

MINUTES OF THE House COMMITTEE ON Labor and Industry

The meeting was called to order by Representative Arthur Douville at
Chairperson

9:00 a.m. on February 5, 1985 in room 526-S of the Capitol.

All members were present except:

Representatives Miller, Patrick, Acheson, Bideau. All excused.

Committee staff present:

All present.

Conferees appearing before the committee:

Mr. Jerry Powell, Dept. of Human Resources

Chairman Douville called the meeting to order. He then called Mr. Jerry Powell to the speakers stand to go over the PEER Act. See attachment number 5. Mr. Powell then went over attachment number 1 with the committee which is a list of the cities and counties under the PEERA and also the number of employees that are within each appropriate unit. Mr. Powell said that all of these units with the exception of a few that are marked are organized and are bargaining today. Mr. Powell said that there are approximately 11,000 state employees that are organized in bargaining units and are represented by the various unions or associations. There are a total of 27,500 employees that are classified and 11,000 that are unclassified.

Mr. Powell then went over attachments 2, 3 and 4.

Chairman Douville asked Mr. Powell the differences between the Professional Negotiations Act and the collective bargaining law. Mr. Powell said there is a difference in verbage, some time frames but other than that the laws are identical, and the procedure fits both.

The meeting was adjourned at 9:55 a.m.

Labo & Industry

2-5-85

1. TERRY L. STEVENS.	KS. FRATERNAL ORDER OF POLICE	TOPEKA.
Richard Funk	KASB	Topeka
SKIP HERR	DHR	
PAUL K DICKHOFF JR	DHR - PERB	TOPEKA
JERRY POWELL	" "	"
WILLIAM HUTCHINSON	DHR	"
Faith Loretto	DOA	Topeka
Harrell Hoffman	DOA - DPS	Topeka
Spud Kent	DOA - DPS	Topeka
Wayne K Wiancki	AFSCME COUNCIL 64	"
PAT SCHAFER	BUDGET DIVISION	TOPEKA
Ralph McGee	MS. AFL-CIO	""
Harry Helser	" " "	" "
Wayne Maucher	" " "	" "

CITIES & COUNTIES UNDER THE PEERA

2-5-85
Att. #1

City of Chanute

city	58
firefighters	16
police	18
TOTAL	92

City of Coffeyville

city	68
electrical	18
firefighters	20
police	27
TOTAL	133

City of Ellis

city	13
police	3
TOTAL	16

City of Hays

firefighters	11
police	22
service and maintenance	38
TOTAL	71

City of Hutchinson

city	143
emergency service dispatchers	7
firefighters	71
police	46
TOTAL	267

City of Junction City

police	16
police (sworn)	33
TOTAL	49

City of Kansas City

dispatchers/PBX Operators	28
firefighters	270
police	276
police garage - mechanics & garagemen	24
TOTAL	598

City of McPherson

firefighters	4
TOTAL	4

City of Manhattan

city	95
firefighters	32
TOTAL	127

City of Osawatomie

city	28
TOTAL	28

City of Russell

decertified	0
TOTAL	0

Attch. 1
2/5/85

City of Topeka

fire	221
fire & police dispatchers II	
communication technicians I	19
park & recreation (decertified)	71
police	226
public housing authority	29
building inspection	8
water	85
water pollution - street	228
zoo (decertified)	15
TOTAL	<u>902</u>

City of Wichita

city	874
firefighters	321
police	304
TOTAL	<u>1,499</u>

*TOTAL CITY EMPLOYEES UNDER THE ACT 3,786

Ellis County

landfill	4
road & bridge	55
sheriff's deputies & jailers	9
TOTAL	<u>68</u>

Norton County

clerical	9
road & bridge	13
TOTAL	<u>22</u>

Phillips County

decertified	0
TOTAL	<u>0</u>

Reno County

courthouse	63
firefighters	21
highway	62
road & bridge	64
sheriff	27
TOTAL	<u>237</u>

Saline County

county	83
sheriff	23
Total	<u>106</u>

Shawnee County

parks & recreation	27
road & bridge	44
sheriff	65
youth center	32
TOTAL	<u>168</u>

*TOTAL COUNTY EMPLOYEES UNDER THE ACT 601

SPECIAL BOARDS UNDER THE PEERA

Topeka Metropolitan Transit Authority

bus drivers & garage mechanics	<u>30</u>
TOTAL	<u>30</u>

Sedgwick County Fire District #1

firefighters	<u>70</u>
TOTAL	<u>70</u>

*TOTAL SPECIAL BOARD EMPLOYEES UNDER THE ACT 100

2-5-85
Att. #2

SENATE

GOVERNOR

APPROVAL

APPOINTS

PERB

JAMES MANGAN - ATTY, DODGE CITY (CHAIR)
ROBERT KENNEDY - ATTY, KANSAS CITY
LOUISA FLETCHER - RET., BONNER SPRINGS
ART VEACH - SEC. TRES., SEU 513, WICHITA
LEE RUGGLES - DIR. EMP. REL. - KSU

DHR (WOLGAST)

DIV. OF EMP & TNG
(GOODMAN)

LMRES
(ABBOTT)

DIV. OF EMP.
(KOTICH)

IND. SAFETY

MEX-AMER AFF

VETS COMM.

WKRS COMP.

EMPLOYMENT STANDARDS

LABOR RELATIONS

POWELL

DICKHOFF

APPRENTICESHIP

LABOR RELATIONS

EMPLOYMENT STDS.

DIR. OF APPR.
CLERICAL

LABOR CONCILIATOR
CLERICAL

HEARING OFFICERS
INVESTIGATORS
CLERICAL

STAFF &
OFFICE SPACE

Attch. 2
2/5/85

PUBLIC EMPLOYEES-KS.

SCHOOL DISTRICT

CERTIFIED TEACHERS

P
N
A

COUNSELORS, NURSES,
SOCIAL WORKERS,
LIBRARIANS, ETC.

CUSTODIANS, SECRETARY
FOOD SERVICE,
BUS DRIVERS, OTHER
BLUE COLLAR

CITY

POLICE

FIRE

OTHER

ALL OTHERS

REFUSE

ROAD & BRIDGE

PUBLIC WORKS

HOUSING AUTHORITY

COMMUNICATIONS

PARK DEPARTMENT

CORRECTIONAL

ETC.

