

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

Luis C. Mendez

Complainant,

v.

Kansas City Kansas Street Department

Respondent.

CASE NO: CAE-2-1979

O R D E R

Now on this 20th day of November, 1979, this matter comes on for hearing on Complainant cause against Respondent for determination, said matter having been continued from the 6th day of November, 1979. Said hearing is conducted before J. Marcus Goodman, the duly appointed Hearing Examiner for the Public Employee Relations Board.

The complainant, Luis C. Mendez, appears in person and pro se. The respondent, Kansas City Kansas Street Department, appears by and through its counsel, Harold T. Walker, Assistant City Attorney, Kansas City, Kansas.

PROCEEDINGS BEFORE THE BOARD

A complaint was filed in this matter by Luis C. Mendez, hereinafter referred to as Complainant, against the Kansas City, Kansas Street Department, hereinafter referred to as Respondent, on September 19, 1978, alleging violations of K.S.A. 75-4333 (1), (3) and (4).

Respondent has answered and a hearing was determined to be held.

FINDING OF FACTS

1. The Complainant became, and was, until his termination chief union steward for Local 1132, on November 22, 1977. (T-50)
2. That on September 3, 1977, Complainant was put on notice by an arbitrator's ruling (FMCS Case Number 77K/13961) that any repetition of conduct resulting in discipline would provide justification for discharge. (T-51 et seq)
3. That on May 9, 1978, Complainant held a meeting with a Mr. Kiper, a superintendent for Respondent, to protest employment practices. (T-44)
4. That on May 24, 1978, Complainant was discharged by Respondent for insubordination, i.e. direct violation of an order conveyed by Superintendent Kiper's clerk that the telephone was not to be used during Mr. Kiper's absence. (T-95)

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5. That on May 24, 1978, Complainant did use the telephone after receiving the order not to use it. (T-46, 47)

6. That on May 24, 1978, a John Marron ceased to attempt to use, or using, the telephone upon becoming aware he should not. (T-106, 11, 74)

CONCLUSION OF LAW

1. That K.S.A. 75-4333 (b) (1) provides:

"(b) 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 section 4(75-4324) or this act;"

2. "(3) Encourage or discourage membership in any employee organization, committee, association or representation plan by discrimination in hiring, tenure or other condition of employment, or by blacklisting;"

3. "(4) Discharge or discriminate against an employee because he has filed any affidavit, petition or complaint or given any information or testimony under this act, or because he has formed, joined or chosen to be represented by any employee organization."

4. That Respondent is not in violation of K.S.A. 75-4333 (b) (1), (3) and (4).

DISCUSSION

As set forth in the finding of facts, the instant case is totally indicative of Complainant's failure to obey now, grieve later. Evidence supports the fact that another employee did obey, and it is only after the fact that Complainant raised the issue of the authority and validity of the order not to use the phone. Complainant's failure to obey is particularly questionable in light of his notice from a prior arbitrator's decision that further acts of insubordination could result in his discharge. Complainant could easily have awaited the superintendent's return, or grieved the order, rather than blatantly ignoring it.

It is further well supported by the evidence introduced that there is no nexus between Complainant's discharge and any violation of statute, i.e. there is no showing that Respondent interfered with Complainant's right to participate in activities of his employee organization in meeting with Respondent in respect to grievances and conditions of employment (K.S.A. 75-4333 (b) (1) and K.S.A. 75-4324). In fact, evidence shows a meeting was held even though there is no showing that Complainant had authority to call the meeting.

There is no evidence to support Complainant's contention that Respondent violated K.S.A. 75-4333 (b) (3) by discouraging membership in the employee organization or subunits by discrimination in hiring, tenure, or employment practices.

There is no evidence to support Complainant's contention that he was discharged because he had joined and was part of the employee organization.

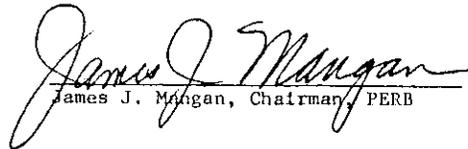
What the evidence does support and show is that Complainant was aware of the arbitrator's warning, that regardless of such he disobeyed an order, and then supported such disobedience by questioning the orders validity. Complainant could have used the protections of his membership in the employee organization by obeying, then grieving. He should not be heard to turn that membership into a shield to excuse his wrong doing.

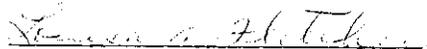
It is therefore the recommendation of the examiner that the Public Employee Relations Board dismiss the complaint of Complainant, and enter order in favor of Respondent, upon the finding that no evidence supports any violation by Respondent of K.S.A. 75-4333 (b) (1), (3) and (4).

J. Marcus Goodman
J. Marcus Goodman, Hearing Examiner
for the Public Employee Relations Board

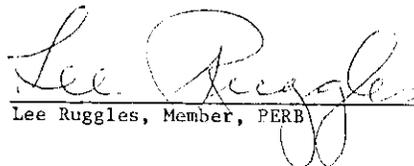
The hearing examiner's report and recommended findings are hereby approved and adopted as a final order of the Board.

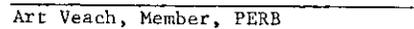
IT IS SO ORDERED THIS 18th DAY OF February 1980, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.


James J. Mangan, Chairman, PERB


Louisa A. Fletcher, Member, PERB


Urbano L. Perez, Member, PERB


Lee Ruggles, Member, PERB

ABSENT

Art Veach, Member, PERB