

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

International Brotherhood of Electrical Workers Local No. 1523,)

and)

Fraternal Order of Police Lodge No. 35,)

and)

Case No(s). 75-CAE-4-1998
75-CAEO-4-1998

International Union of Operating Engineers Local No. 123,)
Petitioners/Respondents,)

v.)

City of Coffeyville, Kansas,)
Respondent/Petitioner.)

Pursuant to K.S.A. 75-4321 *et seq.* and
K.S.A. 77-501 *et seq.*

INITIAL ORDER

NOW ON THIS 12th day of May, 1998, the above-captioned prohibited practice petition comes before presiding officer Susan L. Hazlett for consideration and disposition. Counsel for the Petitioners/Respondents in this matter is Steve A.J. Bukaty. Counsel for the Respondent/Petitioner is David E. Strecker with Paul M. Kritz as co-counsel. By agreement of the parties in this matter, no formal hearing is necessary and disposition of the case shall be based on briefs and supporting documents submitted by the parties.

Nature of the case

The petition in this matter was filed on August 25, 1997, by the International Brotherhood of Electrical Workers Local No. 1523 ("IBEW"), the Fraternal Order of Police

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Lodge No. 35 ("FOP"), and the International Union of Operating Engineers Local No. 123 ("IUOE") against the City of Coffeyville, Kansas ("City"). The parties filed simultaneous Briefs on April 20, 1998, with Reply Briefs subsequently filed by each party. The Petitioners/Respondents ("Unions") filed a Motion to Strike on May 4, 1998, and the City filed a Response to the Motion on May 12, 1998. Said motion will be ruled upon within this Initial Order.

Issues

- I. WHETHER OR NOT THE CITY OF COFFEYVILLE COMMITTED PROHIBITED PRACTICES IN VIOLATION OF K.S.A. 75-4333(b)(1), (2), (3), (4), (5), AND (6) BY REFUSING TO BARGAIN IN GOOD FAITH WITH THE DESIGNATED REPRESENTATIVES OF FOP LODGE #35, IBEW LOCAL #1523, AND IUOE #123, AS PART OF THE NEGOTIATION PROCESS.
- II. WHETHER OR NOT THE FOP LODGE #35, IBEW LOCAL #1523, AND IUOE #123, COMMITTED PROHIBITED PRACTICES IN VIOLATION OF K.S.A. 75-4333(c)(1) AND (3) BY REFUSING TO BARGAIN IN GOOD FAITH WITH THE DESIGNATED REPRESENTATIVES OF THE CITY OF COFFEYVILLE, AS PART OF THE NEGOTIATION PROCESS.

Findings of Fact

Stipulations of Fact were jointly submitted on January 15, 1998, by the parties in this matter. Said Stipulations of Fact are adopted by this presiding officer and incorporated herein, as follows:

- "1. The City of Coffeyville, Kansas (City) is a municipal corporation and subject to the jurisdiction of the PERB pursuant to K.S.A. 75-4321 et seq.
2. Kansas Lodge 35 of the Fraternal Order of Police (FOP), Local 1523 of the International Brotherhood of Electrical

Workers (IBEW), Local 123 of the International Union of Operating Engineers (IUOE), and Local 265 of the International Association of Firefighters (IAFF) are labor organizations representing certain of the employees of the City of Coffeyville, Kansas, and, in this capacity, are subject to the jurisdiction of the PERB pursuant to K.S.A. 75-4321 et seq.

