

8-15-74

State of Kansas

Before The Public Employee Relations Board

In The Matter Of: *
*
Petition for Unit Determination *
of certain uniform Fire Fighters *
of Wichita, Kansas *
*

Case UE 4-1974

Comes now on the 18th day of April, 1974, the above captioned matter for hearing before the Public Employee Relations Board.

The case comes before the Board upon petition of the International Association of Fire Fighters, Local 666, AFL-CIO for unit determination of an appropriate unit for uniformed firemen of the City of Wichita, Kansas under the date of March 19, 1974.

Leave was granted to all parties to consider and offer statement, testimony and evidence relative to other plans for unit determination which would be more "appropriate" than that proposed by the petitioner.

Appearances of parties were as follows:

- Mr. Tom Kelley, in behalf of the International Assn. of Fire Fighters, Local 666
- Mr. Jim Sparr, President of International Assn. of Fire Fighters
- Mr. Jack Schrader, Secretary-Treasurer of International Assn. of Fire Fighters
- Mr. John Dekker, City Atty., Wichita

Statement of Case-Procedures Before the Board

1. Petition filed by the International Association of Fire Fighters, Local 666 under the date of March 18, 1974, praying for a unit determination of an appropriate unit alleged to consist of all employees within the Wichita Fire Department below the rank of Deputy Chief. To exclude: All Deputy Chiefs and Fire Chief and all civilian employees not holding a fire commission rank and all others as defined in the Act.

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2. Answer to Petition for Unit Determination and Certification filed by the City of Wichita under the date of March 25, 1974, making exception to the "appropriateness" of the unit as proposed by the International Association of Fire Fighters, Local 666.

3. Amendment to Answer To Petition for Unit Determination and Certification filed March 29, 1974, by City of Wichita, Kansas proposing an "appropriate" unit of only those employees bearing the

rank of Fire Fighter. Excluding:

- Fire Chief
- Deputy Fire Chief
- Fire Marshal
- Division Chief
- Fire District Chief
- Chief Fire Operations Training Instructor
- Chief Fire Alarm Dispatcher
- Chief Fire Prevention Training Instructor
- Fire Master Mechanic
- Fire Operations Training Instructor
- Fire Captain
- Fire Lieutenant
- Chief Fire Investigator
- Chief Fire Inspector

4. Hearing held on April 18, 1974 before the Public Employee Relations Board to determine an "appropriate" unit for firemen employed by the City of Wichita. Parties were given a time limitation for filing briefs.

5. Motion for extension of the time for the filing of the brief filed by the International Association of Fire Fighters, Local 666 under the date of April 30.

6. Motion to extend the filing period for briefs granted by the Public Employee Relations Board on May 2, 1974.

Extension granted petitioner until May 13, 1974

Extension granted respondent until May 23, 1974

7. Petitioner's brief filed May 13, 1974.

8. Respondent, City of Wichita, brief filed May 23, 1974

The question presented in the instant case centers on the determination of where within the chain of command of the Wichita Fire Department "supervision" within the context of the Act may be said to lie.

The Board is of the opinion that employees of the department from lieutenant down are not "supervisory employees" within the contemplation of the Act.

KSA Supp. 75-4322(a) provides: "Public employee" means any person employed by any public agency, except those persons classed as supervisory employees, professional employees of school districts, as defined by subsection (c) of KSA 72-5413, elected and management officials, and confidential employees.

KSA Supp. 75-4322(b) provides: "Supervisory employee" means any individual who normally performs different work from his subordinates, having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

KSA Supp. 75-4327(e) provides: Any group of public employees considering the formation of an employee organization for formal recognition, any public employer considering the recognition of an employee organization on its own volition and the board, in investigating questions at the request of the parties as specified in this section, shall take into consideration, along with other relevant factors: (1) The principle of efficient administration of government; (2) the existence of a community of interest among employees; (3) the history and extent of employee organization; (4) geographical location; (5) the effects of overfragmentation and the splintering of a work organization; (6) the provisions of KSA 1972 Supp. 75-4325; and (7) the recommendations of the parties involved.

Findings Of Fact

1. Lieutenants do not participate in the hiring of personnel.
2. Recommendations for suspension or discharge are forwarded through the chain of command to the Chief.
3. Assignments of stations are not made by Lieutenants.
4. Layoffs and recalls are managed through respondents personnel department.
5. Rating sheets are prepared by Lieutenants on firefighter personnel directly within the span of their control (usually 3, TRN 33). Captains prepare rating sheets for Lieutenants, etc.
6. All fire personnel are expected and at times do participate in fighting fires.
7. Lieutenants are authorized to take substantive disciplinary measures against personnel within the scope of his control only in emergency situations and then only if senior personnel are not present.