COUNTY

SHERIFF

FIRE DISTRICT

OTHER

ONE UNIT

SPECIAL BOARDS

BPU

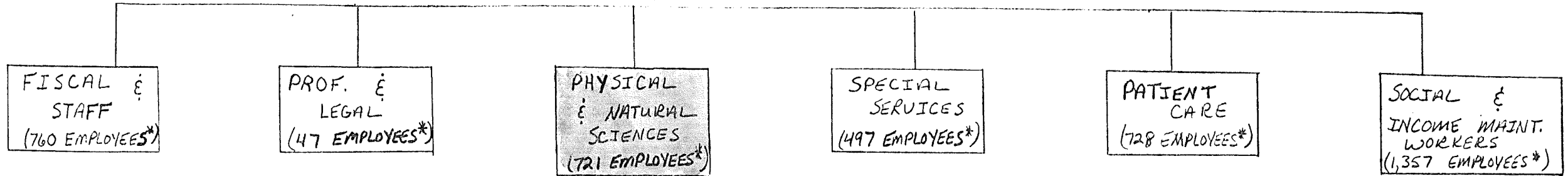
AIRPORT AUTHORITY

CITY - COUNTY
DRAINAGE DISTRICT

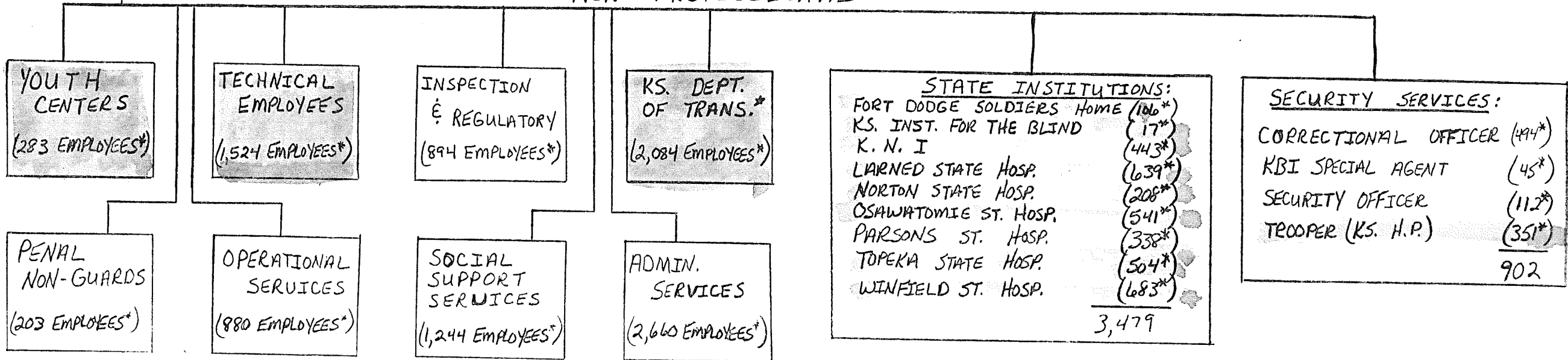
HOSPITAL BOARD
OF TRUSTEES

CLASSIFIED STATE EMPLOYEES

PROFESSIONAL



NON - PROFESSIONAL

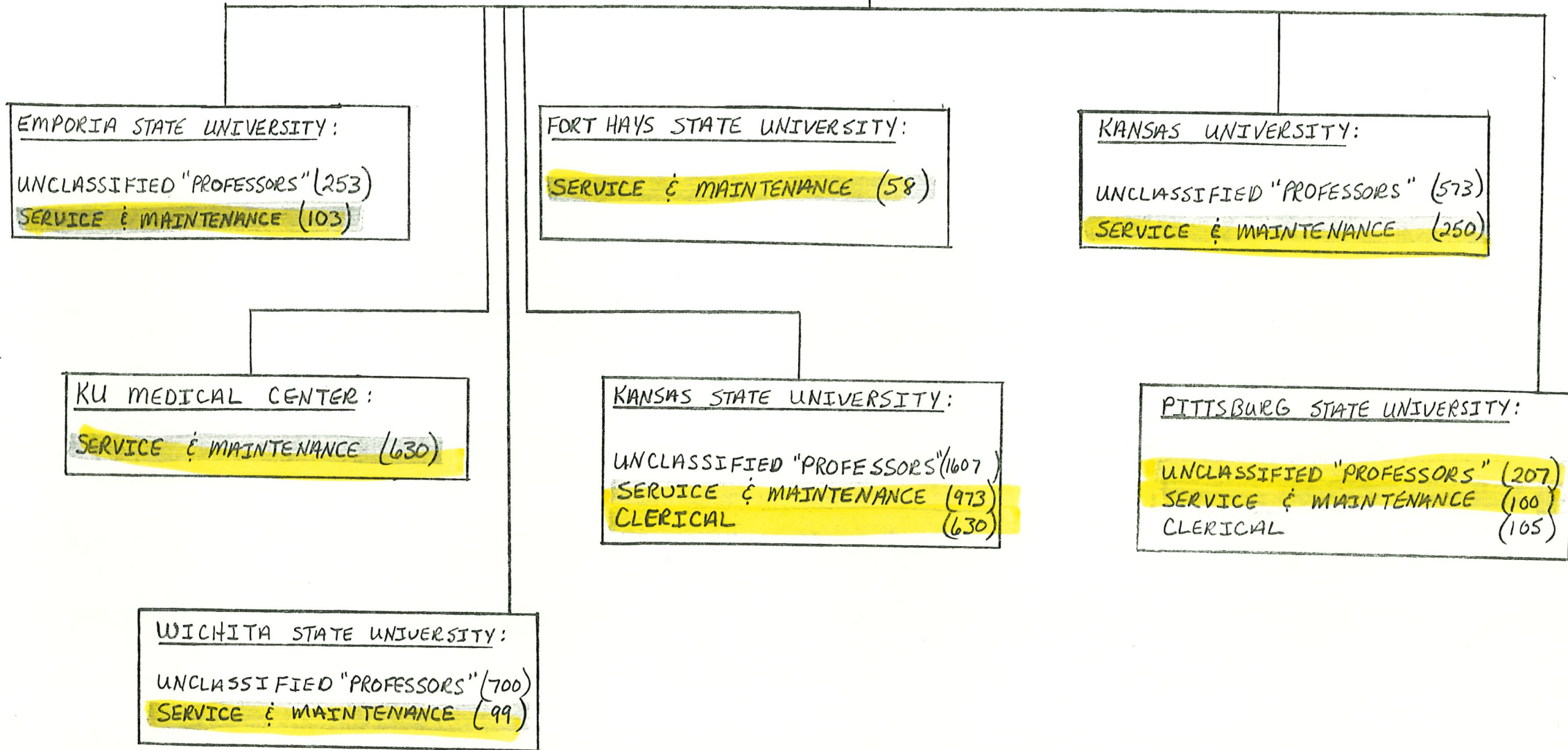


* THE NUMBERS REPRESENT 1974 FIGURES FOR EMPLOYEES WITHIN EACH UNIT.

THOSE UNITS ACCENTED BY YELLOW ARE RECOGNIZED BARGAINING UNITS.

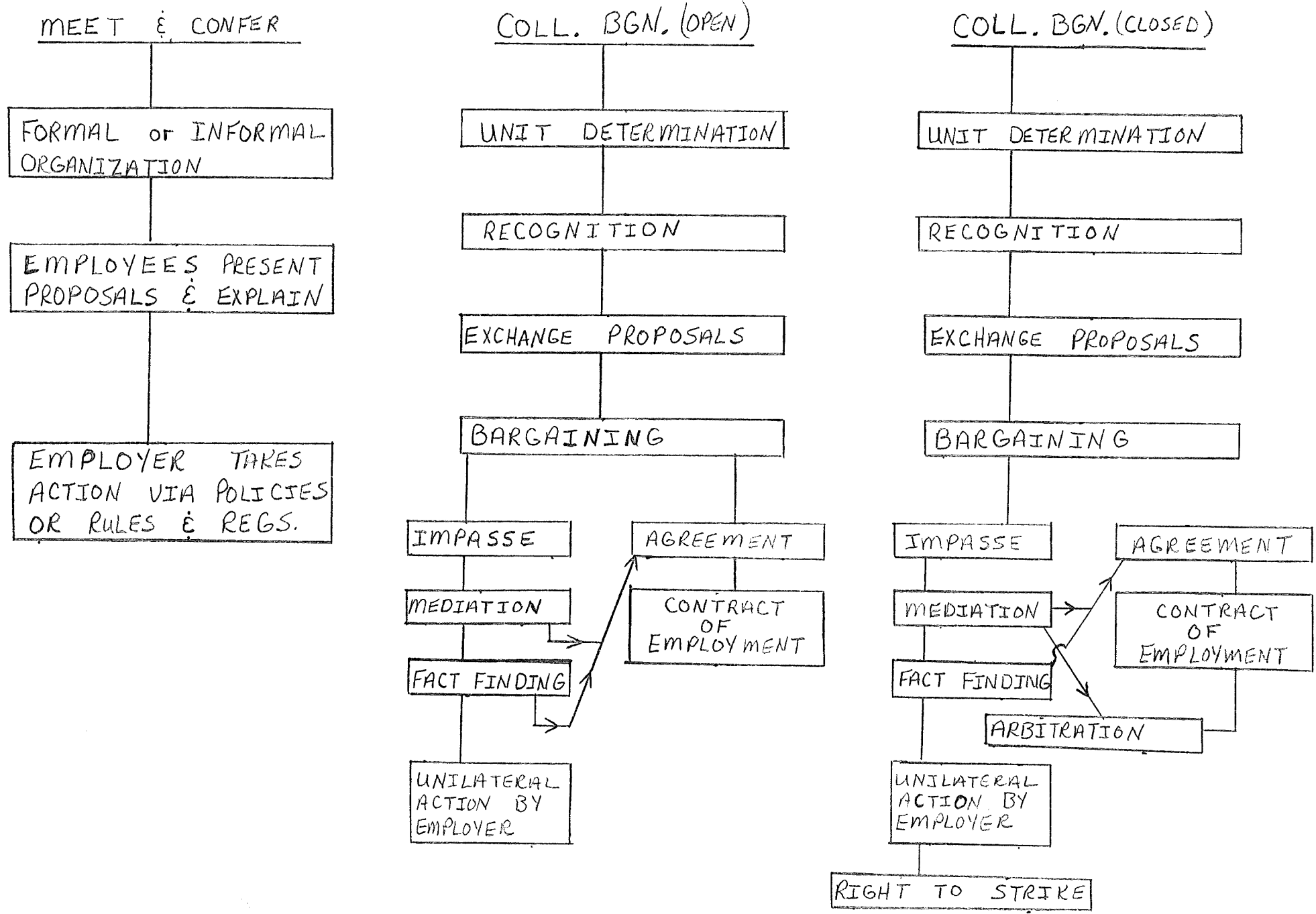
KANSAS DEPARTMENT OF TRANSPORTATION HAS SIX (6) GEOGRAPHICAL BARGAINING UNITS.