3. The City and the aforementioned labor organizations were parties to a certain Memorandum of Agreement executed and/or implemented pursuant to Kansas statutes. The effective date of this Agreement was from January 1, 1993 to December 31, 1995.
4. From April 1978 until July 1997, Harry Thomas (Mr. Thomas) was an employee of the City.
5. From January 1992 until July 1997, Mr. Thomas' position was that of Line Foreman/Trouble Truck Operator in the Electrical Department of the City.
6. The duties of a Line Foreman/Trouble Truck Operator involve working on electrical power lines in the City.
7. On or about October 5, 1995, the City and the aforementioned labor organizations began negotiations for a new Memorandum of Agreement. The parties have still not reached agreement.
8. Initially, the negotiations took place between Mr. Leroy Alsup, the City Manager of the City of Coffeyville, and various business agents and/or officers of the labor organizations.
9. On January 13, 1997, Mr. David E. Strecker, an attorney licensed to practice law in the State of Oklahoma, and previously retained by the City to advise it concerning labor relations matters, became the chief negotiator for the City.
10. On March 11, 1997, agreement was reached between the City and the IAFF, and a Memorandum of Agreement was

duly executed reflecting this fact. After this date, the Firefighters took no part in the negotiations which continued between the City and the three remaining labor organizations.

11. On March 14, 1997, Mr. Steve A.J. Bukaty, an attorney licensed to practice law in the State of Kansas, who had been previously retained by the IUOE, FOP, and IBEW, became the chief negotiator for the three Unions aforementioned.
12. As of April 23, 1997, and thereafter, the City's negotiating team consisted of Mr. Strecker and his legal assistant Ms. Katherine A. Pugh.
13. As of April 23, 1997, and thereafter, the Unions' negotiating team consisted of Mr. Bukaty, Mr. Howard Barnhart (IUOE Business Manager), Mr. Emile Nobile (the IBEW Business Manager), Alonzo Edwards (IUOE), Harry Thomas (IBEW), Tony Lawson (IUOE), Mike Shook (IUOE), Mike Stuart (IUOE), Nate Johnson (IUOE), Ray Robinson (IBEW), Steve Zillifro (FOP), David Witty (FOP), Chad Hayden (IUOE), and Dan McGeary (IUOE). Not all of the foregoing negotiators attended each and every session but this list is representative of the attendance of the Union negotiators.
14. Thereafter, negotiations continued to take place. The dates of negotiating sessions in 1997 are as follows: January 13, 1997, January 21, 1997, January 29, 1997, February 18, 1997, April 10, 1997, April 23, 1997, May 12, 1997, May 20, 1997, and June 12, 1997.
15. On June 4, 1997 Paul Kritz, City Attorney for the City of Coffeyville, Kansas, recorded a telephone conversation with Vicki Stonecipher, an independent insurance salesperson and producer with Coffeyville Insurance Associates. The subject of this conversation concerned an earlier conversation between Ms. Stonecipher and Mr. Thomas.

16. A transcript of that recording is Marked as "Exhibit A" of these stipulations.
17. Mr. Thomas reported an alleged incident to Stonecipher involving Larry Quigley (Mr. Quigley), a City employee who directly supervises other City employees who work on electrical power lines. This incident allegedly occurred on or about the night of May 26, 1997.
18. At that time, Harry Thomas was a member of a four person safety committee of the Electrical Distribution Division of the City pursuant to selection by line crew employees. Mr. Quigley was also a member of this committee.
19. In June of 1997, Mr. Thomas was placed on suspension with pay by the City. On July 11, 1997, the City discharged Mr. Thomas, an IBEW member who, as noted above, had been on the negotiating team and who was also a Union steward.
20. The City contends that it terminated Mr. Thomas because he contacted the City's insurer without authority and allegedly accused a City management employee of being intoxicated on duty and driving a City vehicle while intoxicated. The City further contends that Mr. Thomas asked Ms. Stonecipher to relay this information to the City's insurance carrier with intent to harm the City. The City contends that if it lost its insurance with the current carrier, Employers Mutual, it could be very costly to replace said insurance. The City did not lose its insurance, and still maintains the insurance with the same carrier. The renewal date for the insurance is April, 1998.
21. Ms. Stonecipher had not advised the insurance carrier of her telephone conversation with Mr. Thomas at the time of Mr. Thomas' discharge.
22. The IBEW has denied the City's contentions and has asserted that the City terminated Mr. Thomas because of his status as a Union steward and member of the Union's negotiating committee. The IBEW further contends that Mr. Thomas contacted the City's insurance agent in the

course of investigation of a grievance and a safety issue and that his actions were at all times proper and consistent with his duties as a steward. The Union also contends that the City did not have just cause to terminate Mr. Thomas.

