

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

AFSCME Council 64,

Complainant,

vs.

CASE NO: 75-CAE-6-1982

Kansas Department of Transportation,
District I, Local 1417

Respondent.

O R D E R

Comes now on this 18th day of October, 1982, the above captioned case for consideration by the Public Employee Relations Board.

The case comes before the Board without benefit of formal hearing. The parties agreed to submit the case to the Board on factual stipulations entered into by the parties. Further, the parties requested oral argument before the Board.

A P P E A R A N C E S

Complainant, appeared by Mr. Randy Melancon, International Union Representative, AFSCME Council 64.

Respondent, appeared by and through its counsel, Mr. Ed Swan, Staff Attorney, Kansas Department of Transportation.

PROCEEDINGS BEFORE THE BOARD

1. Complaint filed on March 25, 1982, by Randy Melancon, International Union Representative of AFSCME Council 64, acting on behalf of Mr. Augustine Villegas.

2. Answer received April 1, 1982, under the signature of Cleve H. Blair, Chief of the Bureau of Management Services, acting on behalf of the Kansas Department of Transportation.

3. Pre-hearing conference conducted by Paul K. Dickhoff, Jr., at 512 West Sixth, Topeka, Kansas, on April 20, 1982.

4. Parties notified on June 22, 1982, to submit certain documents for consideration and advised to attach any other documents either party believed necessary to the disposition of the case.

5. Information and documentation received from the Kansas Department of Transportation on July 19, 1982.

6. Information and documentation received from AFSCME Council 64 on July 20, 1982.

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7. Letter mailed to the parties under the signature of Paul K. Dickhoff, Jr., on July 21, 1982, granting ten (10) days for submission of additional information, documentation or to request a formal hearing.

8. Motion to Dismiss filed by the Kansas Department of Transportation on July 19, 1982.

9. Parties appeared before the Public Employee Relations Board on October 18, 1982, to present oral argument.

FINDINGS OF FACT

1. That AFSCME Council 64 is the certified representative for certain employees of the Kansas Department of Transportation.

2. That a Memorandum of Agreement covering terms and conditions of employment was entered into by the Kansas Department of Transportation and AFSCME Council 64 in 1977. The agreement automatically renews annually unless notice to modify or terminate is given to either party by the other.

3. That the parties agreed to submit the case to the Public Employee Relations Board on documentation provided by the parties which becomes the entire record in this proceeding.

4. That Augustine Villegas filed a grievance with the Kansas Department of Transportation on August 5, 1981.

5. That the grievance was denied by Donald Drickey on August 6, 1981.

6. That Mr. Villegas notified Rex Gary, District I Maintenance Engineer, of his desire to pursue the grievance and named Randy Melancon as his union representative on August 14, 1981.

7. That a meeting to discuss the grievance was held on September 3, 1981, in the District I conference room.

8. That Mr. Gary informed the grievant of his position in the matter by a letter dated September 3, 1981. Mr. Gary informed grievant of his rights to pursue the grievance pursuant to Article XVI of the Memorandum of Agreement. Mr. Gary also informed grievant to address any appeal to W. M. Lackey, District Engineer.

9. That Mr. Villegas appealed Mr. Gary's decision to W. M. Lackey on September 11, 1981.

10. That W. M. Lackey denied grievant's appeal by a letter, dated September 17, 1981. Mr. Lackey advised grievant to address any appeal to W. H. Wright, Director of Operations.

11. That Randy Melancon, President/Director, AFSCME Council 64, filed an appeal of Mr. Lackey's decision with W. H. Wright on September 24, 1981.

12. That Mr. Wright refused, in a letter dated September 30, 1981, to overturn the earlier grievance decisions. Mr. Wright's letter was addressed to Randy Melancon, President/Director, AFSCME Council 64, 214 West Sixth, Topeka, Kansas 66605.

13. That Randy Melancon, President/Director, AFSCME Council 64 filed an appeal of Mr. Wright's decision with Larry Morlan, Chief of Management Services on October 8, 1981.

14. That Larry Morlan informed Randy Melancon by a letter dated October 13, 1981, that the Executive Committee would respond to the grievance within thirty (30) calendar days. This letter was copied to the Executive Committee.