STATE INSTITUTIONS OF HIGHER EDUCATION



THE UNITS THAT ARE SHADED ARE ORGANIZED BARGAINING UNITS.

TYPES OF LAWS



THE BARGAINING PROCESS

UNORGANIZED

ORGANIZED

UNIT DETERMINATION

PETITION (30%)

ELECTION

CERTIFICATION

BARGAINING

CONTRACT

CONTRACT ADMINISTRATION

PROHIBITED PRACTICE

Latest Copy

Non-professional Unit

TECHNICAL EMPLOYEES AT STATE AGENCIES

EXCEPT EMPLOYEES AT: Universities

*2-5-85
Att. #3*

All employees, with the above-noted exceptions, who are employed in any of the following job classifications are hereby determined to be within the Technical Non-professional Unit.

- | | |
|---------------------------------------|------------------------------------|
| Agricultural Laboratory Technician | Management Information and Service |
| Agricultural Technician | Delivery Analyst |
| Air Pollution Control Technician | Medical Technician |
| Anatomical Technician | Medical Technologist |
| Artificial Insemination Technician | Mental Health Technician |
| Audio-Visual Education Technician | Motion Picture Projectionist |
| | Museum Artist |
| Barber | Museum Assistant |
| | |
| Chemical/Biological Technician | Nuclear Reactor Operator |
| Computer Operator | Nuclear Reactor Operator Trainee |
| Computer Operator Trainee | |
| Consultant for the Handicapped | Operating Room Technician |
| Contract Specialist (CETA) | |
| Cosmetologist | Petroleum Technician |
| | Photographer |
| Dairy Foods Processor | Photographic Processor |
| Dark Room Technician | Pilot |
| Dental Assistant | Planning Specialist (CETA) |
| Dietetic Technician, | Preparator in Vertebrate Zoology |
| Nutritional Care | Programmer |
| | Psychometric Technician |
| Electrocardiographic (EKG) Technician | |
| Electronic Communication Technician | Radiologic Instrument Inspector |
| Electronics Technician | Radiological Instrument Technician |
| Engineering Technician | Radiologic Specialty Technologist |
| Entomologist Aide | Radiologic Technologist, |
| | Diagnostic X-ray |
| Field Representative, | Radiologic Technologist, |
| VD Control | Radiation Therapy |
| Fish and/or Game Biology Aide | Radio Telephone Operator |
| Fish Culturist | Research Instrument Operator |
| Forestry Technician | Respiratory Therapist |
| | Respiratory Therapy Equipment Aide |
| Gamekeeper | Right-of-Way Agent |
| Glass Blower | |
| Grain Mill Technician | Sanitarian Technician |
| | Seed Analyst |
| Identification Technician | Sheltered Workshop Technician |
| Illustrator | Stage Manager |
| Instrument Maker | |
| Interior Decorator | Tabulating Equipment Operator |
| | Tape Librarian |
| Laboratory Technician | Tower Technician |
| Lock System Specialist | |
| | Van de Graaff Accelerator Operator |

All grades included unless confidential or supervisory.
Approximately 1,524 employees.

*Attch. 3
2/5/85*

Non-professional Unit

INSPECTION AND REGULATORY EMPLOYEES AT STATE AGENCIES

EXCEPT EMPLOYEES AT: Universities

All employees, with the above-noted exceptions, who are employed in any of the following job classifications are hereby determined to be within the Inspection and Regulatory Non-professional Unit.

Agricultural Control Inspector
Anhydrous Ammonia Technician

Barber Shop Inspector
Beauty Shop Inspector
Building and Inflammable Liquids
Safety Inspector

Correctional Facilities Specialist

Dairy Products and Facilities
Inspector
Driver License Examiner
Drug Inspector

Egg Inspector
Embalming Board Inspector

Fire and Safety Officer
Fire/Arson Investigator
Fire Protection Technical Advisor
Fire, Safety and Sanitation
Consultant
Food and Drug Inspector
Food Service and Lodging Inspector

Game Protector
Grain Inspector

Hopper and Track Scale Inspector

Industrial Inspector

Liquor Control Investigator
Livestock Brand Inspector
Livestock Inspector

Meat Inspector
Mine Inspector

Narcotics Violation Investigator

Port of Entry Inspector

Safety Specialist
Special Investigator

Vehicle Regulation Inspector

Warehouse Examiner
Weighmaster
Weights and Measures Inspector

All grades included unless confidential or supervisory.
Approximately 894 employees.

Non-professional Unit

YOUTH CENTER EMPLOYEES

All Youth Center employees who are employed in any of the following job classifications are hereby determined to be within the Youth Center Non-professional Unit.

Account Clerk	Machinist
Activity Therapy Aide	Maintenance Carpenter
Activity Therapy Trainee	Maintenance Electrician
Addressograph Operator	Maintenance Engineer
Athletic Instructor	Maintenance Mason
Automotive Driver	Maintenance Painter
Automotive Mechanic	Maintenance Plumber
Automotive Mechanic's Helper	Meat Cutter
Automotive Service Worker	Messenger
Baker	Official Reporter
Bookkeeping Machine Operator	Petroleum Proration Analyst
Calculating Machine Operator	Pharmacist Intern
Cashier	Power Plant Operator
Claims Examiner	Practical Nurse
Clerk	Prison Medical Assistant
Clerk Stenographer	Program Aide (Disadvantaged)
Clerk Typist	Programmed Typing and Data Machines Operator
Cook	Program Worker (Disadvantaged)
Cottage Parent	Psychiatric Aide
Custodial Supervisor	Psychiatric Security Aide
Custodial Worker	Public Service Career Trainee
Data Entry Equipment Operator	Refrigeration and Air Conditioning Mechanic
Domestic Worker	Reimbursement Officer
Dormitory Director	Sales Representative, Correctional Industries
Drug Clerk	Seamstress
Duplicating Machine Operator	Secretary
Electronic Control Center Mechanic	Sheet Metal Worker
Elevator Operator	Social Clerk Aide
Equipment Operator	Social Worker Aide
Farmer	Social Worker Trainee
Florist	Steam Fitter
Food Service Worker	Storekeeper
Gardener	Switchboard Operator
General Maintenance and Repair Technician	Tourist Guide
Horticulturist	Upholstery and Shoe Repair Specialist
Interviewer	Vanitytypist
Laborer	Vocational Evaluator
Laundry Manager	Vocational Instructor
Laundry Worker	Welder
Law Clerk	Word Processing Copysetter
Law Enforcement Telecommunica- tions Operator	Word Processing Typist
Library Assistant	
Library Clerk	

All grades included unless confidential or supervisory.
Approximately 283 employees.

Non-professional Unit

PENAL - NON-GUARD EMPLOYEES AT STATE PENAL INSTITUTIONS

All penal non-guard employees at penal institutions who are employed in any of the following job classifications are hereby determined to be within the Penal Non-Guard Non-professional Unit.

Account Clerk	Machinist
Activity Therapy Aide	Maintenance Carpenter
Activity Therapy Trainee	Maintenance Electrician
Addressograph Operator	Maintenance Engineer
Athletic Instructor	Maintenance Mason
Automotive Driver	Maintenance Painter
Automotive Mechanic	Maintenance Plumber
Automotive Mechanic's Helper	Meat Cutter
Automotive Service Worker	Medical Records Technician
	Messenger
Baker	
Bookkeeping Machine Operator	Official Reporter
Calculating Machine Operator	Petroleum Proration Analyst
Cashier	Pharmacist Intern
Claims Examiner	Power Plant Operator
Clerk	Practical Nurse
Clerk Stenographer	Prison Medical Assistant
Clerk Typist	Program Aide (Disadvantaged)
Cook	Programmed Typing and Data Machines Operator
Cottage Parent	Program Worker (Disadvantaged)
Custodial Supervisor	Psychiatric Aide
Custodial Worker	Psychiatric Security Aide
	Public Service Career Trainee
Data Entry Equipment Operator	
Domestic Worker	Refrigeration and Air Conditioning Mechanic
Dormitory Director	Reimbursement Officer
Drug Clerk	
Duplicating Machine Operator	
Electronic Control Center Mechanic	Sales Representative, Correctional Industries
Elevator Operator	Seamstress
Equipment Operator	Secretary
	Sheet Metal Worker
Farmer	Social Clerk Aide
Florist	Social Worker Aide
Food Service Worker	Social Worker Trainee
	Steam Fitter
Gardener	Storekeeper
General Maintenance and Repair Technician	Switchboard Operator
Horticulturist	Tourist Guide
Hospital Admitting Clerk	
Hospital Attendant	Upholstery and Shoe Repair Specialist
Hospital Attendant Trainee	
Hospital Trainee	Vanitytypist
	Vocational Evaluator
Interviewer	Vocational Instructor
Laborer	Welder
Laundry Manager	Word Processing Copysetter
Laundry Worker	Word Processing Typist
Law Clerk	
Law Enforcement Telecommunica- tions Operator	
Library Assistant	
Library Clerk	

All grades included unless confidential or supervisory.
Approximately 203 employees.

