

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

IN THE MATTER OF THE PETITION *
FILED BY *
*
American Federation of State, *
County & Municipal Employees * CASE NO. 75-UDC-2/3/4-1985
*
vs. *
*
Department of Corrections *
*
*
*

9 ORDER December

Comes now on this ~~15th~~ day of ~~November~~, 1985, the above captioned matter for consideration by the Public Employee Relations Board. This matter comes before the Board as a petition for unit determination and certification and is filed in accordance with the provisions of K.S.A. 75-4321 et seq., the Kansas Public Employer Employee Relations Act.

APPEARANCES

PETITIONER - AFSCME, Appeared through Mr. Wayne K. Wianecki, Executive Director and, Ms. Jan Fisher, Attorney at Law.

RESPONDENT - Kansas Department of Corrections, appeared through Mr. Charles E. Simmons, Chief Staff Counsel.

PROCEEDINGS BEFORE THE BOARD

1. Petitions filed by petitioner on November 19, 1984.
2. Petitions submitted to respondent for answer on November 19, 1984.
3. Respondent's answer received by Department of Human Resources on December 7, 1984.
4. Respondent's answer submitted to petitioner on December 10, 1984.
5. Pre-hearing conducted before Paul K. Dickhoff, Jr. on March 11, 1985.
6. Formal hearing scheduled for May 2, 1985. Notice sent to:
Petitioner - April 24, 1985
Respondent - April 24, 1985

7. Formal hearing conducted before Jerry Powell on May 2, 1985.
8. Briefs received from the parties on:
 - Petitioner - September 16, 1985
 - Respondent - September 16, 1985

FINDINGS OF FACT

1. That the Department of Corrections is comprised of eleven (11) facilities and institutions.
2. That there are in existence, four (4) classifications of corrections officers. (Respondent's Exhibit 3, T-76)
3. That class specifications have been formulated for the four (4) classifications of corrections officers. (T-76)
4. That the same class specifications are utilized for all corrections officers at all facilities and institutions of the Department of Corrections. (T-77)
5. That certain classifications of Department of Corrections employees receive a pay differential at Kansas State Penitentiary, Kansas Correctional Institution at Lansing, Kansas Correctional-Vocational Training Center, State Reception and Diagnostic Center, Kansas State Industrial Reformatory, and the Honor Camps. (T-80,81)
6. That the Secretary of Corrections issues internal management policies and procedures (IMPP's) which are applicable to all agencies of the Department of Corrections. (T-81,91)
7. That each institution normally has authority to determine what substitutions for the education and experience requirements, listed as minimum qualifications in correctional officer position descriptions, will be allowed. (T-86,87)
8. That the IMPP's referenced in Finding of Fact #6 are issued to establish broad departmental policy. (T-104)
9. That each separate institution issues general orders which are subject to the approval of the Secretary of Corrections. (T-105,141)

10. That general orders establish institutional policy within the confines of the IMPP's. (T-105,142)
11. That each institution has the latitude to establish their own shifts or hours of work. (T-120)
12. That all corrections officers must complete the same number of hours of training. (T-121)
13. That a portion of the training required of all corrections officer varies by institution according to the special needs of the institution. (T-121, 97,98,140)
14. That institutional directors have the authority and are encouraged to resolve grievances at their level. (T-92,140)
15. That general orders are applicable only to each individual institution. (T-150)
16. That informational meetings were conducted by representatives of AFSCME for employees of K.S.P. (T-31)
17. That the informational meetings referenced in Findings of Fact #16 were conducted pursuant to requests made by employees of K.S.P. (T-31)
18. That the employees attending the informational meetings referenced in Finding of Fact #16 expressed a desire for representation. (T-32)
19. That petitioner has attempted to contact employees of the Department of Corrections employed at institutions other than K.S.P. (T-33,34)
20. That petitioner detected no interest in organizing or representation among those employees referenced in Finding of Fact #19. (T-34)

