

75-CAE-2-1980
to Board on 2/18/80
& Managing Ed

STATE OF KANSAS
BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

_____		:
National Association of Government	:	:
Employees	:	:
	:	:
Complainant,	:	:
	:	:
vs.	:	CASE NO: 75-CAE-2-1980
	:	:
Social and Rehabilitation Services	:	:
Beloit Youth Center	:	:
	:	:
Respondent.	:	:
_____		:

ORDER

Comes now on this 18th day of February the above captioned case for consideration by the Public Employee Relations Board. The case comes before the Board on complaint of Mr. Vincent Rubbico, National Representative of National Association of Government Employees, on behalf of Ms. Donna Smith, an employee of Beloit Youth Center. Complainant alleges a denial or representation by her union representative during an appeal from a personnel evaluation and again when complainant attempted to file a grievance. Complainant further alleges that the memorandum of agreement was violated by the utilization of a Social and Rehabilitation Service "grievance procedure".

On January 7, 1980 the executive director of the Public Employee Relations Board met with the parties in Beloit. The purpose of this meeting was threefold. First to resolve any jurisdictional questions. Secondly, to attempt to amiable resolve the dispute by agreement of the parties. Assuming no jurisdiction problems and failing to resolve the dispute, the executive director would set a time and place for a formal hearing of the complaint.

The investigation reveals that complainant has not alleged union discrimination other than a denial of representation. The question then is; does the Public Employer-Employee Relations Act or existing contractual provisions grant the right to union representation in the meetings cited in the complaint.

The director finds basically two obligations placed upon a public employer by the provisions of K.S.A. 75-4321 et seq. That is the obligation

to meet and confer over terms and conditions of employment and to allow union representation of employees in resolving grievances. The grievance procedure is listed at K.S.A. 75-4322 (t) as a mandatory subject for the meet and confer process. The respondent and the complainant have met and conferred and entered into a memorandum of agreement effective July 26, 1979. The agreement terminates April 30, 1981. The agreement contains an article XVIII entitled grievance procedure and is found on pages 11-13. Section 1 of that article states in part,

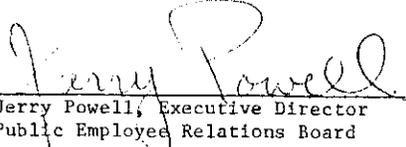
"Nothing in this article or elsewhere in this agreement applies to matters of demotion, dismissal, suspension, service rating, or any other subject covered by rules and regulations of the Department of Administration where appropriate appeals procedure is established under appropriate Kansas Statutes or amendments."

As stated earlier in this recommendation, complainant alleges that she was denied union representation on three occasions. Investigation reveals that at least two of these "meetings" were conducted under Social and Rehabilitation Service or Department of Administration rules and regulations regarding an appeal from a service rating. These hearings or meetings, obviously, were not taken pursuant to the contractual grievance procedure. Therefore, the Public Employer-Employee Relations Act does not guarantee the right of representation. The other occasion cited in the complaint was a "meeting" at which Ms. Smith attempted to file a written grievance pursuant to the contract. Both complainant and respondent agree that union representation was denied at this meeting. However, respondent points out and complainant agrees that the grievance involved harassment of the aggrieved employee witnessed by the employees' low service rating. Complainant informed respondent that the service evaluation was not subject to the grievance procedure thus the grievant had no right to union representation.

The investigator found no disagreement on the facts alleged in the complaint. However, serious jurisdictional questions were raised. The investigator has determined that the Public Employee Relations Board has no jurisdiction in the two occasions cited in which actions were taken pursuant to procedures established by rule and regulation of the Department of Social and Rehabilitation services or of the Department of Administration. The third occasion in which the employee attempted to grieve is not quite so clear cut. While the director questions why an employee should not be allowed to grieve suspension, demotion, dismissals, or service ratings, he must preserve the sanctity of the memorandum of

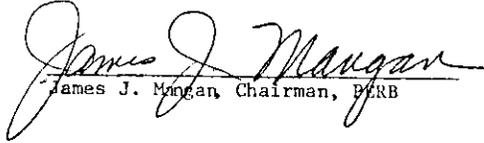
agreement arrived at and entered into by the parties. It follows that absent the right to grieve a matter there exists no right under the Public Employer-Employee Relations Act to union representation.

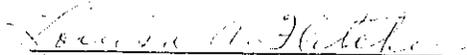
It is therefore the recommendation of the executive director of the Public Employee Relations Board that 75-CAE-2-1980 be dismissed for lack of jurisdiction by the Public Employee Relations Board in the matter.

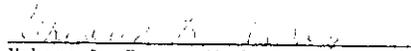

Jerry Powell, Executive Director
Public Employee Relations Board

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

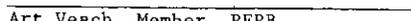
IT IS SO ORDERED THIS 18th DAY OF February 1980, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.


James J. Mangar, Chairman, PERB


Louisa A. Fletcher, Member, PERB


Urbano L. Perez, Member, PERB


Lee Ruggles, Member, PERB

ABSENT

Art Veach, Member, PERB