



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

September 12, 1975

ATTORNEY GENERAL OPINION NO. 75- 357

Mr. Jerry Powell
Executive Director
Public Employee Relations Board
701 Jackson - Offices 202-204
Topeka, Kansas 66603

Re: Public Employer-Employees Relations Act -- Impasse
Procedures

Synopsis: Where an election by the members of an appropriate unit has never been held to determine representation status of an employee organization the Board may not institute statutory impasse procedures to assist in resolution.

Dear Mr. Powell:

You state that the Public Employee Relations Board has received a request for assistance in an alleged impasse from the Fraternal Order of Police, Lodge #3 arising out of meet and confer proceedings with the City of Topeka. The City pursuant to its ordinance (#13-437 of June, 1973) has elected to bring itself under the provisions of the Public Employer-Employee Relations Act, K.S.A. 1974 Supp. 75-4321 et seq. Contractual agreements between the City and Lodge #3 concerning salaries and fringe benefits of the employees have been formally in existence during contractual years 1974 and 1975. Informal agreements concerning 'conditions of employment' as that term is defined at K.S.A. 1974 Supp. 75-4322(t) have existed during previous years.

The Board has never taken cognizance of the unit by determining 'an appropriate unit' nor has an election ever been held by the members of the unit either locally or under Board control to determine whether the employees desire to be represented by the Fraternal Order of Police or any other employee

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organization.

Difficulties have now arisen concerning issues developed during meet and confer sessions for contractual year 1976.

You inquire whether under these facts the unit represented by the Fraternal Order of Police, Lodge #3 is a 'recognized employee organization' and consequently whether the Board may now implement the impasse procedures of the Act to assist the parties in dispute resolution.

The purposes of the Act are clearly stated at K.S.A. 1974 Supp. 75-4321 where it is stated in part at subsection (b):

". . .It is also the purpose of this act to promote the improvement of employer-employee relations within the various public agencies of the state and its political subdivisions by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice, or to refrain from joining, and be represented by such organizations in their employment relations and dealings with public agencies."

Subsection (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 public employer and its employees 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."

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K.S.A. 1974 Supp. 75-4322 provides the following definitions pertinent here.

"(i) 'Employee organization' means any organization which includes employees of a public agency and which has as one of its primary purposes representing such employees in dealings with that public agency over conditions of employment and grievances."

"(j) 'Recognized employee organization' means an employee organization which has been formally acknowledged by the public agency or certified as representing a majority of the employees of an appropriate unit."

"(n) 'Memorandum of agreement' means a written memorandum of understanding arrived at by the representatives of the public agency and a recognized employee organization which may be presented to the governing body of a public employer or its statutory representative and to the membership of such organization for appropriate action."

"(t) 'Conditions of employment' means salaries, wages, hours of work, vacation allowances, sick and injury leave, number of holidays, retirement benefits, insurance benefits, wearing apparel, premium pay for overtime, shift differential pay, jury duty and grievance procedures, but nothing in this act shall authorize the adjustment or change of such matters which have been fixed by statute or by the constitution of this state."

K.S.A. 1974 Supp. 75-4327(b) states thus:

"Where an employee organization has been certified by the board as representing a majority of the employees in an appropriate unit, or recognized formally by the public employer pursuant to the provisions of this act, the appropriate public employer shall meet and confer in good faith with such employee organization in the determination of conditions of employment

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of the public employees as provided in this act, and may enter into a memorandum of agreement with such recognized employee organization." (Emphasis supplied.)

K.S.A. 1974 Supp. 75-4327(c) directs that "a recognized employee organization shall represent not less than a majority of the employees of an appropriate unit." This subsection continues thus:

"When a question concerning the designation of an appropriate unit is raised by a public agency, employee organization or by five (5) or more employees, the public employee relations board, at the request of any of the parties, shall investigate such question and, after a hearing, rule on the definition of the appropriate unit in accordance with subsection (e) of this section."
(Emphasis supplied.)

The Board therefore, enters into the determination of the appropriate unit only when the question is not agreed upon. Subsection (e) referred to above, indicates an allowance for voluntary recognition. In setting forth certain relevant factors to be taken into consideration, it prefaces them by this statement;

"(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 . . ." (Emphasis supplied.)

K.S.A. 1974 Supp. 75-4328 provides, in addition, as follows:

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

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K.S.A. 1974 Supp. 75-4329 provides in pertinent part:

"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 . . . board in accordance with section 7 (75-4327) of this act."