CONCLUSIONS OF LAW/DISCUSSION

The instant case comes before the Public Employee Relations Board on petition of the American Federation of State, County, and Municipal Employees (AFSCME) Kansas Council 64. The petition seeks to establish a separate unit of correctional officers at Kansas State Penitentiary in amendment to a previously determined statewide unit of correctional officers as ordered by this board in 1974. It should be noted that this Board has always enforced the philosophy that the scope of no unit is "set in concrete". Labor relations is a field in which conditions change regularly. What may have been an appropriate action in the past, may be inappropriate today or may become inappropriate in the future. The necessity to remain flexible and responsible to change is the only course of action logically open to the Board. Change solely for the sake of change, however, would be equally as incorrect as a lack of flexibility. Each case must turn on its own merits and particular circumstances. For that reason, the actions of the Board, in determining any one unit as either local or statewide, do not serve as absolute precedents which must be followed in subsequent cases.

In the consideration of questions regarding the determination of an appropriate bargaining unit the Board must utilize the guidelines established within K.S.A. 75-4327(e) which states:

"Any group of public employees considering the formation of an employee organization for formal recognition, any public employer considering the recognition of an employee organization on its own volition and the board, in investigating questions at the request of the parties as specified in this section, shall take into consideration, along with other relevant factors: (1) The principle of efficient administration of government; (2) the existence of a community of interest among employees; (3) the history and extent of employee organization; (4) geographical location; (5) the effects of overfragmentation and the splintering of a work organization; (6) the provisions of K.S.A. 75-4325; and (7) the recommendations of the parties involved."

The Board is of the opinion that no single factor may be assigned any greater weight than any other factor. Rather, the Board believes that the unit determination questions must be viewed as a whole. In many cases not all of the enumerated factors will have application. The evidence presented at the formal hearing in this matter, likewise, addressed only those factors thought by the parties to be germane.

Evidence presented shows that the Secretary of Corrections has issued internal management policy and procedure (IMPP's) documents which have application to all institutions within the Department of Corrections. Those IMPP's, in many cases, pertain to issues defined by K.S.A. 75-4321 et seq. as "conditions of employment". Testimony at the hearing, however, characterized those IMPP's as being broad and general. Of greater interest to the examiner is the existence of the "general orders". Testimony indicates that the "general orders" are drafted at the institutional level, are applicable only to the specific institution, and more clearly define how the IMPP's will be applied at the particular institution. It can be argued that the general orders are not effective unless and until they are approved by the Secretary of Corrections. Certainly the examiner can understand that the Secretary would not wish to approve a general order which did not substantially comply with the general intent of the IMPP's. It appears to the examiner, however, that the Secretary recognizes the need for flexible application of his policies, and further recognizes that the institutional director is the logical party to determine the extent to which each policy should be tailored. In that regard, the examiner can understand the diversity of the institutions relative to the populations they serve and the various goals they seek to accomplish. The examiner believes that the existence of the general orders and the procedure utilized in the formulation and adoption of the general orders serves to further substantiate the fact that each institution faces unique conditions which are best addressed at the local level. As that fact is considered in regard to the establishment

of an appropriate bargaining unit, the examiner does not believe that the conditions of employment of the employees in those unique institutions could be adequately or appropriately addressed in one comprehensive unit. If the concept of one comprehensive unit were retained by the examiner, the employer could be placed in the position of being unable to participate in meet and confer proceedings in "good faith". By way of example, assume that the statewide concepts were retained. Assume further that the employees wished to meet and confer regarding something as simple as wearing apparel. Assume further that by management decision, statute or by accreditation requirements, a particular type of uniform was required at a certain type of institution. In such a case, the employer would find himself unable to "exchange freely information, opinions, and proposals to endeavor to reach agreement". In order to meet other "needs", the employers position would necessarily lack flexibility which is a key ingredient in "good faith" bargaining. Similar examples could be drawn for virtually all other conditions of employment and indicates to the examiner that retention of the concept of an all encompassing unit could severely restrict the meaningful exchange of ideas sought by the law. The establishment of a separate bargaining unit at K.S.P. would provide the parties with the ability to remain responsible to the unique circumstances at the individual institution and thereby fulfill their legislative mandate to bargain in good faith.