23. The Union also contends that on or about the night of May 26, 1997, Mr. Thomas reported to Leroy Alsup, the City Manager, that Mr. Quigley had reported to work smelling strongly of alcohol. At the time that Mr. Thomas made this report to Alsup, Mr. Quigley was present so that Alsup had an opportunity to inspect the truth of Mr. Thomas' report.
24. On June 18, 1997, the IBEW filed a grievance protesting Mr. Thomas' discharge. This grievance has been set for arbitration before arbitrator Rex W. Wiant on January 15, 1998.
25. On June 20, 1997, the Union filed a prohibited practice charge protesting the termination of Mr. Thomas, case number 75-CAE-29-1997. On September 2, 1997, the Public Employee Relations Board deferred this charge pending the outcome of the aforementioned arbitration.
26. On August 19, 1997, the parties were to have a negotiating session. When Mr. Strecker entered the negotiating room he discovered that Mr. Thomas was present. Mr. Strecker asked Mr. Bukaty if he could meet with him in the hallway out of the hearing of the negotiators.
27. While in the hallway outside of the negotiating room. Mr. Strecker asked Mr. Bukaty "What is Harry Thomas doing here?" Mr. Bukaty responded that Mr. Thomas was a part of the negotiating team. Mr. Strecker responded that the City would not negotiate with Mr. Thomas present because of what Mr. Thomas had done and his status as a discharged employee. Mr. Bukaty reiterated that the City could not determine the composition of the Unions' negotiating committee; and that he would recommend that the Unions file a prohibited practice charge if the City refused to negotiate with the Unions' regular committee.

28. Since August 19, 1997, the City has refused to bargain with the Unions' committee, whose composition has remained unchanged since at least March, 1997.
29. The Union has continued to refuse to remove Mr. Thomas from the Negotiating Committee.
30. There have been no negotiating sessions since August 19, 1997.
31. Mr. Thomas was on the Unions' negotiating team on August 19, 1997. This was the first negotiating session subsequent to Mr. Thomas' discharge.
32. Mr. Thomas has been on the Unions' negotiating team continuously since at least February, 1997.
33. Prior to August 19, 1997, the City did not object to Mr. Thomas' presence on the Unions' negotiating team.
34. Larry Quigley was not a member of the City's negotiating team.
35. Since March 14, 1997, Leroy Alsup has not been a member of the City's negotiating team.
36. Ron Sandusky, a supervisor in the City's Electrical Department at the time of Harry Thomas' report regarding Mr. Quigley, was not a member of the City's negotiating team.
37. On August 20, 1997, the Unions filed a prohibited practice charge against the City claiming that the aforementioned conduct on the part of the City is violative of K.S.A. 75-4333 subsections (b)(1),(2),(3),(4),(5) and (6).
38. On September 11, 1997, the City filed a prohibited practice charge against the aforementioned Unions claiming that the Unions' conduct violated Sections K.S.A. 75-4333 subsections (c)(1) and (3)."

The date of arbitration reflected in paragraph 24 was amended from January 15, 1998, to June 23 and 24, 1998, by Order as requested by the parties.