15. That W. H. Wright, Chairman, Kansas Department of Transportation Executive Committee responded to the appeal by letter dated November 9, 1981. The letter denied the appeal and was addressed to Mr. William Edgerly, President/Director, Kansas-AFSCME Local 64, 214 West Sixth, Room 306.

16. That a return receipt dated November 12, 1981, was signed on Mr. Edgerly's behalf by D. Tetuan.

17. That Randy Melancon, International Union Representative, wrote to Mr. Morlan on December 9, 1981, to inquire about the status of Mr. Villegas' grievance. The letterhead states the council's address as 214 West Sixth, Room 306. The letter was copied to Bill Edgerly and Augustine Villegas.

18. That Mr. Morlan informed Mr. Melancon by a letter dated December 21, 1981, that the Executive Committee had responded to the grievance appeal on November 9, 1981. Further, that the time for appeal to arbitrate had lapsed.

19. That Mr. Melancon informed Mr. Morlan by a letter dated December 29, 1981, that the Union wished to proceed to arbitrate on the Villegas grievance.

20. That Mr. Cleve H. Blair, Chief of the Bureau of Management Services, denied Mr. Melancon's request to proceed to arbitrate on Mr. Villegas' grievance because of failure to timely file.

21. That the Memorandum of Agreement between the Kansas Department of Transportation and AFSCME Council 64 states:

"Step 3. Grievances which have been appealed through all levels of management on a timely basis without mutual resolution may be submitted to arbitration by either party.

Submission of a grievance to arbitration must be done in writing to the other party within fifteen (15) working days from the date of response of the Executive Committee of the Department of Transportation. If an unresolved grievance is not submitted to arbitration within fifteen (15) working days of the Executive Committee response the grievance shall be considered settled on the basis of that response."

22. That the Memorandum of Agreement referenced in finding number twenty-one (21) was signed by R. A. Caraway, Business Agent on behalf of AFSCME.

CONCLUSIONS OF LAW

The parties appeared before the Board and offered oral argument on Respondent's Motion to Dismiss and the merits of the alleged prohibited practice. Both parties agreed that the evidence before the Public Employee Relations Board would constitute the record upon which this matter is to be decided.

Respondent raised the question of the Public Employee Relations Board jurisdiction and argues that K.S.A. 75-4333 relates strictly to the meet and confer sessions. Complainant has alleged that Respondent's refusal to proceed with the Villegas grievance constitutes willful violations of K.S.A. 75-4333 (b) (5), (6) and (7).

K.S.A. 75-4333 (b) (5), (6), and (7) states:

"(b) It shall be a prohibited practice for a public employer or its designated representative willfully to:

(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;

(7) Deliberately and intentionally avoid mediation, fact-finding, and arbitration endeavors as provided in K.S.A. 75-4332; or..."

K.S.A. 75-4327 (a) states in part:

"(a) Public employers shall recognize employee organizations for the purpose of representing their members in relations with public agencies as to grievances and conditions of employment."

K.S.A. 75-4328 (a) states in part:

"(a) A public employer shall extend to a certified or formally recognized employee organization the right to represent the employees of the appropriate unit involved in meet and confer proceedings and in the settlement of grievances,..."

K.S.A. 75-4332 then speaks to the procedures to be invoked in the event of an impasse in negotiations. The last sentence in that statute refers to the costs of a "neutral arbitrator". Complainant argues that this sentence must refer to rights arbitration since the statute does not provide for interest arbitration. This interpretation of K.S.A. 75-4332 seems to be illogical unless one reads the entire Act for intent. K.S.A. 75-4321 (b) states in part:

"(b) Subject to the provisions of subsection (c), it is the purpose of this 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,..."

It is obvious then, that legislative intent is basically twofold. That is to obligate employers to meet and confer in an effort to reach an agreement over terms and conditions of employment, which by definition includes grievance procedures. Secondly, the legislature intended to insure that grievances would be resolved in a harmonious manner by the parties.

K.S.A. 75-4327 and K.S.A. 75-4328 then mandates that employers allow recognized organizations to represent employees in resolving grievances. The process or procedures for resolving the grievance is subject to the meet and confer process. However, once agreement is reached, both the employer and employee organization must comply with the contractual procedure. These procedures are specified by the labor agreement just as other terms and conditions, such as wages and hours. Jurisdiction for most contract violations is not vested in the Public Employee Relations Board. However, the legislature gave special consideration to the settlement of grievances since they viewed this matter to be the very basis for labor harmony and peace. K.S.A. 75-4333 (b) (7) and (c) (4) specifically state that "arbitration" efforts or the lack thereof, may be the basis for prohibited practice. K.S.A. 75-4322 (q) defines "arbitration" as:

"(q) 'Arbitration' means interpretation of the terms of an existing or a new memorandum of agreement or investigation of disputes by an impartial third party whose decision may or may not be final and binding."

