

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

International Brotherhood of Teamsters)
Local Union No. 795,)
Petitioner,)

v.)

Case No. 75-UDC-5-1998

Sedgwick County Sheriff Department,)
Respondent.)

Pursuant to Kansas Statutes Annotated (K.S.A.) 75-4321 *et seq.* and
K.S.A. 77-501 *et seq.*

INITIAL ORDER

ON the 28th day of July, 1998, the above-captioned unit determination and certification petition came on for consideration by presiding officer Susan L. Hazlett. Oral arguments scheduled for such date were not held as neither party notified the presiding officer as to whether or not oral arguments were desired. The parties filed simultaneous briefs required by a June 12, 1998 Order, which was issued in response to petitioner's hearing request on a Summary Order of May 26, 1998. Said Summary Order dismissed this matter for lack of jurisdiction.

FINDINGS OF FACT

1. The public employer, for purposes of this matter, is Sedgwick County, Kansas.
2. None of the purported governing bodies of Respondent Sedgwick County Sheriff Department, i.e. the Sheriff of Sedgwick County, the Sheriff's Civil Service Board, or the Board of County Commissioners of Sedgwick County, Kansas, have elected to come under the provisions of the Public Employer Employee Relations

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Act (PEERA) or are currently governed by the PEERA.

3. The Sedgwick County Fire District Number One is a special district created in 1954 by the Board of County Commissioners of Sedgwick County, and is the public employer as defined by PEERA only for certain specific employees of that Fire District.
4. The election by the governing body of the Sedgwick County Fire District Number One to come under the provisions of the PEERA in 1979 did not work to bring all of Sedgwick County under such provisions. (*See Public Employee Relations Board (PERB) Case No. 75-UDC-5-1993, LAFF v. Sedgwick Co. EMS and Sedgwick Co. Fire District Number One, upheld by the current Public Employee Relations Board*)

CONCLUSIONS OF LAW

K.S.A. 75-4321(c) provides that:

“The governing body of any public employer, other than the state and its agencies, by a majority vote of all the members may elect to bring such public employer under the provisions of this act, and upon such election the public employer and its employees shall be bound by its provisions from the date of such election. ...”

K.S.A. 75-4322(f) defines public employer as:

“Every governmental subdivision, including any county, township, city, school district, special district, board, commission, or instrumentality or other similar unit whose governing body exercises similar governmental powers and the state of Kansas and its state agencies.

K.S.A. 75-4322(g) defines a governing body as:

“The legislative body, policy board or other authority of the public employer possessing legislative or policy-making responsibilities pursuant to the constitutional laws of this state.”

As stated above, this presiding officer and the Public Employee Relations Board recently made extensive findings of fact and conclusions of law in *IAFF v. Sedgwick County*, PERB Case No. 75-UDC-5-1993. Petitioner attempts to use that case and a Kansas Supreme Court case, *City of Wichita v. Public Employee Relations Board*, 259 Kan. 628 (1996) to support their argument that the Sedgwick County Sheriff Department is governed by PEERA.

In the *City of Wichita (Airport Authority)* case, cited above, the Supreme Court determined that the City was the employer because of the substantial control it retained over the Airport Authority Board and its employees when it created that board. The City had elected to come under PEERA, so the Supreme Court determined that the Airport Authority was also under PEERA. *City of Wichita* was a very fact-specific case.

The *IAFF v. Sedgwick County* case, which was never appealed past the administrative level, is not inconsistent with, nor contrary to, the Supreme Court's ruling in *City of Wichita* because it is factually distinguishable. It was concluded in the *IAFF* case that Sedgwick County did not have substantial control over the Sedgwick County Fire District Number One, a separate and distinct governmental unit; therefore, the Fire District's separate action to come under the PEERA did not affect Sedgwick County as a whole. The result in that case was that the Sedgwick County EMS Department and its employees were not governed by the PEERA, just as the Sedgwick County Sheriff Department and its employees in this matter are not governed by the PEERA. The issue in the *IAFF* case has already been decided by this Board and will not be

“re-tried” for purposes of this matter.

Petitioner also argues , ironically, that Sedgwick County “should also bring the whole county under PEERA...[o]therwise, discrimination would be implied and constitutional rights would be violated.” (Pet. Brief, p. 2) The PERB has no authority to force the Sedgwick County Commissioners to elect to bring Sedgwick County under PEERA.

ACCORDINGLY, this matter is hereby dismissed for lack of jurisdiction over the parties.

IT IS SO ORDERED, this 27th day of August, 1998.



Susan L. Hazlett
Presiding Officer
Public Employee Relations Board
1430 SW 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 Service

I, Sharon L. Tunstall, Office Manager for the Public Employee Relations Board, hereby certify that on the 28th day of August, 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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Sharon L. Tunstall

Mailed to PERB members on 3rd day of September, 1998 .