Non-professional Unit

ADMINISTRATIVE SERVICES EMPLOYEES AT STATE AGENCIES

EXCEPT EMPLOYEES AT: Universities
 Social & Rehabilitation Services
 Department of Transportation
 Penal Institutions
 State Institutions *Hospitals*
 Youth Centers
 FT Detention *Center*

All employees, with the above-noted exceptions, who are employed in any of the following job classifications are hereby determined to be within the Administrative Services Non-professional Unit.

Account Clerk	Official Reporter
Activity Therapy Aide	Pharmacist Intern
Addressograph Operator	Petroleum Proration Analyst
Bookkeeping Machine Operator	Program Aide (Disadvantaged)
Calculating Machine Operator	Programmed Typing and Data Machines Operator
Cashier	Program Worker (Disadvantaged)
Civil Defense Area Coordinator	Public Service Career Trainee
Civil Rights Intake Worker	Radiological Defense Officer
Claims Examiner	Reimbursement Officer
Clerk	Sales Representative, Correctional Industries
Clerk Stenographer	Secretary
Clerk Typist	Social Clerk Aide
Communications and Shelter Officer	Specialized Tax Analyst
Cottage Parent	Switchboard Operator
Data Entry Equipment Operator	Tax Examiner
Dormitory Director	Transcript Analyst
Drug Clerk	Varsitytypist
Duplicating Machine Operator	Veterans Service Representative
Hospital Admitting Clerk	Vocational Evaluator
Interviewer	Vocational Instructor
Law Clerk	Word Processing Copysetter
Law Enforcement Telecommunications Operator	Word Processing Typist
Library Assistant	
Library Clerk	
Medical Records Technician	
Messenger	

All grades included unless confidential or supervisory.
 Approximately 2,660 employees.

Non-professional Unit

OPERATIONAL SERVICES EMPLOYEES AT STATE AGENCIES

EXCEPT EMPLOYEES AT: Universities
 Social & Rehabilitation Services
 Department of Transportation
 Penal Institutions
 State Institutions
 Youth Centers

All employees, with the above-noted exceptions, who are employed in any of the following job classifications are hereby determined to be within the Operational Services Non-professional Unit.

Automotive Driver	Laborer
Automotive Mechanic	Lake and Grounds Keeper
Automotive Mechanic's Helper	Laundry Manager
Automotive Service Worker	Laundry Worker
Baker	Lifeguard
Capitol Area Guide	Machinist
Chief Capitol Area Guide	Maintenance Carpenter
Cook	Maintenance Electrician
Custodial Supervisor	Maintenance Engineer
Custodial Worker	Maintenance Mason
Domestic Worker	Maintenance Painter
Electronic Control Center Mechanic	Maintenance Plumber
Elevator Operator	Meat Cutter
Equipment Operator	Museum Caretaker
Farmer	Park Attendant
Florist	Power Plant Operator
Food Service Worker	Refrigeration and Air Conditioning Mechanic
Gardener	Seamstress
General Maintenance and Repair Technician	Sheet Metal Worker
Grain Sampler-Weigher	Steam Fitter
Horticulturist	Storekeeper
Hospital Attendant	Tourist Guide
	Upholstery and Shoe Repair Specialist
	Welder

All grades included unless confidential or supervisory.
 Approximately 880 employees.

Non-professional Unit

EMPLOYEES AT KANSAS SOLDIERS HOME

All employees at Kansas Soldiers Home who are employed in any of the following job classifications are hereby determined to be within the Kansas Soldiers Home Non-professional Unit.

Account Clerk	Machinist
Activity Therapy Aide	Maintenance Carpenter
Activity Therapy Trainee	Maintenance Electrician
Addressograph Operator	Maintenance Engineer
Athletic Instructor	Maintenance Mason
Automotive Driver	Maintenance Painter
Automotive Mechanic	Maintenance Plumber
Automotive Mechanic's Helper	Meat Cutter
Automotive Service Worker	Medical Records Technician
Baker	Messenger
Bookkeeping Machine Operator	Official Reporter
Calculating Machine Operator	Petroleum Proration Analyst
Cashier	Pharmacist Intern
Claims Examiner	Power Plant Operator
Clerk	Practical Nurse
Clerk Stenographer	Program Aide (Disadvantaged)
Clerk Typist	Programmed Typing and Data Machines Operator
Cook	Program Worker (Disadvantaged)
Cottage Parent	Psychiatric Aide
Custodial Supervisor	Psychiatric Security Aide
Custodial Worker	Public Service Career Trainee
Data Entry Equipment Operator	Refrigeration and Air Conditioning Mechanic
Domestic Worker	Reimbursement Officer
Dormitory Director	Seamstress
Drug Clerk	Secretary
Duplicating Machine Operator	Sheet Metal Worker
Electronic Control Center Mechanic	Social Clerk Aide
Elevator Operator	Social Worker Aide
Equipment Operator	Social Worker Trainee
Farmer	Steam Fitter
Florist	Storekeeper
Food Service Worker	Switchboard Operator
Gardener	Tourist Guide
General Maintenance and Repair Technician	Upholstery and Shoe Repair Specialist
Horticulturist	Vanitytypist
Hospital Admitting Clerk	Vocational Evaluator
Hospital Attendant	Vocational Instructor
Hospital Attendant Trainee	Welder
Hospital Trainee	Word Processing Copysetter
Interviewer	Word Processing Typist
Laborer	
Laundry Manager	
Laundry Worker	
Law Clerk	
Law Enforcement Telecommunica- tions Operator	
Library Assistant	
Library Clerk	

All grades included unless confidential or supervisory.
Approximately 106 employees.

Non-professional Unit

EMPLOYEES AT STATE INSTITUTIONS

All employees at State institutions who are employed in any of the following job classifications are hereby determined to be within the State institutional unit at which they are employed.

Account Clerk	Machinist
Activity Therapy Aide	Maintenance Carpenter
Activity Therapy Trainee	Maintenance Electrician
Addressograph Operator	Maintenance Engineer
Athletic Instructor	Maintenance Mason
Automotive Driver	Maintenance Painter
Automotive Mechanic	Maintenance Plumber
Automotive Mechanic's Helper	Meat Cutter
Automotive Service Worker	Medical Records Technician
	Messenger
Baker	
Bookkeeping Machine Operator	Official Reporter
Calculating Machine Operator	Petroleum Proration Analyst
Cashier	Pharmacist Intern
Claims Examiner	Power Plant Operator
Clerk	Practical Nurse
Clerk Stenographer	Program Aide (Disadvantaged)
Clerk Typist	Programmed Typing and Data
Cook	Machines Operator
Cottage Parent	Program Worker (Disadvantaged)
Custodial Supervisor	Psychiatric Aide
Custodial Worker	Psychiatric Security Aide
	Public Service Career Trainee
Data Entry Equipment Operator	
Domestic Worker	Refrigeration and Air
Dormitory Director	Conditioning Mechanic
Drug Clerk	Reimbursement Officer
Duplicating Machine Operator	
Electronic Control Center Mechanic	Seamstress
Elevator Operator	Secretary
Equipment Operator	Sheet Metal Worker
	Social Clerk Aide
	Social Worker Aide
	Social Worker Trainee
Farmer	Steam Fitter
Florist	Storekeeper
Food Service Worker	Switchboard Operator
Gardener	
General Maintenance and	Tourist Guide
Repair Technician	
Horticulturist	Upholstery and Shoe Repair Specialist
Hospital Admitting Clerk	
Hospital Attendant	Vanitytypist
Hospital Attendant Trainee	Vocational Evaluator
Hospital Trainee	Vocational Instructor
Interviewer	Welder
	Word Processing Copysetter
	Word Processing Typist
Laborer	
Laundry Manager	
Laundry Worker	
Law Clerk	
Law Enforcement Telecommunica-	
tions Operator	
Library Assistant	
Library Clerk	

All grades included unless confidential or supervisory.
Approximately 3,356 employees.

Non-professional Unit

DEPARTMENT OF TRANSPORTATION EMPLOYEES

All Department of Transportation employees who are employed in any of the following job classifications are hereby determined to be within the Department of Transportation district unit in which his/her employment is located (seven geographical units; see attached map).