Another factor which the Board is obliged to consider, in questions of unit determination, is geographical location. While the record is clear that the institutions within the Department of Corrections are located throughout the state, the examiner does not place great weight on that fact in this case. The wide spread location of the institutions would

normally tend to persuade the examiner toward separation of the unit. If sheer geography were viewed by the examiner as a critical issue in this case, however, institutions with greatly different goals and purposes could conceivably be grouped in one unit. A prime case in point would be in Topeka with KRDC, a work release center, a pre-release center, Department of Corrections headquarters, and KCVTC all located in that city. The examiner does not believe that the mere location of those facilities can in any way outway the importance of recognizing the diverse purpose and function of those institutions. In the existing 1977 statewide unit determination order those institutions are all grouped as one unit together with all other facilities of the Department of Corrections. In light of the evidence presented at the hearing, however, the examiner is not convinced that the statewide concept is either workable or appropriate in the present.

The statute also directs the Board to consider the principle of efficient administration of government. Respondent is correct in his belief that the separation of the statewide unit could evolve to a stage where each institution could constitute a separate bargaining unit. Certainly such a condition could drastically increase the amount of time, money, and effort required to engage in good faith negotiations with each of those units. The examiner further believes that those employees have the right to expect that the bargaining unit in which they are placed will be comprised in a manner which allows it to be responsive to the needs, concerns, and interests of those classifications so included. The examiner does not believe that the rights the

legislature has seen fit to bestow upon the employees can be so easily denied because of the potential for increased expense or effort inherent therein. If one were to rely on that logic, argument could be advanced that there be only one bargaining unit within each department or government, or that all state employees be grouped in one comprehensive statewide unit. It must be remembered that one of the primary purposes of the statute is to develop a more harmonious and cooperative relationship between public employees and public employers through full and open communications. The larger the unit, the less the ability to be responsive to more and more of the concerns of the unit. Therefore, the establishment of large, unresponsive units serves to impair full communication. As stated earlier, the process of unit determination is not a science which follows strict absolutes. Each set of circumstances must be viewed separately, weighed separately, and an objective determination made. In regard to the criteria of efficiency of governmental operations the examiner believes that the facts dictate the establishment of a separate appropriate unit at K.S.P.

A factor which relates to the efficiency of governmental operations is stated as "the effects of overfragmentation and the splintering of a work organization". The examiner is not convinced that the establishment of a separate bargaining unit at K.S.P. would overfragment or splinter the work organization. It appears that quite the contrary is true. The amendment requested by the petitioner seeks to establish a bargaining unit in accordance with the departmental lines drawn by the Department of Corrections. The department seems to be saying that for their purposes each institution requires its own general orders, on site director, work schedules, training flexibility, and procedures while for unit determination purposes, the Department of Corrections stands as one entity. As stated earlier,

the difference demonstrated by the department in their organizational structure, lead the examiner toward the separation of K.S.P. from the balance of the department as an appropriate unit.

The statute lists the recommendations of the parties as another factor to be considered in unit determination. Great weight is given to that factor in cases where the parties are able to reach agreement on the scope of a unit. In this case, however, there is a dispute between the parties and as might be expected, testimony offered by each side serves to refute the other. For that reason, the examiner is unable to place much, if any, reliance on the evidence presented in that regard.

