions.
2. That the election scheduled at the University of Kansas for March 22, 1973 be set aside until a proper adjudication of the issues raised in complaintant's original petition challenging KAPE's status could be made.
3. That adjudicative hearings on the complaints be separated.

Thereupon the instant hearing was ordered.

Findings Of Fact

Upon report being made by the examiner and after reviewing the evidence presented at the hearing, the Board finds:

1. That KAPE was incorporated in May, 1963.
2. That said incorporation pre-dates the passage of the Public Employer-Employee Relations Act.

3. That the 25 original incorporations of KAPE were largely state employees, most of whom held professional, supervisory or managerial positions within state government (Complainant's Exhibit #1).
4. That KAPE has existing by-laws which provide for elections of officers by secret ballot (by-laws Respondent Exhibit #1).
5. That KAPE maintains financial records which are available to its membership for inspection.
6. That KAPE's by-laws and articles of incorporation provide for the fair and equal treatment of all members.
7. That pursuant to said by-laws, any state employee may join KAPE notwithstanding the position he holds as an employee or officer of the State of Kansas.
8. That any member of KAPE may hold office in the organization.
9. That the membership of KAPE is approximately 4,000 including officers and employees of virtually all levels of public employment.
10. That KAPE sponsors and encourages local chapters.

11. That no local chapter of KAPE has by-laws or a constitution other than that of the State organization.
12. That any such by-laws or constitution of a local chapter would be subject to approval by the Board of Directors of KAPE. (Bylaws)
13. That the State KAPE organization has not filed its by-laws with the Secretary of State.
14. That KAPE has represented at least one state employee in a dispute concerning hours of work and a resultant grievance prior to the effective date of a memorandum of agreement.
15. That the Executive Secretary of KAPE, Mr. Bryan McLaughlin, has bi-monthly meetings with members of the Executive Committee of the Board of Directors.
16. That said Board of Directors, not the Executive Secretary, is empowered under the terms of the by-laws to determine whether the organization will represent public employees in specific matters involving conditions of employment.
17. That the overall structure and composition of KAPE differs from that of traditional labor organizations found in the private sector, since membership includes a substantial number of managerial, professional and supervisory personnel.

Conclusions Of Law

1. The Public Employee Relations Board is not bound by any statute, rule or decision or any other agency, state or federal, whose function it is to resolve disputes between public employers and public employees.
2. That the Public Employer-Employee Relations Act does not by its terms create a new right in public employees to join and participate in employee organizations. Such right pre-dates the passage of the Act and has long been recognized as a constitutionally protected association.
3. The Act was not intended to eliminate existing employee organizations or require that their structure conform to organizations in the "private sector."
4. That neither the Act nor regulations promulgated by the Public Employee Relations Board require that "employee organizations" be incorporated.
5. The Board finds upon review of the entire record in the instant case that the complaintant has failed to establish that KAPE does not meet the standards of an "employee organization" as defined by the Public Employer-Employee Relations Act.

The organization and history of KAPE are clearly unique to the public sector. Its membership is diversified and includes many employees not typically associated with labor or employee organizations. This is particularly true in regard to the original incorporators as well as the historic make-up of the Board of Directors. Obviously, there are many members in the organization holding supervisory and professional positions in public service. While these factors raise serious questions regarding the organization's future ability to represent lower ranking public employees, the Board is aware that supervisory and professional personnel are allowed to belong to employee organizations under the express terms of the Act itself. The Board is also cognizant of the fact that employer-employee relations in any formalized sense is new to the public sector in Kansas. Accordingly, employee organizations must be given a degree of latitude and time to structure their organizations to meet their new privileges and obligations under the Act.

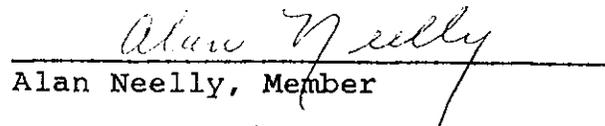
Accordingly, in the absence of evidence of the most cogent nature, the Board is unwilling to deprive any organization of standing before it.

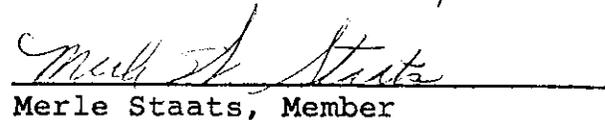
The Board's ruling in this case should not be construed as an authorization to public employers to dominate or to control employee organizations. While supervisory personnel are authorized to belong to employee organizations, this factor does insulate the public

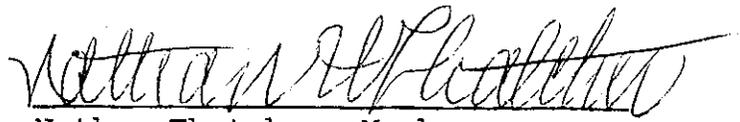
employer from being bound by the acts and conduct of such supervisors. If in a proper case, it is shown that supervisory employees of a public employer while members of KAPE, any other employee organization, or for any other reason are guilty of any of the innumeraed prohibited practices found in the Act, the Board will have no hesitancy in imputing such conduct to the public employer.

IT IS ORDERED BY THE PUBLIC EMPLOYEE RELATIONS BOARD
THE COMPLAINT IS DISMISSED


Eldon Danenhauer, Chairman


Alan Neelly, Member


Merle Staats, Member


Nathan Thatcher, Member

Arthur Veach, Member

Date: April 26, 1973

RUNDOWN - CASE CAEO 1-1973 - COMPLAINT AGAINST EMPLOYEE ORGANIZATION OF
KAPE, FILED BY PUBLIC SERVICE EMPLOYEES UNION LOCAL 1132

Petition Filed: March 2, 1973

Petitioner: Lloyd Rose, Business Manager for Local 1132
Harry Helser, Rep., National AFL-CIO

KAPE Reps: Bryan McLaughlin, Executive Director
William Haynes, Atty.
Charles McAtee, Atty.

State Reps: Lowell Long, State Director of Personnel
Frank Theis, Atty.

COMPLAINT ALLEGED: KAPE is not a bonafide "Employees Organization" in accordance with Section 2(i) of the Act because the Kansas Association does not have - "as one of its primary purposes representing such employees in dealing with that public agency over conditions of employment and grievances."

REMEDY: KAPE be denied the right to intervene on the petition filed by Local 1132 for the Service & Maintenance employees at KU in Lawrence (Case UE 6-1972), and further that KAPE be forever denied the privilege of being on an election ballot where an "Employee Organization" is being selected by a group of employees to be their "Recognized Employee Organization."

March 8: PERB mailed Notice of Hearing for March 15 and notified KAPE they could file written reply to complaint at hearing.

March 15: HEARING - After discussion and hearing statements by parties, PERB ruled that a hearing be held March 26, with Don Hoffman acting as Hearing Officer. All parties are to be better prepared to introduce evidence and give argument to the bonafideness of KAPE. Local 1132 was instructed to provide more information to KAPE regarding the complaint.

March 19: PERB issued Notice of Hearing for March 26

March 20: PERB sent letter to complaintant requesting them to provide respondent details on their complaints.