Motion to Strike

As a preliminary matter, the Unions' Motion to Strike the City's Exhibit 2 shall be considered. The Unions correctly argue that since the parties in this matter entered into Stipulations of Fact, new or additional facts or documents which the Unions have not had an opportunity to examine or agree to should not be considered by the presiding officer in the final disposition of this case. The City contends, however, "it was never agreed by the City nor the Unions that only the stipulated facts were to be considered by the PERB." City's Response to Motion to Strike, p. 2. On the contrary, the parties indicated to the presiding officer that no contested material facts remained and, therefore, this matter did not need a formal hearing. The prehearing Order of November 21, 1997, clearly stated that "[I]f stipulations of fact are reached by the parties *and no material questions of fact remain*, this matter will be determined on arguments presented by the parties in written briefs." [Emphasis added] As noted above, Stipulations of Fact were jointly filed by the parties on January 15, 1998. The City's Exhibit 2 is a cost comparison of insurance coverage and was not referenced or included in any of the stipulations by the parties. Therefore, the City's Exhibit 2, entitled "City of Coffeyville Historic Cost Comparison Various Types of Insurance Coverage" will not be considered in this matter and the Unions' Motion to Strike is granted.

On the other hand, the Unions' Exhibit A (recorded telephone conversation); Unions' Exhibit B (Memorandum of Agreement between the City of Coffeyville and the IBEW); City's

Exhibit 1 with its first Brief (Stipulations of Fact); City's Exhibit 1 with its Reply Brief (Harry Thomas grievance #0007); and City's Exhibit 2 with its Reply Brief (recorded telephone conversation) were all referenced and included in the stipulations and will, therefore, be considered along with the Stipulations of Fact for purposes of this matter.

Conclusions of Law

- I. WHETHER OR NOT THE CITY OF COFFEYVILLE COMMITTED PROHIBITED PRACTICES IN VIOLATION OF K.S.A. 75-4333(b)(1), (2), (3), (4), (5), AND (6) BY REFUSING TO BARGAIN IN GOOD FAITH WITH THE DESIGNATED REPRESENTATIVES OF FOP LODGE #35, IBEW LOCAL #1523, AND IUOE #123, AS PART OF THE NEGOTIATION PROCESS.

When analyzing and making decisions in cases under the Public Employer Employee Relations Act ("PEERA") at K.S.A. 75-4321 *et seq.*, the purpose of the Act should always be considered. In declaring that the "people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees," the Kansas legislature stated that the purpose of the PEERA is 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." K.S.A. 75-4321.

The presence of Harry Thomas at the parties' negotiating table has obviously caused some contention between the parties. Negotiations were not progressing well at the time the petition was filed in this matter. The question is, however, whether or not the City can refuse to bargain because of Thomas' presence in a meet and confer session as a member of the Unions' negotiating team.

K.S.A. 75-4333(b) provides, in part, that:

“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 K.S.A. 75-4324;
- (2) Dominate, interfere or assist in the formation, existence, or administration of any employee organization;
- (3) Encourage or discourage membership in any employee organization, [or] committee ... by discrimination in ... conditions of employment, or by blacklisting;
- (4) Discharge or discriminate against an employee because he or she has filed any affidavit, petition or complaint or given any information or testimony under this act, or because he or she has formed, joined or chosen to be represented by any employee organization;
- (5) Refuse to meet and confer in good faith with representatives of recognized employee organizations as required in K.S.A. 75-4327;
- (6) Deny the rights accompanying certification or formal recognition granted in K.S.A. 75-4328; ... ”

The Kansas Supreme Court has reaffirmed that the PEERA obligates public employers and certified public employee organizations to meet and confer in good faith over terms and conditions of employment, and that it is a prohibited practice to refuse to do so. See State Dept. of Administration v. Public Employee Relations Board, 257 Kan. 275 (1995); and Kansas Board of Regents v. Pittsburgh State Univ. Chap. of KNEA, 233 Kan. 801 (1983).