- | | |
|------------------------------------|---------------------------------------|
| Account Clerk | Machinist |
| Addressograph Operator | Maintenance Carpenter |
| Automotive Driver | Maintenance Electrician |
| Automotive Mechanic | Maintenance Engineer |
| Automotive Mechanic's Helper | Maintenance Mason |
| Automotive Service Worker | Maintenance Painter |
| | Maintenance Plumber |
| Bookkeeping Machine Operator | Messenger |
| | |
| Calculating Machine Operator | Official Reporter |
| Cashier | |
| Claims Examiner | Petroleum Proration Analyst |
| Clerk | Power Plant Operator |
| Clerk Stenographer | Programmed Typing and Data |
| Clerk Typist | Machines Operator |
| Custodial Supervisor | Public Service Career Trainee |
| Custodial Worker | |
| | |
| Data Entry Equipment Operator | Refrigeration and Air |
| Duplicating Machine Operator | Conditioning Mechanic |
| | |
| Electronic Control Center Mechanic | Secretary |
| Elevator Operator | Sheet Metal Worker |
| Equipment Operator | Sign Shop Worker |
| | Steam Fitter |
| Farmer | Storekeeper |
| Florist | Switchboard Operator |
| | |
| Gardener | Tourist Guide |
| General Maintenance and | |
| Repair Technician | Upholstery and Shoe Repair Specialist |
| | |
| Horticulturist | Vanitytypist |
| | Vocational Evaluator |
| Interviewer | Vocational Instructor |
| | |
| Laborer | Welder |
| Law Clerk | Word Processing Copysetter |
| Library Assistant | Word Processing Typist |
| Library Clerk | |

All grades included unless confidential or supervisory.
Approximately 2,084 employees.

Non-professional Unit

SOCIAL SERVICES FIELD EMPLOYEES SPSEXCEPT EMPLOYEES OF: Institutions
Youth Centers

All Dept. of Social & Rehabilitation Services employees, with the above-noted exceptions, who are employed in any of the following job classifications are hereby determined to be within the Social Services Field Employees regional unit in which his/her employment is located (six geographical units; see attached map).

Account Clerk
Activity Therapy Aide
Activity Therapy Trainee
Addressograph Operator
Automotive Driver
Automotive Mechanic
Automotive Mechanic's Helper
Automotive Service Worker

Machinist
Maintenance Carpenter
Maintenance Electrician
Maintenance Engineer
Maintenance Mason
Maintenance Painter
Maintenance Plumber
Messenger

Bookkeeping Machine Operator

Official Reporter

Calculating Machine Operator
Cashier
Claims Examiner
Clerk
Clerk Stenographer
Clerk Typist
Cook
Cottage Parent
Custodial Supervisor
Custodial Worker

Petroleum Proration Analyst
Power Plant Operator
Program Aide (Disadvantaged)
Programmed Typing and Data
Machines Operator
Program Worker (Disadvantaged)
Public Service Career Trainee

Data Entry Equipment Operator
Domestic Worker
Dormitory Director
Drug Clerk
Duplicating Machine Operator

Refrigeration and Air
Conditioning Mechanic
Reimbursement Officer

Electronic Control Center Mechanic
Elevator Operator
Equipment Operator

Secretary
Sheet Metal Worker
Social Clerk Aide
Social Worker Aide
Social Worker Trainee
Steam Fitter
Storekeeper
Switchboard Operator

Farmer
Florist

Tourist Guide

Gardener
General Maintenance and
Repair Technician

Upholstery and Shoe Repair Specialist

Horticulturist

Varsitytypist
Vocational Evaluator
Vocational Instructor

Interviewer

Welder
Word Processing Copysetter
Word Processing Typist

Laborer
Law Clerk
Library Assistant
Library Clerk

All grades included unless confidential or supervisory.
Approximately 1,244 employees.

Non-professional Unit

SECURITY SERVICES EMPLOYEES AT STATE AGENCIES

EXCEPT EMPLOYEES AT: Universities

All employees, with the above-noted exceptions, who are employed in any of the following job classifications are hereby determined to be within that Security Services Non-professional Unit.

Correctional Officer - Unit A - Approximately 494 employees.

KBI Special Agent - Unit B - Approximately 45 employees.

Security Officer and Patrolman - Unit C - Approximately 112 employees.

Trooper (Kansas Highway Patrol) - Unit D - Approx. 351 employees.

All grades included unless confidential or supervisory.

Professional Unit

PHYSICAL AND NATURAL SCIENCES EMPLOYEES AT STATE AGENCIES

EXCEPT EMPLOYEES AT: Universities

All employees, with the above-noted exceptions, who are employed in any of the following job classifications are hereby determined to be within the Physical and Natural Sciences Professional Unit.

Air Pollution Control Engineer
Air Quality Engineer
Architect

Ceramist
Chemist
Civil Engineer

Ecological Specialist
Engineer in Training
Entomologist
Environmental Pesticide Specialist
Epidemiologist

Fish and/or Game Biologist
Forensic Chemist

Geologist

Hydrologist

Landscape Architect

Mechanical Engineer
Microbiologist

Paleontologist
Petroleum Research Specialist
Pharmacist

Plant Pathologist
Public Health Physicist

Radiation Protection Specialist

Sanitarian
Sanitary Engineer

Utilities Engineer

Vertebrate Zoologist
Veterinarian

Water Quality Biologist

All grades included unless confidential or supervisory.
Approximately 721 employees.

Professional Unit

PATIENT CARE EMPLOYEES AT STATE AGENCIES

EXCEPT EMPLOYEES AT: Universities

All employees, with the above-noted exceptions, who are employed in any of the following job classifications are hereby determined to be within the Patient Care Professional Unit.

Activity Therapist
Audiologist

Consultant Nurse (C.C.)

Dietitian
District Nurse (C.C.)

Graduate Nurse

Heart-Lung Machine Technician

Nutritionist

Psychiatric Nurse
Psychologist
Psychology Trainee
Public Health Dental Hygienist
Public Health Nurse

Speech Pathologist

All grades included unless confidential or supervisory.
Approximately 1,200 employees.

Professional Unit

FISCAL AND STAFF EMPLOYEES AT STATE AGENCIES

EXCEPT EMPLOYEES AT: Universities

All employees, with the above-noted exceptions, who are employed in any of the following job classifications are hereby determined to be within the Fiscal and Staff Professional Unit.

Accountant	Industrial Training Programs Specialist
Administrative Intern	Informational Writer
Administrative Officer	Information Representative
Agricultural Marketing Specialist	Insurance Claims Investigator (W.C.)
Apprentice Training Representative	Insurance Securities Officer
Archivist	Intergovernmental Analyst
Auditor	
Buyer	Labor-Management Relations Specialist
Central Accountant	Law Enforcement Specialist
Civil Rights Investigator	Librarian
Common Carrier Rates Analyst	Media Production Technician
Community Program Consultant	Nursing Education Consultant
Contract Compliance Field Investigator	Policyholders Service Representative
Coordinator of Childrens Services	Property Appraiser
Disability Examiner	Property Appraiser Trainee
Emergency Resource Planning Officer	Public Relations Director
Employment Security Consultant	Radio Announcer/Producer
Extension Nutritional Assistant	Real Estate Specialist
Federal Surplus Property Agent	Research Analyst
Field Representative (E.S.)	Retirement Field Representative
Financial Examiner	Revenue Auditor
Financial Examiner Trainee	Revenue Field Representative
Health Facility Surveyor	School Lunch Specialist
Health Planning Consultant	Securities Examiner
Health Planning Project Reviewer	Specifications and Standards Engineer
Industrial Therapy Coordinator	State Planning Coordinator
	Training Officer (Meat Inspector)
	Water Resources Economist

All grades included unless confidential or supervisory.
Approximately 760 employees.

Professional Unit

SPECIAL SERVICES EMPLOYEES AT STATE AGENCIES

EXCEPT EMPLOYEES AT: Universities

All employees, with the above-noted exceptions, who are employed in any of the following job classifications are hereby determined to be within the Special Services Professional Unit.

