

STATE OF KANSAS
PUBLIC EMPLOYEE RELATIONS BOARD

IN THE MATTER OF COMPLAINT AGAINST EMPLOYER: *
NATIONAL ASSOCIATION OF GOVERNMENT *
EMPLOYEES (NAGE) *
Complainant, *
and *
STATE DEPARTMENT OF SOCIAL & REHABILITATION *
SERVICES (YOUTH CENTER AT TOPEKA) *
Respondent. *

Case CAE 7-1976

FINDINGS OF FACT-CONCLUSIONS OF LAW ORDER

The above-captioned case comes before the Public Employee Relations Board on petition of the National Association of Government Employees. Statements of the facts and briefs were submitted to the Board by Mr. Paul Hayes, National Vice-President, NAGE, and Mr. W. John Badger, Legal Representative for Department of Social and Rehabilitation Services, Youth Center at Topeka. Mr. Thomas J. Pitner, Chief Attorney for Department of Administration, filed a Motion to Intervene and submitted a brief on behalf of the Department of Administration.

Statement of Procedures Before the Board

1. Complaint filed April 7, 1976 by Mr. Lonnie J. Williams, Representative for NAGE, on behalf of Mr. Ronald Evans alleging violations of K.S.A. 75-Supp. 75-4333 (b) (1), (2) and (6).
2. Answer filed April 13, 1976 by Mr. W. John Badger on behalf of the Youth Center at Topeka (SRS).
3. Appearances by parties at the Public Employee Relations Board meeting April 29, 1976. Agreement made to stipulate to the facts in case and to file briefs no later than May 21, 1976.
4. Petition for Intervention was filed May 20, 1976 by Mr. Thomas J. Pitner, Chief Attorney for Department of Administration.
5. Petition for Intervention was granted by the Public Employee

CAE-7-1976

Relations Board June 10, 1976.

Findings of Fact

1. National Association of Government Employees certified as representative for non-professional employees at Youth Centers March 19, 1976.
2. Complainant Ronald Evans was notified by letter of March 30, 1976, of a five-day suspension in his employment. Mr. Evans was further notified of his right to appeal the proposed action pursuant to the Department of Administration Rules and Regulations Article 11:1-11-6. The appeal date was set for April 7, 1976 at 1:00 p.m., at the Youth Center at Topeka, 1440 N.W. Highway K-172.
3. Complainant Ronald Evans appeared at the appeal hearing accompanied by Mr. Lonnie J. Williams, NAGE, Topeka.
4. Mr. Evans was denied the right of representation at the appeal hearing on April 7, 1976.
5. Mr. Evans was notified of the suspension and appeal hearing in accordance with Department of Administration Rules and Regulations Article 11:1-11-6.
6. There is no executed Memorandum of Agreement covering the non-professional employees at the Youth Center at Topeka (SRS).

CONCLUSIONS OF LAW

The instant case raises the issue of employees' rights, under K.S.A. 75-Supp. 75-4321 et seq., to representation at a disciplinary appeal hearing conducted pursuant to State Department of Administration Rules and Regulations.

K.S.A. 75-Supp. 75-4333 (b) (1) and (6) makes it a prohibited practice for a public employer to deny the rights granted by 75-4324 and 75-4328. 75-4324 states: "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 or their designated representatives with respect to grievances and conditions of employment. Public employees also shall have the right to refuse to join

or participate in the activities of employee organization." [Emphasis added]; and

75-4328.(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 settlement of grievances, and also shall extend the right to unchallenged representation status, consistent with subsection (d) of section 7 (75-4327), during the twelve (12) months following the date of certification or formal recognition."

The meet and confer process is defined in K.S.A. 75-Supp. 75-4322 (m) as follows:

"(m) "Meet and confer in good faith" is the process whereby 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."

The grievance procedure, as defined by K.S.A. 75-Supp. 75-4322 (u), states:

"(u) "Grievance" means a statement of dissatisfaction by a public employee, supervisory employee, employee organization or public employer concerning interpretation of a memorandum of agreement of traditional work practice."

The Public Employee Relations Board is of the opinion that a hearing conducted pursuant to the Department of Administration Rules and Regulations does not satisfy the statutory definition of the "meet and confer" process, nor does it satisfy the definition of a grievance. Therefore, any determination as to employees' rights to representation at such a hearing must be based upon the regulation applicable to the specific hearing and the purpose thereof.

There were grievance procedures available to this employee and this employee failed to exercise his rights under this procedure. If he had done so, he would have had the right to be represented at said grievance procedure.

Respondent, the Youth Center at Topeka (SRS) has allegedly violated K.S.A. 75-Supp. 75-4333(b) which expresses that..."It shall be a prohibited practice for a public employer or its designated representative willfully to:

(2) Dominate, interfere or assist in the formation, existence, or administration of any employee organization;....."

The Public Employee Relations Board finds no argument to sustain the allegation.

IT IS, THEREFORE, THE ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD THAT CAE 7-1976 BE DISMISSED.

BY ORDER OF THE PUBLIC EMPLOYEE RELATIONS BOARD THIS 17th DAY OF June, 1976.

Nathan W. Thatcher
Nathan W. Thatcher, Chairman

Garold A. Been
Garold A. Been, Member

Phyllis Burgess
Phyllis Burgess, Member

E. Jay Rennick
E. Jay Rennick, Member

Richard R. Rock
Richard R. Rock, Member

Hayes
Vigole
Badger
Pitner
B. Harber
Y. Penny
R. A. Caraway