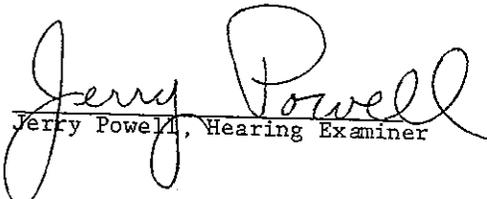
The examiner must also consider the history and extent of employee organization. Once again, this factor may not be viewed as controlling. Testimony at the hearing indicated that K.S.P. was the only institution in which employee interests in organizing had been strongly demonstrated. The examiner does not believe, however, that a bargaining unit should be established simply as a matter of convenience for a particular group of individuals. As has been explained previously, no single factor standing alone can be assigned that great of a weight but must be considered as a part of the whole. The evidence presented in this regard tends to indicate the separation of K.S.P. as a separate unit but will be considered only in concert with all other relevant facts.

In summary, the Department of Corrections is comprised of eleven (11) separate institutions and facilities under the ultimate supervision of the Secretary of Corrections. Each and every institution is governed by internal management policies and procedures (IMPP's) issued by the Secretary of Corrections. Institutional directors, however, are given considerable flexibility in formulating "general orders" which explain how the IMPP's will be applied on the local level. The general

orders in many cases deal with issues, defined as conditions of employment by K.S.A. 75-4322(t), and by their very existence help to establish a community of interest among the employees of each institution. The facilities under the control of the Secretary of Corrections serve varied populations, are established with diverse goals (work release, pre-release, vocational training, reception and diagnosis, honor camps, etc.), and are geographically located throughout the state. Currently only the employees of K.S.P. have demonstrated any interest and/or activity toward organizing and the examiner has not been persuaded that the separation of K.S.P. as a separate unit would adversely affect the principle of efficient administration of government. Similarly, the examiner is not convinced that the establishment of a bargaining unit along previously established departmental lines, could in any way be perceived as an overfragmentation or splintering of the work organization.

Based upon the foregoing, the examiner finds that Kansas State Penitentiary meets the statutory criteria and should be established as a bargaining unit separate and apart from the balance of the Department of Corrections.

It is so recommended this 15th day of November, 1985.


Jerry Powell, Hearing Examiner

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

IT IS SO ORDERED THIS 9 DAY OF December, 1985, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.

dissent

James J. Mangan, Chairman, PERB

ABSENT

Louisa A. Fletcher, Member, PERB

Lee Ruggles

Lee Ruggles, Member, PERB

Art Veach

Art J. Veach, Member, PERB

Robert L. Kennedy

Robert L. Kennedy, Member, PERB

Member Mangan given 20
DAYS FROM DATE OF ORDER TO
FILE A WRITTEN DISSSENTING
OPINION.

BEFORE THE KANSAS PUBLIC EMPLOYEES RELATIONS BOARD

IN THE MATTER OF THE PETITION)
OF AFSCME--KANSAS COUNCIL 64 FOR)
UNIT DETERMINATION AND CERTIFICA-)
TION OF CERTAIN EMPLOYEES OF THE)
KANSAS DEPARTMENT OF CORRECTIONS)

CASE NO.
75-UDC-2/3/4-1985

DISSENTING OPINION

Comes now JAMES J. MANGAN, member of the above Board, and respectfully dissents to the majority opinion entered in the above matter on the 9th day of December, 1985.

FINDINGS OF FACT

1. That the Department of Corrections is comprised of eleven (11) facilities and institutions.
2. That there are in existence four (4) classifications of Corrections Officers; that specifications have been formulated for each class; and that the same class specifications are utilized for all Correction Officers at all facilities and institutions of the Department of Corrections. (T-76 and Respondent's Exhibit 3.)
3. Certain classes receive hazardous duty pay. The designated employees at all of the institutions receive this pay differential with the exception of the Pre-Release Centers at Topeka and Winfield, and the Topeka Work Release Center does not have any employees in these classes. (T-80-81.)
4. The Secretary of Corrections issues Internal Management Policies and Procedures (IMPP'S) which are applicable to all agencies of the Department of Corrections. They represent the policies that the Secretary of Corrections has determined for the operation of the Department and it is mandatory that they be followed. (T-81.) These

IMPP'S are not intended to reach down into every single element of what is going on within an institution. They are intended to establish a broad policy. (T-104.)