Alcoholism Counselor	Home Teacher for the Blind
Alcoholism Field Representative	Industrial Therapy Coordinator
Alcoholism Program Specialist	Inmate Classification Officer
Alcoholism Training and Education Director	Institutional Educator
Archeologist	Instructor for the Blind
Area Manpower Planning Coordinator	Intergroup Activities Specialist
Clinical Chaplain	
Clinical Pastoral Trainee	Occupational Analyst
Community Employment Planning Coordinator	Planner
Community Resource Specialist, Probation and Parole	Probation and Parole Officer
Compliance Representative	Public Health Educator
Counselor	Social Work Instructor
Counselor Trainee	
Economic Development Representative	Training Officer,
Education Certification Specialist	Correctional Institutions
Education Program Specialist	Vocational Rehabilitation
Extension Representative	Counselor
Group Care Specialist	Volunteer Services Coordinator

Professional Unit

LEGAL EMPLOYEES AT STATE AGENCIES

EXCEPT EMPLOYEES OF: Universities

All employees, with the above-noted exceptions, who are employed in any of the following job classifications are hereby determined to be within the Legal Professional Unit.

Appeals Referee
Attorney

Civil Rights Hearing Examiner

All grades included unless confidential or supervisory.
Approximately 47 employees.

Professional Unit

SOCIAL WORKER AND INCOME MAINTENANCE WORKER EMPLOYEES

All employees who are employed in any of the following job classifications are hereby determined to be within the Social Worker and Income Maintenance Worker Professional Unit.

Income Maintenance Worker

Social Worker

All grades included unless confidential or supervisory.
Approximately 1,357 employees.

CONCLUSION AND DISCUSSION

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AH #4

75-CAE-20-1980 and 75-CAE-21-1980 were consolidated for hearing by the examiner.

The issues in the two cases are interrelated and were simultaneously addressed by the parties in hearing and in briefs. 72-CAE-21-1980 raised a question of negotiability. Such questions are primarily questions of law, however, testimony and evidence was taken relating to past practice and individual concepts of the subject, "retrenchment".

75-CAE-20-1980 alleges that the Pittsburg State University administrative team's actions during the 1981-1982 meet and confer sessions constitute a violation of the prohibited practice section of the Act. There appears to be little disagreement of factual matters surrounding the meet and confer sessions. Rather respondent argues that the preceding memorandum of agreement dictated the parties' rights and obligations for meeting and conferring during the life of the existing agreement.

A preliminary issue was raised by the respondent, Board of Regents, as named in the complaint by Pittsburg State University/KHEA. The Board of Regents has questioned that they are the proper respondent in light of a "local agreement" between the parties. Board of Regents contends that the Pittsburg State University administration is the appropriate respondent since only "local" issues were discussed by the two teams. Respondent admits that Board of Regents could have been the appropriate respondent if the "local agreement" had not been in effect and the parties had discussed issues subject to Regents wide policy.

A side issue was raised by respondent in its Motion to Compel witness John Loyd to answer certain questions relating to complainant's standing to file the charges contained in 75-CAE-20-1980 and 75-CAE-21-1980. The cases indicate that the charges were filed by Mr. Robert Medford on behalf of Pittsburg State University/KHEA. The charges were filed by Mr. Medford on June 10, 1980 and June 27, 1980. On July 22, 1980 the Secretary of State issued a Certificate of Dissolution to the KHEA. After hearing oral argument by the parties the hearing examiner denied respondent's Motion to Compel.

The examiner will first address the issue of the "appropriate respondent". K.S.A. 75-4333 (b) provides:

"It shall be a prohibited practice for a public employer or its designated representative willfully to:" (Emphasis added)

There appears to be little argument that the Kansas Board of Regents is the appropriate public employer. The Board of Regents, or representatives thereof, has in the past been an active participant in the meet and confer process. They have been

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represented at the bargaining table and have on past occasions signed the resultant memorandum of agreement. There is also little argument that during the past fact-finding process an agreement was entered into to continue meet and confer under a local arrangement. The examiner is confused regarding the definition of the local agreement. Does "local agreement" indicate that only "local issues" are to be discussed or does the agreement indicate that only "local" or "on-campus people" will be utilized? There is also the possibility that both conditions must be met in order to comply with the agreement. The initial concept of meeting on a "localized" basis stems from the January 3, 1977 letter from Mr. Partridge to Mr. Cope. This letter indicates that the local concept was for "local people" to discuss "local matters". The same letter indicates that as an alternative to the local concept a representative of the Department of Administration and Mr. Partridge would meet with the Pittsburg State University/KHEA team on specific dates. President Appleberry indicates his understanding of the agreement to meet in his correspondence to Dr. James Basham. His understanding was to resume discussions at the local level and discuss issues that had only campus wide impact. President Appleberry also states that the composition of the Pittsburg State University team should change with the resumption of discussions with an impact beyond the local campus. He proposes that in such a case the current team be retained and that such team be argued by a representative of the Department of Administration.

In order to determine whether or not this "local agreement" continued in future years we must consider the composition of the teams, the definition of issues of local campus impact, and the parties approving any resultant memorandum of agreement.

The transcript indicates that representatives of the Department of Administration, on occasion, have met as members of the Pittsburg State University bargaining team. The transcript further indicates that Mr. Partridge participated in the preparation of materials to be presented at the bargaining table. Testimony and exhibits show that Board of Regents members were apprised throughout the years of the process and progress at the bargaining table. Attorney Kauffman gave testimony regarding the "local impact" vs. "regents wide impact" of mandatorily negotiable terms and conditions of employment. His testimony indicates to the examiner that even he as attorney for Pittsburg State University and attorney for Board of Regents can not categorically state which terms and conditions are local and which are Regents wide. Rather one must consider not only the various proposals but also the resulting language agreed upon by the parties at the table. Mr. Kauffman testified that a very wide grant of authority was given by the Board of Regents to President Appleberry to administer

the affairs of the institution. Mr. Kauffman defines local issues to be those issues over which the chief executive officer of the institution has the authority to resolve. The examiner finds nothing in the hearing record to define the scope of this wide grant of authority. Therefore, it is reasonable to assume that such authority has been delegated to President Appleberry but that the Board of Regents has not relinquished its authority to overrule President Appleberry at any time. Exhibits show that Board of Regents members agree that authority to negotiate at a "local level" was indeed granted to President Appleberry at sometime. Further that they had complete confidence in President Appleberry's ability. At least two members of the Board of Regents believe that they have been informed by President Appleberry or Mr. Kauffman regarding the bargaining process. Regent Smith perceives that Board approval of previous memorandums of agreement did, in fact, occur when "... we were informed and we took no action...". The Regents members state that they gave no direction to the Pittsburg State University bargaining team regarding bargaining tactics or prohibited practice charges. The members were confident that the Pittsburg State University team and Mr. Partridge were more capable of understanding the meet and confer process. The Pittsburg State University/KHEA team has in each year subsequent to 1977 placed subjects on the table which were, in their eyes, of Regents wide impact.

In summary, there was an agreement to meet and confer concerning local issues only, pending the issuance of the 1976-1977 fact-finding report. At some time subsequent to that agreement Mr. Hoffman of the Department of Administration was added to the Pittsburg State University bargaining team. At least one Pittsburg State University proposal was prepared by someone other than a "local" team member. Pittsburg State University/KHEA attempted to negotiate subjects of a Regents wide impact. At least two Regents members were informed of the bargaining process and the memorandums of agreement. These Regents members believed that they retained the authority to disapprove a memorandum of agreement or to remove President Appleberry in the event the Regents disagreed with President Appleberry's methods or results.

The hearing examiner is of the opinion that the Regents were in control of the process and that their failure to act was based upon their approval of President Appleberry's methods and results. The examiner is convinced that the so called local agreement was never intended by either party to continue in effect after the the fact-finding report was issued. The Pittsburg State University team should have been placed on notice that Pittsburg State University/KHEA deemed the local agreement

to have ended when the Pittsburg State University/KHEA team placed Regents wide issues on the table. The act of including Mr. Hoffman on the Pittsburg State University team seems to signal an end to any local agreement. Therefore, the examiner must conclude that during the 1980 meet and confer period the Kansas Board of Regents were acting as the governing body, were the appropriate public employer, and are the appropriate respondent for the purposes of these charges.

Notwithstanding the above conclusions the examiner must question the ability of the public employer to abdicate its statutory responsibility by transferring the authority to bargain to a representative. The examiner is of the opinion that statutory obligations may not be relinquished or transferred by the public employer or governing body. Rather the Regents may delegate their bargaining responsibilities while maintaining ultimate control over the process. The delegation of bargaining is permissible only to the extent that statutory duties are not relinquished or transferred.