As can be seen the record of testimony is somewhat meager of facts and data relevant to the central issue. The parties did provide the Board with certain documentary materials and briefs which have been helpful.

The question of where the line is to be drawn separating supervisory from non-supervisory personnel is never easy nor dramatically clear. This is particularly true in the paramilitary structure of the state's largest fire department.

The military concept of "chain of command" is very much a part of the formal structure of the organization, an obvious necessity due to the nature of the department's mission. Decisions flow down through a well-defined rank structure. Input to the decision-making process appears to flow upwards until the appropriate level for decision-making is reached. Different decisions require different rank levels for determination. Categories of decisions to be handled at various levels are spelled out - rank is the central factor. (Petitioner Sparr's Exhibit #1) The Board is persuaded that substantive supervisory decision making is sufficiently removed from Lieutenants in

the Wichita system to authorize this rank as a part of the appropriate unit along with other non-supervisory fire department employees.

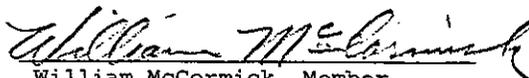
Personnel holding the rank of Captain are excluded for the reason that their general span of control, in terms of numbers of employees directed, is materially greater than that of Lieutenants; although, the substance of the supervisory decisions made is not substantially dissimilar.

The Board is aware that the determination announced herein does not coincide with the units sought by the parties to this proceeding. The question whether the Board may define a unit which it deems more appropriate than that proposed by the parties has never been directly resolved in any of our orders to date. The Board has concluded that the statutory grant of authority (KSA Supp. 75-4327(c)) to resolve disputes concerning representation status does not limit such exercise to the approval or disapproval of a unit sought by either of the parties. If the Board's authority is so limited, a representation dispute could be interminable in that it would continue until a party petitioned for a unit which the Board could find to be appropriate.

IT IS THEREFORE ORDERED that the unit is defined as all employees in the Wichita Fire Department below the rank of Captain.

IT IS SO ORDERED BY THE PUBLIC EMPLOYEE RELATIONS BOARD


Eldon Danenhauer, Chairman


William McCormick, Member

Alan Neelly, Member


Arthur Veach, Member

DATE: August 15, 1974


Nathan Thatcher, Member

Case UE 4-1974
Wichita Fire Fighters Unit
Order of August 15, 1974

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STATE OF KANSAS
BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

In the Matter of UNIT DETERMINATION
FOR CERTAIN PROFESSIONAL FACULTY
MEMBERS OF KANSAS STATE COLLEGE OF
PITTSBURG

CASE UE 2-1974

ON RELATION OF KANSAS HIGHER
EDUCATION ASSOCIATION (KHEA)

Sample

Comes now on the 29th day of March, 1974, the above captioned matter for hearing. The hearing is conducted before Donald R. Hoffman, duly appointed Hearing Examiner for the Public Employee Relations Board.

The case comes before the Board upon petition of Kansas Higher Education Association (KHEA) for Unit Determination of an appropriate unit for faculty members at Kansas State College of Pittsburg under date of March 7, 1974 as amended under date of March 25, 1974.

Leave was granted to all parties to consider and offer statements, testimony and evidence relative to other plans for unit determination throughout the state's higher education system which would be more "appropriate" than that proposed by petitioner. Appearances of parties were as follows:

- Mr. Steve Massoni, Atty., Kansas Higher Education Assn.
- Mr. Victor Salem, Executive Secretary, KHEA
- Mr. J. Bunker Clark, President of Kansas Conference, AAUP (American Assn. of University Professors)
- Mr. Grant Goodman, AAUP Representative, KU
- Dr. Charles Oldfather, Atty. for KU
- Mr. James Feldstein, Director of Labor Relations, KU
- Mr. Jerome Freeman, AAUP Representative, K-State
- Dr. Doris Sindt, Representative AAUP, KHEA and Faculty Assn., Ks. State College of Pittsburg
- Dr. George Budd, President, Ks. State College of Pittsburg
- Mr. Max Bickford, Exec. Officer, Board of Regents
- Mr. Darrell Hoffman, Labor Relations Administrator

Findings of Fact

1. The unit as proposed by petitioner in its amended petition is composed of approximately 247 professional faculty members at Kansas State College of Pittsburg including approximately 24 "chairmen" of the various academic departments. All "General Departmental Teaching Faculty, Vocational Technical Institute Faculty and Learning Resources Faculty of Kansas State College of Pittsburg" are included.
2. The unit as proposed does not include non-professional employees.
3. Kansas State College of Pittsburg is one of six major institutions of higher learning directly under the supervision of the Kansas Board of Regents.
4. Colleges and universities under the control of the State Board of Regents have historically exercised wide latitude and atonomy in handling personnel matters of non-classified Civil Service employees.
5. Professional faculty members are non-classified Civil Service employees.
6. The Kansas Board of Regents is responsible for the appointment of the chief executive officer (President) of the college; a position presently held by Dr. George Budd, President.
7. The President of the college exercises wide discretion in the appointment, rate of compensation and duties of faculty members.
8. The President of Kansas State College of Pittsburg selects Department Chairmen.
9. Non-teaching administrative personnel are available to the President in academic, as well as non-academic affairs of the college (Executive Vice President, Academic Vice President, Business Manager, Plant Superintendent, Director of Campus Planning, etc.).