5. Each institution issues General Orders. A General Order is an institutional policy issued by the Director of an institution. It is necessary to get approval of the different departments that will be impacted by it and, eventually, the Secretary's approval. If the Secretary disapproves a General Order, it is not effective. (T-104-105.) The procedure is that the Proposed General Order comes from the institution. It would be reviewed by the legal staff and personnel staff. They would provide their comments, and it then goes to the Secretary of Corrections who makes a final decision. The purpose of this is to avoid any conflict with one institution's doing it one way and another institution's doing it the other. (T-139.)

6. Employees of Kansas State Penitentiary are not handled any differently than the remainder of the employees in the Department of Corrections on salary structure, benefits, hiring procedures, disciplinary rules, layoff procedures, employee grievance procedures, and the work-week. However, one institution could have different shift arrangements than another. (T-119-120.)

7. Basic training for Corrections Officers is two hundred hours (200 hrs.) and eighty hours (80 hrs.) of annual training. The institutions have to do the minimum. They can do more if they wish. Training programs devised at each of the Training Centers are reviewed by the Department of Corrections Central Staff and they have to be approved. (T-97, 98 & 140.)

8. There is an established procedure relative to employee grievances. The first step is for the employee to take the grievance to the employee's Director. If the employee is not satisfied, he can appeal to the Deputy Secretary for Institutions. If he is not satisfied with that response, it then goes to the Secretary of Corrections who is the ultimate authority on it within the Department on Grievances. (T-92, Respondent's Exhibit #5 IMPP #02-115, Employee Grievances.) The Department recommends that the Director

of the institution solve as many grievances as he can. (T-140.)

9. General Orders are applicable only to the individual institution after they are approved by the Secretary. (T-150.) The review process relative to General Orders is intended to avoid conflict between institutions as heretofore stated. (T-139.) The Secretary of Corrections has issued IMPP #02-118 on Employee Rules of Conduct and #02-120 on Employee Discipline which are applicable to all institutions.

10. For a period of time prior to April, 1984, AFSCME received a number of calls from employees at Kansas State Penitentiary. (T-30.) AFSCME proceeded to hand out informational leaflets in June, 1984. That effort continued through the remainder of the summer and into early fall. A number of informational meetings were conducted for the employees at Kansas State Penitentiary and culminated with filing a petition with PERB. AFSCME had many meetings with the employees at Kansas State Penitentiary. (T-31.) Meetings and discussion were held with portions of each classification. The central issue at these meetings was representation through the PEER Act. (T-32.) At these meetings the Reformatory at Hutchinson, the Honor Camps and the Pre-Release Centers were discussed together with the advantages and disadvantages of a Statewide Unit versus a Kansas State Penitentiary Unit. The response from these employees was that KSP was different from the other ten (10) institutions in the types of duties and responsibilities in some cases, and definitely in the type of institution. (T-33.) AFSCME had not been contacted by employees from any of the other institutions. AFSCME attempted to make contact with the other units and found no interest expressed. (T-34.) AFSCME handed out leaflets at KCIL, and held a general informational meeting simultaneously with the effort at Kansas State Penitentiary. No organizational attempt was made at any of the other institutions. (T-38.)

11. In the organizational meetings employees of Kansas State Penitentiary expressed great concerns about promotional policies and

who got the promotions and who didn't. There were also some concerns about grievances not being adequately handled. The concern was not that the procedures were different among the institutions but that the implementation of these procedures was causing concern. (T-39-40.) Health and safety were a concern because of the more violent nature of some of the inmates. Staffing also created concern in that these employees were of the opinion that the institution needed more staffing. (T-43.) The biggest concern of the employees involved in the meetings was that as Correction Officers they felt they had no say in the determination of their employment and what happened to them while they were employed there, and they felt that they should have some effective input and be listened to by the people who were in charge. (T-48-49.)