The people comprising the Pittsburg State University team fulfill the role of representatives of the public employer. President Appleberry, although not an official member of the team, must be viewed in a similar role as the Pittsburg State University team. He had the authority to act, subject to the approval of the Board of Regents. President Appleberry was given a wide scope of authority not to exceed any area which might have Regents wide impact. Who served as judge regarding the fine line between local and Regents wide impact? Certainly, President Appleberry's wide grant of authority did not include serving as his own judge. The Public Employer-Employee Relations Act contemplates that the authority to act is to coincide with the responsibility for the actions. Therefore, while the representative of the public employer at the meet and confer table acted, President Appleberry approved, and the Regents concurred. The Regents must now be held accountable for their representatives: President Appleberry and the meet and confer team. To rule otherwise would be to allow President Appleberry to give a wide grant of authority to anyone he might choose thus removing himself and all above from the responsibility of any actions. There can be no question that President Appleberry can only act independent of the Regents to the extent granted by the Regents. They, the Regents, are the final arbiter regarding the outer limits of that authority. The Regents might overturn a decision by President Appleberry or in an extreme case terminate President Appleberry's services at the University.

Therefore, the examiner finds the Kansas Board of Regents to be the appropriate respondent for the purposes of the two prohibited practices involving unclassified personnel of Pittsburg State University now on file with the Public Employee Relations Board.

Pittsburg State University/KHEA has alleged that the Pittsburg State University administrative team has failed to meet and confer in good faith by their actions during the Spring of 1980. KHEA has admitted that they failed to serve notice to meet and confer as required by the duration clause contained in the 1979-1980 agreement between respondent and complainant. The duration clause states:

"This agreement shall become effective August 1, 1979, and shall terminate on July 31, 1980.

On or before January 1, 1980, either party may notify the other that it desires to modify the agreement. In such event, the parties shall begin on or after January 7, 1980, to meet and confer with respect to a successor agreement.

The Association and the University agree that should either legislation or policy changes occur during the term of this agreement that would permit modification of this agreement, meeting and conferring on the topic involved may occur following such a request by either party to resume discussions."

The Pittsburg State University team was released by Dr. Appleberry when the KHEA failed to serve notice by January 1. KHEA subsequently requested to meet and confer over subjects other than salary for inclusion in a 1980-1981 memorandum of agreement. Pittsburg State University then placed a package of proposals on the bargaining table. The cover sheet on the proposals contained the following note:

"NOTE: Because neither party notified the other of the desire to modify their existing agreement before January 1, 1980, meeting and conferring is limited to topics related to legislative or policy changes. This proposal is submitted only on the specific understanding that it be acknowledged by KHEA that Pittsburg State University reserves the right to limit topics for meeting and conferring to those relating to legislative and policy changes."

Considerable discussion was had with regard to the intended meaning of this language. The examiner finds the explanation of the duration clause given by the Pittsburg State University team to be confusing at best. Dr. Appleberry stated the Pittsburg State University position regarding the note to be that the Pittsburg State University team wanted to be able to discuss matters other than salary but not within the framework of the Act. (T 331-360) When it became apparent that the two teams were failing to communicate, the Pittsburg State University team withdrew their proposal and Pittsburg State University/KHEA asked that an understanding be signed by Pittsburg State University. The understanding provided for meet and confer sessions to be held and any resultant agreement be implemented in the form of a memorandum of agreement. The provisions of the existing memorandum of agreement were to be continued in the event agreement could not be reached. Both parties would give up their rights to mediation and fact-finding except on the issue of salary. The Pittsburg State University team refused to sign the understanding and 75-CAE-20-1980

was filed with the Public Employee Relations Board. The 1979-1980 agreement expired on July 31, 1980 and an interim grievance procedure was unilaterally implemented by the University. The interim grievance procedure differed from the procedure contained in the 1979-1980 memorandum of agreement. Both Pittsburg State University and Pittsburg State University/KHEA agree that salaries for 1980-1981 were exempted from the notice date in the duration clause by the third paragraph of the clause.

Dr. Appleberry's testimony clearly states the Pittsburg State University team's interpretation of the duration clause and their position with regard to meet and confer for a 1980-1981 - memorandum of agreement. He states that the Pittsburg State University team was not obligated to meet and confer over any subject except salary until after the 1979-1980 agreement expired on July 31, 1980. This position had the effect of saying to the Pittsburg State University/KHEA: you must work for some period of time without a memorandum of agreement. That is, the period of time from August 1, 1980 until agreement was reached or until impasse procedures could be completed. The examiner finds nothing in the duration clause to support the Pittsburg State University position. The clause is certainly ambiguous and poorly written. It is difficult to understand how either party could suggest such language and how the other party could agree. Nevertheless, the examiner must attempt to reasonably interpret the clause and consider the parties' actions in light of that interpretation.

Paragraph one (1) of the clause is unambiguous. The effective date of the agreement was August 1, 1979 and the termination date was July 31, 1980.

The first sentence of paragraph two (2) is equally clear. That is, either party could modify the agreement by giving notice of their desire on or before January 1, 1980. The second sentence of paragraph two (2) seems to cause the confusion and misunderstanding which led to the filing of the prohibited practice. This sentence refers back to the first sentence which speaks to modifying "the agreement" and then speaks of a "successor agreement".

Paragraph three (3) then indicates that legislative or policy changes which would permit modification of "the agreement" could precipitate meet and confer upon request of either party. The Pittsburg State University administration has interpreted this sentence as applying to meeting and conferring with regard to money matters to be contained in a successor agreement. The examiner is bothered, however, with the terminology, "during the term of this agreement". How could one modify the existing agreement with a salary plan for the year commencing August 1, 1980, if in fact, the existing agreement terminated July 31, 1980? For that matter, how could one modify in any manner a successor agreement if the existing agreement expired?

It appears to the examiner that the duration clause can be interpreted in two ways. First, one might interpret the clause to speak only to modifying the existing agreement and as remaining silent with regard to a contract for 1980-1981. In that event there would have been no prohibition on meeting and conferring for the 1980-1981 contract at any date. Rather the employer would be obligated to meet and confer without regard to the January 1 notice date. Use of the term successor agreement does not seem to support such an interpretation.

Secondly, one might interpret the duration clause to continue the existing agreement for another contract year in the event either party failed to give timely notice to open negotiations. This interpretation would then remove the examiner's confusion regarding Pittsburg State University team's interpretation of paragraph three (3). That is, the parties would modify the self-renewing memorandum of agreement with a new pay plan. One might argue that the absolute termination date of July 31, 1980, coupled with an absence of any specific continuation language might logically serve to disprove this interpretation. The Pittsburg State University team's interpretation of the clause is totally illogical and unacceptable in that it denies rights to public employees which have been guaranteed by the Public Employer-Employee Relations Act. Nor does such an interpretation fit with the stated purpose and intent of the Public Employer-Employee Relations Act. K.S.A. 75-4321 (a) (2) states:

"(2) the denial by some public employers of the right of public employees to organize and the refusal by some to accept the principle and procedure of full communication between public employers and public employee organizations can lead to various forms of strife and unrest;"

and 75-4321 (b) which states:

"(b) Subject to the provisions of subsection (c), it is the purpose of this act to obligate public agencies, public employees and their representatives to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment, acting within the framework of law. 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."

It is certainly unreasonable to assume that an employee organization would enter into any agreement which could preclude them from negotiating a new agreement until after the expiration date of the existing agreement. If, however, the existing agreement was to "self-renew", an organization might choose to forego negotiations for a period of time. This procedure is not unusual in collective bargaining agreements and wage openers are common.

It would appear then that the most reasonable interpretation of the duration clause would be that of a self-renewing agreement, in the event neither party requested modification. Perhaps Regent Member Smith best stated the logical interpretation of

the duration clause on page 43 of his deposition: Respondent's Exhibit #26

"Well, I suppose that one paragraph may be a little ambiguous, Mr. Menghini, because the first paragraph says it terminates July 31, 1980; then the deadline you've mentioned as to modifications are stated: and then the deadline for commencing negotiations for a successor agreement, and I would assume--it'd be my assumption that it would be a continuing contract if there were no modifications requested."

