ATTORNEY GENERAL OPINION NO. 77-211

Mr. Jerry Powell
Executive Director
Kansas Public Employee Relations Board
701 Jackson
Topeka, Kansas 66603

RE: Public Officers and Employees -- Public Employer-Employee Relations Act -- Recognition Procedure

SYNOPSIS: An election by public employers, other than the state and its agencies, to bring the employer under the act is required before the provisions of K.S.A. Supp. 75-4329 apply.

Deaf Mr. Powell:

We have your letter of May 24, 1977. You inquire relative to the applicability of the provisions of K.S.A. Supp. 75-4329 to public employers, other than the state, where no election has been made to bring the employer under the provisions of the act. K.S.A. Supp. 75-4321(5)(c) provides:

"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 employer and its employee shall be bound by its provisions from the date of such election. Once an election has been made to bring the public employer under the provisions of this act it continues in effect unless rescinded by a majority vote of all members of the governing body. No vote to rescind shall take effect until the termination of the next complete budget year following such vote."
You direct our attention to K.S.A. Supp. 75-4329, which provides:

"Every public agency, other than the state, acting through its governing body, may establish procedures, not inconsistent with the provisions of sections 7(75-4327) and 8(75-4328) of this act and, after consultation with interested employee organizations and employer representatives, may resolve disputes concerning the recognition status of employee organizations composed of employees of such agency. In the absence of such procedures, such disputes shall be submitted to the public employee relations board in accordance with section 7(75-4327) of this act."

In an opinion issued by this office to you dated March 18, 1976, we concluded:

"In light of the foregoing we are constrained to the view that the provisions of the act are not to be expanded beyond its clearly expressed terms."

As to local units of government, K.S.A. Supp. 75-4321(5)(c) set out above, clearly conditions jurisdiction of the board and indeed the applicability of the act itself to the employer-employee relations of local units of government after the election to come under the law is unequivocally made by the governing body. In construing the provisions of K.S.A. 75-4335 we stated:

"This section, in our opinion, should not be read as implying the laws application to public employers or employees other than the state without the election discussed above. The section merely allows for local legislation and substitution of provisions by local governing bodies after the election to come under the act has been made."

In our opinion, K.S.A. Supp. 75-4329 is nothing more than a continuation of the manifest legislative policy to insure local units of government a full measure of local autonomy. (See K.S.A. 75-4323(e)). There is no indication that K.S.A. 75-4329 deals with a subject more unique than other sections of the act, all of which require the election to come under the act. Certainly we must conclude as we did in our earlier
opinion that as to employers, other than the state, an unequivocal election is required.

Very truly yours,

CURT T. SCHNEIDER
Attorney General
July 28, 1977

Mr. Charles W. Kiffin
Stinson, Mag, Thomson, Mcevers & Fizzell
P. O. Box 19251
TenMain Center
Suite 2100
Kansas City, MO 64141

Dear Mr. Kiffin:

The Public Employee Relations Board met at its regular meeting July 21, 1977 and the following action was taken in Case UDC-1977:

With respect to the letter dated April 10, 1977, from Mr. Charles W. Kiffin, and the Attorney General's opinion No. 77-211, that:

"Under the circumstances, the Public Employee Relations Board is not in any position to consider dismissing the Unions' request for reconsideration of the petition."

Therefore, we consider this case closed.

If you have any questions, please contact this office. Thank you for your cooperation.

Sincerely,

Jerry Powell
Executive Director

JP:ml

cc: Mr. Eugene V. Clarke
August 1, 1977

Mr. Eugene V. Clarke - 760376
Business Representative
International Association of Machinists and Aerospace Workers
1113-15 East 47th Street
Kansas City, Missouri 64110

Dear Mr. Clarke:

This letter is to replace an earlier letter dated July 28, 1977, mailed to you and concerned action taken by the Public Employee Relations Board at its meeting July 21, 1977.