12. Kansas State Penitentiary has a maximum security area housing about one hundred inmates out of a total of nineteen hundred inmates. (T-50, 58 & 59.) All four (4) classifications of Correction Officers have contact with maximum, medium and minimum security. (T-51.)

STATEMENT OF LAW AND CONCLUSIONS

I.

It is axiomatic that the decisions of the Board must stay within the confines of the PEER Act. The statutory key term in this matter is "appropriate unit". The Board's responsibility is to investigate and, after a hearing, rule on the definition of the appropriate unit in accordance with K.S.A. 75-4327(e), which states that the Board shall take into consideration, along with other relevant factors:

- (1) The principle of efficient administration of government;
- (2) The existence of a community of interest among employees;
- (3) The history and extent of employee organization;
- (4) Geographical location;

- (5) The effects of overfragmentation and the splintering of a work organization;
- (6) The provisions of K.S.A. 75-4325; and
- (7) The recommendations of the parties involved.

The primary duty and responsibility of Corrections Officers I and II are in maintaining security by supervising the movement, conduct, work, discipline, recreation, and training of inmates. Corrections Officers III and IV require the supervision of subordinates and inmates, and require a higher level of skill or capability. However, essentially, all four (4) classes are involved in security. Therefore, it follows that without doubt all Corrections Officers have the same community of interests that cannot be separated. The training programs are basically the same. The fact that about one hundred inmates out of nineteen hundred at KSP have to be housed together or handcuffed when moved is merely a part of the general term of security. Granted, there are different types of security problems as there are different abilities among Security Officers but the problems are of the same general nature. It therefore follows that if there is a community of interest among Correction Officers the administration of government is more efficient to negotiate with the entire group insofar as an appropriate unit is concerned. Otherwise, overfragmentation and the splintering of a work organization would occur.

Finding of Fact No. 10 sets out the history and extent of employee organization. If there have been prior attempts, the record does not disclose such. The record shows that there was little or no effort to organize the Corrections Officers in the other ten (10) institutions and the effort that was made provoked no interest.

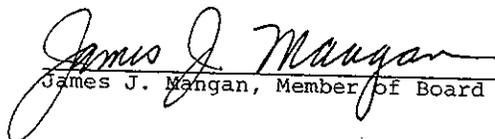
Geographically, the DOC is in Topeka. There are two (2) institutions in Lansing, four (4) in Topeka, one (1) in Hutchinson, one (1) in Eldorado, one (1) in Toronto, one (1) in Wichita and one (1) in Winfield. These are all within the Eastern part of the State.

The geographical locations of these institutions and a single unit of Corrections Officers, who have a community of interest, would work well for the one (1) basic unit. Separation could cause serious effect upon the efficient administration of government.

There is a question relative to Corrections Officers III and IV being supervisory. If this is true, it would decrease the number of Corrections Officers in the KSP unit and make the unit even smaller.

The picture that I see from the record made in this matter is that there were some serious personal problems at KSP among personnel. By virtue of these problems AFSCME was contacted. It is obvious that there was no general interest in organization in the other institutions relative to the Corrections Officers. Thereupon, the decision was made to attempt to convince this Board to form a separate unit at KSP. The evidence in support of this Petition is so scanty that it is almost non-existent. The formation of an appropriate unit can not and should not be based upon local problems arising in one institution out of many. The statute requires a much broader perspective. If this Board sets a precedent of this kind based upon this type of evidence, it will return to haunt it on many occasions. It is my thought that a stronger attempt should be made to convince all classes of Corrections Officers to recommend a single unit for all eleven (11) institutions. There is no doubt in my mind but that they should be in one (1) unit. If this fails, then the grievances of the Corrections Officers at KSP must be handled through the ordinary grievance procedure. If the results are not satisfactory to the parties involved, then possibly they should be referred to the Executive Branch of government or to the Legislature. However, I reiterate that as the law is now written and based upon the evidence in this case a separate unit for KSP should not be formed.

Respectfully submitted this 20th day of December, 1985.


James J. Mangan, Member of Board