Interpretation of the terms of an agreement is then defined at K.S.A. 75-4322 (u) as a grievance.

While it might appear that K.S.A. 75-4333 (b) (7) refers only to resolving impasses resulting from the meet and confer sessions, the Public Employee Relations Board must conclude that this statute includes

the settlement of grievances known as rights arbitration. This conclusion is reached by reading this statute in concert with the aforementioned statutes. Therefore, a "contract violation" of a grievance arbitration procedure if taken intentionally and deliberately would be a prohibited practice and evidence of bad faith in the meet and confer process.

The Public Employee Relations Board finds that the Board does have jurisdiction to hear the matter now pending and denies Respondent's Motion to Dismiss for jurisdictional reasons.

The Board must now consider the evidence before it in order to determine whether Respondent's refusal to arbitrate the Villegas grievance violates K.S.A. 75-4333 (b) (5), (6) or (7).

The Memorandum of Agreement is quite clear with respect to time limitations. The grieving party must submit, in writing to the other party, notice of intent to arbitrate a grievance within fifteen (15) days from the response of the Executive Committee. Although, the term "receipt" of the response is not used, one must assume that the fifteen (15) day clock cannot begin to run until service is made on the grievant or his/her representative. The question then is whether service was made by the Executive Committee on the grievant or his representative thus starting the fifteen (15) day clock.

The Board notes several interesting facts. The Memorandum of Agreement does not specify that the Union is to provide the names of union representatives. Rather, the agreement provides for a listing of union stewards. The Memorandum of Agreement was signed by Mr. R. A. Caraway. Mr. Villegas designates Randy Melancon as his union representative in his August 14, 1981, memorandum to Rex Gary. Mr. Melancon signed his October 8, 1981, letter to Mr. Morlan as President/Director, AFSCME Council 64. Mr. Melancon signed his December 9, 1981, letter to Mr. Morlan as International Union Representative. Mr. Wright, Chairman of the Kansas Department of Transportation Executive Committee, directed his November 9, 1981, letter to Mr. William Edgerly, President/Director, Kansas-AFSCME Local #64. All correspondence to the Union representing the grievant is addressed to 214 West Sixth, Topeka, Kansas.

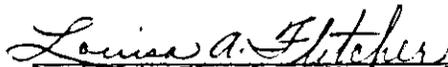
Although the grievance named Mr. Melancon as the union representative something must have happened between October 8, 1981, and December 9, 1981, to Mr. Melancon's status as President/Director of

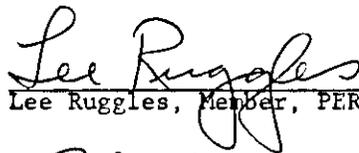
AFSCME. Further, we must assume that Mr. Wright did not simply pull the name William Edgerly from a hat. The Public Employee Relations Board places great weight on the fact that the Executive Committee response was mailed return receipt to the Union office located at 214 West Sixth. Service requirements are not specified in the contract thus the Board points to K.A.R. 84-2-1, "Service of pleadings". This administrative rule and regulation allows service to be made by leaving a copy of the papers to be served in the proper office or place of business of the person to be served. The Board recognizes that the above cited rule and regulation is not binding on the parties in the instant case. However, the rule and regulation is, in the absence of specific contractual language, rather standard fare in labor relations.

The Board finds no evidence that the Executive Committee or the Respondent deviated from usual practice or that they willfully attempted to deny Mr. Villegas or the Union any right. Therefore, it is the order of the Board that 75-CAE-6-1982 be dismissed in its entirety.

IT IS SO ORDERED THIS 5th DAY OF November, 1982, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.


James J. Mangan, Chairman, PERB


Louisa A. Fletcher, Member, PERB


Lee Ruggles, Member, PERB


Art J. Veach, Member, PERB

ABSTAINED FROM VOTING
Robert L. Kennedy, Member, PERB