Conclusions of Law - Reationale - Order

The instant case is one of first impression to the Public Employee Relations Board. It calls into question the establishment of an "appropriate unit" as defined by the Act for faculty members at a state university or college. Two major issues immediately develop for consideration: (1) Should the state-wide appropriate unit concept be adopted by the Board; (2) Should Department Chairmen be included within the unit or units established by the Board.

It should be noted at the outset that argument was not offered relative to whether faculty members are "public employees" within the purview of the Act.

The Board has not formally ruled on the point in any of its orders to date. The question, while not disputed in the instant case or previous cases is basic as a jurisdictional matter. Accordingly, the Board finds as a matter of law that faculty members are "public employees" under the law and as specifically defined at KSA Supp. 75-4322.

The Act provides at KSA Supp. 75-4327(3) for seven criteria to be considered by the Board in making unit determinations. They are:

- (a) The principal of efficient administration of government;
- (b) The existence of a community of interest among employees;
- (c) The history and extent of employee organization;
- (d) Geographical locations;
- (e) The effects of overfragmentation and the splintering of a work organization;
- (f) The provisions of KSA 1972 Supp. 75-4325; and
- (g) The recommendations of the parties involved.

No single criteria is more important than the others. Other criteria may be considered in addition to those enumerated.

The evidence and statements of the parties is undisputed that each of the institutions of higher learning within the state have been granted wide latitude and autonomy by the Board of Regents both in practice and by law (see KSA 76-711 et seq.). The Board takes notice that each of the institutions are structured organizationally to be self-sustaining. Each maintains a sophisticated array of departments with organic administrative specialists capable of dealing with a multiplicity of management problems. Most, if not all, of the institutions presently employ full-time labor management relations specialists and have rather elaborate business and personnel offices. Only decisions of the highest level appear to necessitate Board of Regents' involvement or approval. This appears particularly true in the area of faculty-management relations. The inference is inescapable that this autonomous relationship is well-known to faculty members and is a relationship which they approve and foster. Employment policies and relationships regarding faculty members are simply not consistent as between institutions.

Accordingly the treatment of the faculty unit at Kansas State College of Pittsburg as proposed by the petitioner would not, in the opinion of the Board, violate any of the criteria set out above. The so-called state-wide concept of faculty-management relations if superimposed over this existing system would be damaging in the following respects:

1. It overlooks that autonomous administrative structure of the institutions.
2. It does not consider geography.
3. It overlooks the unique characteristics and "direction" of the institutions, both academic and administrative.

4. It overlooks the recommendations of the parties directly involved.

5. It overlooks the history of faculty-management relations at Kansas State College of Pittsburg.

Department Chairmen

The question of whether Department Chairmen should be included within the unit highlights the difficulty encountered when traditional labor-management concepts are applied to the college campus.

KSA Supp. 75-4322(b) defines "Supervisory Employee" as:

"means any individual who normally performs different work from his subordinates, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

As related to faculty members, clear lines of authority are traditionally absent on the college campus. Kansas State College of Pittsburg represents no exception. Factors such as academic freedom and classroom independence distinguish the faculty member as a professional. Faculty members play a major role in the development of institution policy. Their input does not necessarily flow through distinguishable channels. In this sense their aggregate role resembles that of management. Co-existing with this relationship, however, is the special status of the Department Chairmen. The Board recognizes that the creation of this position at Kansas State College of Pittsburg is more than a mere formality. Faculty members are in fact employees of the institution. Their number is large enough that even though they are professionals, span of control must be maintained if the institution is to be managed. Accordingly, at Kansas State College of Pittsburg,

Department Chairmen are in fact first level supervisors and should be excluded from the proposed unit. Owing to the unique characteristics of the various campuses, this ruling should not be construed as binding precedence on the question of whether chairmen will be excluded at other locations.

Conclusion

The unit as proposed by petitioner is approved with the exception that Department Chairmen are excluded from the unit.

IT IS SO ORDERED BY THE PUBLIC EMPLOYEE RELATIONS BOARD

BY

Jerry Powell
Jerry Powell, Executive Director
For The Public Employee Relations Board

4-23-74

Date