Neither the PEERA nor the Kansas Supreme Court, however, have addressed the specific issues in this matter. Because of that, both parties have cited National Labor Relations Board cases to support their respective arguments. Both parties recognize that these federal cases are not controlling authority as did the Kansas Supreme Court in *City of Wichita v. Public Employee Relations Board*, 259 Kan. 628 (1996), when it recognized “the wisdom of not relying on NLRA

cases in deciding PEERA issues.” The policy behind PEERA is set out in K.S.A. 75-4321(a)(4), which provides that

“There neither is, nor can be, an analogy of statuses between public employees and private employees, in fact or law, because of inherent differences in the employment relationships arising out of the unique fact that the public employer was established by and is run for the benefit of all the people and its authority derives not from contract nor the profit motive inherent in the principle of free private enterprise, but from the constitution, statutes, civil service rules, regulations and resolutions.”

There is reasoning, however, in the federal law cited by the parties which is persuasive.

As cited by the petitioner, “[a] party to labor negotiations usually enjoys unrestricted selection of its bargaining representatives. Colfor, Inc., 282 N.L.R.B. 1173, 1174 (1987). This rule applies ‘absent extraordinary circumstances,’ Carpet Transport, 299 N.L.R.B. 791, 803 (1990), that demonstrate a ‘clear and present danger to the bargaining process.’ Santa Rosa Blueprint Services, 288 N.L.R.B. 762, 794 (1988).” Unions’ Brief, p. 14. “Moreover, mere personal animosity between management personnel and a member of the union’s negotiating team is insufficient to vest the employer with a right to refuse to negotiate. Carpet Transport, 299 N.L.R.B. at 803.” Unions’ Brief, p. 14.

Regardless of whether the foregoing federal cases are directly on point, the reasoning offered by the petitioner is sound and should be applied in matters falling under the PEERA.

Although it appears that negotiations between the parties in this matter would progress efficiently if the unions removed Thomas from their negotiation team, the unions are under no obligation to prove why they consider Thomas to be a necessary member of their team. On the

other hand, the City has no statutory right to determine the make-up of the unions' negotiating team. The City does have an obligation to meet and confer with the unions regardless of the make-up of the unions' team, unless the individual that the City may be objecting to has engaged in some malicious conduct in the negotiations or directed toward the City's negotiating team members. The purpose of the PEERA is to obligate the public employers and employee organizations to negotiate conditions of employment. Giving either party the authority to control who the other party chooses as a representative, except in extraordinary circumstances, would circumvent the very purpose of the PEERA.

The facts in this case do not support the City's argument that the unions should be required to remove Thomas from their team. There is no evidence of an extraordinary circumstance, and insufficient evidence that Thomas' actions (calling the insurance company) constituted malicious conduct in negotiations or towards any negotiating team member. Whether or not Thomas' actions justified his discharge is irrelevant in this particular matter before this presiding officer.

Sufficient evidence has been submitted to indicate that the City refused to negotiate with the unions unless the unions removed Thomas from their negotiating team. By doing so, the City interfered with the administration of the employee organizations and failed to meet and confer in good faith.

- II. WHETHER OR NOT THE FOP LODGE #35, IBEW LOCAL #1523, AND IUOE #123, COMMITTED PROHIBITED PRACTICES IN VIOLATION OF K.S.A. 75-4333(c)(1) AND (3) BY REFUSING TO BARGAIN IN GOOD FAITH WITH THE DESIGNATED REPRESENTATIVES OF THE CITY OF COFFEYVILLE, AS PART OF THE NEGOTIATION PROCESS.

The City has also filed a petition in this matter, Case No. 75-CAEO-4-1998, which was consolidated with the unions' complaint against the City. In the complaint against the employee organizations, the City alleges that it is the unions who have committed a prohibited practice, in violation of K.S.A. 75-4333(c)(1) and (3), because of the unions' "selection and continued insistence of Mr. Thomas as one of its bargaining representatives." City's Brief, p. 9.

K.S.A. 75-4333(c) provides, in part, that

"It shall be a prohibited practice for public employees or employee organizations willfully to:

- (1) Interfere with, restrain or coerce public employees in the exercise of rights granted in K.S.A. 75-4324; ...
- (3) Refuse to meet and confer in good faith with a public employer as required in K.S.A. 75-4327; ..."