In acting on case UDC 9-1977, the Board took the following action:

"Under the circumstances, the Public Employee Relations Board is not in any position to consider the union's request for reconsideration of the petition." The case, therefore, is closed.

We sincerely apologize for the error and ask that you contact this office if you have any questions. Thank you for your patience in this matter.

Sincerely,

Jerry Powell
Executive Director

cc: Mr. Charles W. Kiffin - 760377
Stinson, Mag, Thomson, McEvers & Fizzell
P. O. Box 19251
TenMain Center
Suite 2100
Kansas City, Missouri 64141
State of Kansas
PUBLIC EMPLOYEE RELATIONS BOARD

PETITION

Filed By: [X] Employee Organization
[ ] Employer
[ ] Employees (must be signed by five employees)

Do Not Write In This Space

Case No. UDC-9-1977
Date Filed 2-17-77

INSTRUCTIONS: File an original and five copies of this Petition to the Public Employee Relations Board, 701 Jackson, Rm 204-206, Topeka, Kansas 66603 by Certified Mail. If more space is required for any item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the Public Employee Relations Board proceed under its proper authority.

1. Purpose of this Petition (Check appropriate box)

[ ] Unit Determination (UD)
[ ] Unit Certification (UC)
[ ] Unit Determination and Certification (UDC)
[ ] Unit Decertification (UDE)

2. Name and Address of Petitioner:

INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO
Phone 753-2125

3. Name and Address of Employer:

KANSAS CITY BOARD OF PUBLIC UTILITIES
7TH & MINNESOTA, KANSAS CITY, KANSAS
Phone

4. Employer Representative to Contact:

MR. JESS E. FLESCHEM
DIRECTOR OF PERSONNEL
Phone 281-8040

5. Type of Establishment:

POWER PLANTS

6. Description of unit alleged to be appropriate (be complete and specific, using job titles):

INCLUDE:

EXCLUDE:

6a. Number of employees in unit:

120

6b. If filing for Unit Certification or Decertification, is this Petition supported by 30% or more of the employees in the unit?

YES [X] NO [ ] If "YES", please attach signature petitions or authorization cards.

7. Is there agreement by all parties on the appropriate unit?

YES [X] NO [ ]

8. Give statement to the effect the governing body of the public employer is under the provisions of the Public Employer-Employee Relations Act either by virtue of the public employer being with the state or one of its agencies, or if not with the state or a state agency, that said public employer has elected to come under the provisions of said Act, and include evidence to that effect.

ISSUE TO BE DECIDED

UDC-9-1977
9. Is there a work stoppage or picketing in progress at the establishment involved? YES [X] NO [ ] If "YES", state date of work stoppage and number of employees involved.

10. Has an appropriate unit been determined by the Public Employee Relations Board? YES [X] NO [ ] If "YES", attach details of unit.

11. If Petitioner is representative in behalf of employee organization, is that representative duly licensed under the laws of the state of Kansas? YES [X] NO [ ]

12. Name(s) of other persons or employee organizations, known to Petitioner, who claim to represent any employees, or other employee organizations known to have an interest in representing employees in the alleged appropriate unit: (If none, so state)

   Name: [ ]
   Address: [ ]
   Affiliation: [ ]

13. Include a clear and concise statement of any other relevant facts:

14. If Petition for Unit Certification is filed by public employees or employee organization, complete and attach Form PERB 002.

  [Form provided]

  Note: Any answer to this Petition is to be filed with the Public Employee Relations Board within seven days after receipt of said Petition. The Board will consider failure to answer Petition as an admission of the allegations of said Petition, particularly the Unit Determination.

DECLARATION

I declare that I have read the above Petition and that the statements herein are true to the best of my knowledge and belief.

Petitioner & Affiliation, if any:

BY [ ]

Representative or Person Filing Petition

Date: [Feb. 14, 1977]

Subscribed and sworn to before me this 16th day of February, 1977

[Signature]

Notary Public

My commission expires [December 19, 1977]