K.S.A. 1974 Supp. 75-4327(d) provides thus:

"Following determination of the appropriate unit of employees, the public employee relations board, at the request of the public employer or on petition of employees, shall investigate questions and certify to the parties in writing, the names of the representatives that have been designated for an appropriate unit. The . . . petition shall show the names of not less than thirty percent (30%) of the employees within an appropriate unit. In any such investigation, the board may provide; for an appropriate hearing, shall determine voting eligibility and shall take a secret ballot of employees in the appropriate unit involved to ascertain such representatives for the purpose of formal recognition. Recognition shall be granted only to an employee organization that has been selected, as a representative of an appropriate unit, in a secret ballot election, by a majority of the employees in an appropriate unit who voted at such election . . . The board is authorized to hold elections to determine whether (1) an employee organization should be recognized as the formal representative of employees in a unit; (2) an employee organization should replace another employee organization as the formal representative of employees in a unit; (3) a recognized employee organization should be decertified." (Emphasis supplied.)

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The question whether the Board must conduct the election has been previously considered by this office after a consideration of the foregoing and specifically the underscored language of K.S.A. 1974 Supp. 75-4327. In our opinion issued under the date of June 23, 1972, to Mr. William M. Douglas, we stated:

"The holding of a secret ballot election by the Board is required, in our view, only when it is requested to investigate and certify the name of the representative, as set out in Section 4327, subsection (d). However, we remain persuaded that, whether a representative is determined upon by board certification or by recognition by the public employer 'of its own volition,' binding authority to compel meet and confer procedures and accordingly to enter into enforceable memorandums of agreement under the act arises only when the representative of the appropriate unit has been selected at some point in a secret ballot election although this secret ballot election in instances of voluntary recognition and the absence of dispute is not required to be held, conducted, or reviewed by the Board."

Later we concluded:

"In our estimation, any interpretation that would dispense with the requirement of a secret ballot election as a pre-requisite to formal recognition would subvert the law mandating majority status for an employee organization prior to formal recognition in that any other standard in substitution therefor has the greater potential for subjecting employees to diverse pressures, causing them to make declarations which, if given a secret vote, may perhaps differ when expressed through the ballot box. Additionally, such an interpretation would substitute an administratively variable standard for the clear one expressed to determine majority status."

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Accordingly, where as in the instant case, no election by the members of an appropriate unit has ever been held either under local procedures or under Board control no appropriate unit can be deemed to exist.

K.S.A. 1974 Supp. 75-4332 provides the procedures to be utilized in the event an impasse is reached during the course of meet and confer proceedings. Procedures may differ for employers subject to the budget law and for situations where no provision is included in the memorandum of agreement defining when an impasse is deemed to exist but in any case, the Board is authorized to implement impasse procedures only where a 'recognized employee organization' is involved in the dispute.

The section provides in pertinent part:

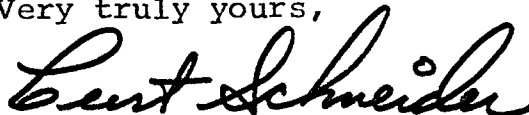
"(a) Public employers may include in memoranda of agreement concluded with recognized employee organizations a provision setting forth the procedures to be invoked in the event of disputes which reach an impasse in the course of meet and confer proceedings. Such memorandum shall define conditions under which an impasse exists, and if the employer is bound by the budget law set forth in K.S.A. 79-2925 et seq., the memorandum shall provide that an impasse is deemed to exist if the parties fail to achieve agreement at least fourteen (14) days prior to budget submission date." (Emphasis supplied.)

"(b) In the absence of such memorandum of procedures, or upon the failure of such procedures resulting in an impasse, either party may request the assistance of the public employee relations board, or the board may render such assistance on its own motion. In either event, if the board determines an impasse exists in meet and confer proceedings between a public employer and a recognized employee organization, the board shall aid the parties in effecting a voluntary resolution of the dispute, and appoint a mediator or mediators, representative of the public, from a list of qualified persons maintained by the board."

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Accordingly, we must conclude that until an election is held, the Board may not implement impasse procedures.

Very truly yours,

A handwritten signature in cursive script that reads "Curt Schneider". The signature is written in black ink and is positioned above the typed name.

CURT T. SCHNEIDER
Attorney General

CTS:DRH:en