K.S.A. 75-4324 provides, in part, that

"Public employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing, for the purpose of meeting and conferring with public employers..."

The City has provided no evidence the unions violated K.S.A. 75-4333(c)(1) by interfering with, restraining or coercing any of the employees in the exercise of their rights to form, join, or participate in the unions.

In regard to the City's allegation of a violation of K.S.A. 75-4333(c)(3) by the unions, the evidence in the record indicates simply that the unions refused to remove Thomas from their negotiating team. Thomas was, under PEERA, a legal and legitimate member of the unions' team. Even though Thomas' presence in negotiations has caused some contention between the parties, there is insufficient evidence to suggest that the unions failed to meet and confer with the City in

good faith. Thomas was a member of the unions' negotiating team before his discharge and there is no evidence that the City objected to his presence on the team before his discharge. The unions exhibited a continued willingness to bargain with the City, albeit with the composition of a negotiating team that the City did not like.

Conclusion

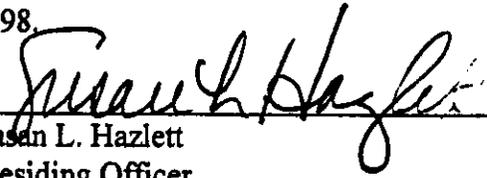
At the time of this writing, the presiding officer has received notification from the City that they have reached agreement with the FOP and the IUOE. The City, the FOP and the IUOE, therefore, have agreed to request dismissal of Case No(s). 75-CAE-4-1998 and 75-CAEO-4-1998 as they pertain to allegations by the City, the FOP, and the IUOE against each other. The motion for dismissal does not include any dismissal of any charges made by the City against the IBEW in Case No. 75-CAEO-4-1998, nor does it include the dismissal of any charges made by the IBEW against the City in Case No. 75-CAE-4-1998.

IT IS THEREFORE ADJUDGED AND DECREED

- 1) that the Motion to Dismiss Case No. 75-CAE-4-1998 and 75-CAEO-4-1998, in part as described above, filed by the City of Coffeyville, Kansas, is hereby granted;
- 2) that the City of Coffeyville, Kansas, committed prohibited practices in violation of K.S.A. 75-4333(b)(2) and (5);
- 3) that the I.B.E.W. Local No. 1523 did not commit any prohibited practice in violation of K.S.A. 75-4333(c)(1) or (3) and, therefore, the allegations against the IBEW by the City are hereby dismissed; and
- 4) that the City of Coffeyville, Kansas, cease and desist from acting in bad faith in

negotiations and committing any prohibited practice, specifically, from interfering with the administration of the I.B.E.W. and refusing to meet and confer in good faith with the I.B.E.W.

IT IS SO ORDERED this 16th day of June, 1998.



Susan L. Hazlett
Presiding Officer
Public Employee Relations Board
1430 S.W. Topeka Blvd.
Topeka, Kansas 66612

NOTICE OF RIGHT TO REVIEW

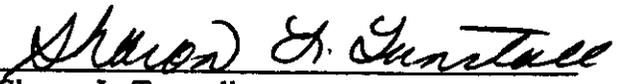
This Initial Order is the official notice of the presiding officer's decision in this case. The Initial Order will become final pursuant to K.S.A. 77-530 unless reviewed by the Public Employee Relations Board, either on its own motion, or at the request of a party pursuant to K.S.A. 77-527. Any party seeking review of this Order must file a Petition for Review with the Public Employee Relations Board at 1430 SW Topeka Blvd., Topeka, Kansas 66612, within fifteen (15) days from the date of service, plus three (3) days for mailing.

CERTIFICATE OF MAILING

I hereby certify that on the 16th day of June, 1998, a true and correct copy of the above and foregoing Initial Order was deposited in the U.S. Mail, first class, postage pre-paid, addressed to the following:

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