

RECEIVED

MAY - 5 1981

KANSAS DEPARTMENT  
OF HUMAN RESOURCES

BEFORE THE PUBLIC EMPLOYEES RELATIONS BOARD  
FOR THE STATE OF KANSAS

RONALD TARWATER

Claimant

AND

CITY OF KANSAS CITY, KANSAS, BOARD OF  
PUBLIC UTILITIES

Respondent

No. 75-CAE-4-1981

ORDER

Now on this 20th day of April, 1981, after due deliberation, it is the unanimous decision of the Board that the above complaint be and the same is hereby dismissed for lack of jurisdiction in that the Kansas City Board of Public Utilities is the governing body under the terms of the Public Employer-Employee Relations Act and such Board has not elected to come under the provisions of the Act as required by K.S.A. 75-4321 (c). The Board's reasoning is as follows:

1. The Board of Public Utilities is a "Public Employer" as defined by K.S.A. 75-4322 (f). It follows that employees of this agency are "Public Employees" within the meaning of said Act.

2. The Board of Public Utilities as the governing body has not elected to bring such public employer under the provisions of the Act as clearly required by K.S.A. 75-4321 (c).

3. The principal question presented in this matter is: Who is the governing body of the Kansas City Board of Public Utilities? Is it the City of Kansas City, Kansas, or the Kansas City Board of Public Utilities? In our opinion, the Board of Public Utilities is the governing body under the provisions of the Public Employer-Employee Relations Act hereinafter referred to as the PERB Act. It is true that the Board of Public Utilities is not an autonomous entity. It certainly is not free from statutory controls by the City of Kansas

75-CAE-4-1981

City. The Supreme Court of Kansas in Board of Public Utilities vs. City of Kansas City, 227 KAN 194, stated unequivocally that the Board of Public Utilities is an administrative agency of the City, charged with the duty of managing, operating, maintaining and controlling the water and electric plants of the City. Further, and undoubtedly in response to this decision, the Legislature modified K.S.A. 13-1220 and stated that the Board was an administrative agency known as the Board of Public Utilities of the City. Further, at the same time, the Legislature modified K.S.A. 13-1223 in stating that the Board of Public Utilities shall have exclusive control of the daily operation of the water and electric-light plant instead of exclusive control of the water and light plant. It is also true that the Board of Public Utilities can sue and be sued only in the name of and on behalf of the City of Kansas City and it does not have the power to levy taxes or issue revenue bonds. Further, K.S.A. 13-1226 prescribes that legal services for the Board are to be provided by the City Attorney's Office. The City Treasurer is the ex officio Treasurer of the Board. Also, the City has the same authority as the Board to issue vouchers and warrants in payment of claims and accounts incurred by the Board. However, the Board of Public Utilities is an elected body, separate and distinct from the City Commission and, in the operation and control of the utility plants, including employer-employee relations, the Board is autonomous. It has the following statutory powers:

- a. It has exclusive control of the daily operations of the plant (K.S.A. 13-1223).
- b. Except for attorneys, it has the power to hire and discharge all employees, agents and officers of the Water and Light Departments and fix their compensation. (K.S.A. 13-1223). The Board shall make all appointments and hire all officers, agents, servants and employees in the plants, fix their compensation and determine their

qualifications. Such officers, agents, servants and employees shall serve at the pleasure of the Board. (K.S.A. 13-1226). It might be further added that attorneys are professional persons and are not employees of the Board.

c. Even though the title to properties received or purchased by the Board are taken in the name of the City, such properties are under the control of the Board. (K.S.A. 13-1223).

d. Under K.S.A. 13-1224 and -1225, respectively, the Board appoints managers of production and collections and accounts to serve at the pleasure of the Board. All officers, employees, servants and agents of the plants are under the immediate control and management of these individuals.

e. Under the provisions of K.S.A. 13-1227 and -1228, the Board has complete power to fix water and electricity rates in order to have the necessary funds to operate the utility plants in all of their aspects.

4. "Governing Body" under the PERB Act means the Legislative body, Policy Board or other authority of the public employer possessing legislative or policy-making responsibilities pursuant to the constitution or laws of this State. (K.S.A. 75-4322 (g)). The primary function of the Board is to furnish utilities to the public. It certainly possesses policy-making responsibilities in this area pursuant to the laws of this State. Therefore, it is a "Governing Body".

5. The beating heart of the PERB Act is employer-employee relations. The purpose of the Act is very clearly set out in K.S.A. 75-4321 (d). This section of the Act states that it is the purpose

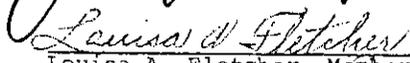
of the Act to obligate public agencies, public employees and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment, acting within the framework of law. This section goes on to state that it is also the purpose of the Act to promote the improvement of employer-employee relations within the various public agencies of the State and to allow organizations to represent employees in their dealings with public agencies. "Conditions of Employment" (K.S.A. 75-4322 (t)) means salaries, wages, hours of work, vacation allowances, sick and injury leave, number of holidays, retirement benefits, insurance benefits, prepaid legal service benefits, wearing apparel, premium pay for overtime, shift differential pay, jury duty and grievance procedures.

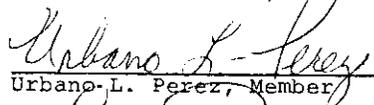
Under the provisions of K.S.A. 75-4327 (b), the public employer shall meet and confer in good faith with the employee organization in the determination of conditions of employment of the public employee and may enter into a memorandum of agreement with the employee organization. Under the provisions of K.S.A. 75-4322 (m), "Meet and Confer in Good Faith" is the process where the representative of a public agency and representatives of recognized employee organizations have the mutual obligation personally to meet and confer in order to exchange freely information, opinions and proposals to endeavor to reach agreement on conditions of employment. Memorandums of agreement are authorized by the Act. The scope of the memorandum of agreement may extend to all matters relating to conditions of employment (K.S.A. 75-4330). Under K.S.A. 75-4331, if an agreement is reached by the representatives of the public agency and the recognized employee organization, they shall jointly prepare a memorandum of understanding and, within fourteen (14) days, present it to the appropriate governing body or authority for determination. If a

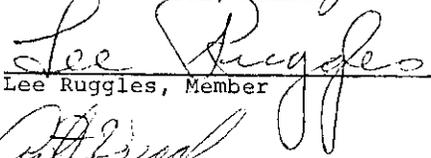
settlement is reached, the governing body or authority shall implement the settlement in the form of a law, ordinance, resolution, executive order, rule or regulation. Under K.S.A. 13-1223, the Board is granted all powers as may be necessary for the proper discharge of its duties. Therefore, it has the power to approve a memorandum agreement and, under its rate-fixing authority, provide the necessary funds for implementation of the agreement. The Board needs no other body or authority to accomplish this end. A Meet and Confer in Good Faith meeting between representatives of the City and representatives of the employees of the Board of Public Utilities relative to conditions of employment would be a superlative exercise in futility; the City would have no power to contract.

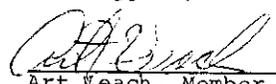
DATED: This 20th day of April, 1981, and effective on this date.

  
James J. Mangan, Chairman

  
Louisa A. Fletcher, Member

  
Urbano L. Perez, Member

  
Lee Ruggles, Member

  
Art Veach, Member