Testimony and evidence show that the Pittsburg State University team refused to meet and confer over terms and conditions of employment other than salary as contemplated by the Public Employer-Employee Relations Act until sometime after the expiration of 1979-1980 agreement. This position was taken with full knowledge that the employees would in all probability be without a memorandum of agreement when a majority of the employees reported for work. Members of the Pittsburg State University team testified that they did not refuse to meet and confer but rather attempted to preserve their rights and finally withdraw the offensive proposal. They then asked Pittsburg State University/KHEA for an alternative for resolving the "problem". One must remember that Pittsburg State University Spokesperson Hay had previously notified Pittsburg State University/KHEA President Judith Shaw that the only subject over which Pittsburg State University was "for sure" going to meet and confer, prior to the expiration of the agreement, was salary. When an alternative was presented the Pittsburg State University team would not agree. Rather, the Pittsburg State University team wanted to pursue salary discussions or review other proposals without addressing whether such subjects were within the framework of the Act. The examiner views the Pittsburg State University team's "willingness" to continue to meet and confer, in light of their position on their obligation to continue, as being synonymous with a refusal. Pittsburg State University subsequently changed a mandatorily negotiable term and condition of employment. It must be remembered that collective bargaining is a two-way street. That is, good faith meeting and conferring over terms and conditions of employment prior to unilateral change is mandated by the statute. The employer certainly has the right to remove problem language from an agreement. The statute contemplates such changes and provides an orderly framework for such change. The employer must, however, place proposals on the table and then meet and confer prior to the change. This rule holds true even in the event a contract has expired. Any other interpretation of the Public Employer-Employee Relations Act gives unfair advantage to an employer and can only serve to defeat the purpose of the Act. Such an interpretation of the statute could lead to trickery and deceit by an unscrupulous employer. Therefore, even if the examiner could logically embrace the Pittsburg State University team interpretation of the duration clause the violation of K.S.A. 75-4333 (b) (5) would have occurred when Pittsburg

State University unilaterally changed a mandatorily negotiable term and condition of employment when the existing agreement expired. However, as previously stated, the examiner finds nothing to support respondent's interpretation of the duration clause. Rather he finds respondent's interpretation contrary to any reasonable interpretation and he can but find this interpretation coupled with respondent's subsequent actions to be a calculated plan to deny the employees their statutorily mandated rights.

The examiner recommends to the Public Employee Relations Board a finding of a violation of K.S.A. 75-4333 (b) (5) as alleged by complainant Pittsburg State University/KHEA in case number 75-CAE-20-1980.

Complainant has further alleged a violation of K.S.A. 75-4333 (b) (7) which states;

"(b) It shall be a prohibited practice for a public employer or its designated representative willfully to:

(7) Deliberately and intentionally avoid mediation, fact-finding, and arbitration endeavors as provided in section 12 (75-4332) of this act; or"

Respondent's failure to meet and confer concerning mandatorily negotiable terms and conditions of employment conditioned by their May 29 "proposal" serves to substantiate complainant's charge of a refusal to participate in mediation and fact-finding. Respondent's unyielding position on an illogical and unreasonable interpretation of the duration clause, coupled with their subsequent actions, serves to offset their withdrawal of the May 29 proposal and their willingness to "discuss" matters outside the framework of the Act. The examiner recommends to the Public Employee Relations Board a finding of a violation of K.S.A. 75-4333 (b) (7) as alleged by complainant, Pittsburg State University/KHEA in case number 75-CAE-20-1980.

Pittsburg State University/KHEA has asked the Public Employee Relations Board to direct the employer to meet and confer in good faith and not attempt to exempt itself from the mediation and fact-finding provisions of the Public Employer-Employee Relations Act.

This case comes before the examiner for a determination of the negotiability status of the retrenchment issue and to rule as to whether the refusal to negotiate retrenchment constituted bad faith. As defined by Mr. Partridge in his testimony on April 21, 1981, "retrenchment means reduction in force and includes the method and procedures used for reduction of personnel, how personnel are to be laid off and establishment of procedures for recall of personnel." Mr. Menghini concurred with this definition.

In order to determine the negotiability of retrenchment, the examiner believes that it is necessary to consider the total language of the Public Employer-Employee Relations Act. The legislature was quite clear in its intent to require the parties to the negotiations process to perform certain duties. These duties are set forth in the declaration of policy at K.S.A. 75-4321 (c):

"it is the purpose of this act to obligate public agencies, public employees and their representative to enter into discussions with affirmative willingness to resolve grievances and disputes relating to conditions of employment." (Emphasis added)

This verbiage removes the discretion from the parties to refuse to negotiate those items which relate to conditions of employment. The use of the term "obligate" identifies the mandatory nature of these subjects.

In addition, the declaration of policy previously cited explicitly refers to the extension of the obligation to bargain to "disputes relating to conditions of employment". An examination of the definition of "conditions of employment", is provided at K.S.A. 75-4322 (t) reveals that "salaries, wages and hours of work" are included. The issue of retrenchment currently before the examiner is mandatorily negotiable in that any procedure for obtaining a reduction in the workforce would impact or affect salaries, wages or hours of work and other "conditions of employment" as described by the definition.

Perhaps the question of the negotiability of retrenchment can most easily be understood and resolved by looking at the various procedure by which a reduction in work force may be achieved. One procedure that may be utilized by employers is to lay off employees one day per week. Certainly, this technique would fall under the definition for conditions of employment as it directly affects the number of hours worked. Another procedure for achieving a reduction in work force is to simply terminate a certain number of employees. This technique would also fall under the definition of "conditions of employment" as it directly affects the salaries of those employees. Still another procedure for effectuating retrenchment may involve a combination of lay off and demotions. This technique would also remain

within the definition as it would, once again, involve the salaries of employees regardless of whether they are terminated or demoted.

It should be noted that the examiner is referring only to the procedures by which a reduction in work force is achieved as being mandatorily negotiable. The decision as to whether retrenchment is necessary is reserved for managerial discretion. The examiner has reached this conclusion through an analysis of the management's rights provisions of K.S.A. 75-4326. These provisions allow for the maintenance of the work force through hiring, promoting, demoting, transfer, and so forth. In addition, an employer retains the right to assign work to employees. These rights only extend, in the opinion of the examiner, to the actual decision as to whether retrenchment, promotion, transfer, etc., are necessary. The examiner bases this conclusion on the portion of the declaration of policy at K.S.A. 75-4321 (3) which states:

"the state has a basic obligation to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government."

The examiner is of the opinion that the designation of management rights, as set forth at K.S.A. 75-4326, is the avenue through which the state may fulfill its obligation to provide certain services. However, the examiner believes that the legislature intended to limit the procedures by which these duties are fulfilled by the requirement of both public employers and public employees to meet and confer over conditions of employment.

An examination of the language of the management's rights provisions at K.S.A. 75-4326 reveals that although the employer retains the right to decide whether layoff, promotion, etc., are necessary to fulfill governmental duties, the statute is silent concerning who may make the decisions on the procedure for promoting or reducing the work force. To determine who under the Act can set procedure, the examiner has considered the mandatory nature of issues involving conditions of employment. The examiner has shown that the procedures by which a reduction in work force is achieved has a direct impact on salaries and hours of work. In light of the fact that the legislature did not specifically grant the employer the right to set procedures for reducing the work force and in consideration of the direct impact of this procedure on the conditions of employment, the examiner can only conclude that the procedure for achieving a reduction in work force is mandatorily negotiable.

With the determination that retrenchment is a "condition of employment" as defined by the Act, it becomes necessary to also determine whether the refusal to

meet and confer over retrenchment with KHEA and the unilateral implementation of a retrenchment policy by the administration of Pittsburg State University are prohibited practices as provided at K.S.A. 75-4333 (b) (1) (5). These provisions are:

"(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) of this act;...

(5) Refuse to meet and confer in good faith with representatives of recognized employee organizations as required in section 7 (75-4327) of this act;..."

Before determining whether a violation of the Act has occurred, it is appropriate to examine the provisions that delineate the requirements of the public employer and public employees organization. K.S.A. 75-4327 (b) sets forth the charge to the public employer. This provision states:

"the appropriate employer shall meet and confer in good faith with such employee organization in the determination of conditions of employment of public employees, as provided in this act, and may enter into a memorandum of agreement with such recognized employee organization."

This section, which designates the employer's responsibility in the negotiations process, can be divided into three crucial components. The first component is that employers shall meet and confer in the determination of conditions of employment. The employer representative did in fact meet and confer with regard to some issues contained within the definition of "conditions of employment". However, with regard to retrenchment, which has been held to be a condition of employment, the employer representative(s) chose not to deal with the employee organization, but rather with the Faculty Senate. This was done despite the protest from Faculty Senate that retrenchment was properly a subject of negotiations. This action was not in accordance with the second component of the employer's responsibility. That is, the employer must meet and confer with the employee organization concerning issues which are conditions of employment. The third component of the employer's responsibility involves the spirit of good faith which must be evidenced in the process of meeting and conferring. In the opinion of the examiner, the refusal to meet and confer over conditions of employment, in this case retrenchment, is adequate to show that the employer's responsibility has not been met. Obviously, there can be no good faith evidenced in a meet and confer process which did not take place.

Thus far, the examiner has addressed only the aspect of the statute that identifies the employer's responsibility to meet and confer in good faith. The

act also provides, however, that the willful failure or refusal to meet this responsibility constitutes evidence of bad faith in meet and confer proceedings.

The unilateral action taken by the Pittsburg State University administration went beyond simply failing to meet and confer in good faith as provided at K.S.A. 75-4327 (b). As evidenced by the testimony, the Faculty Senate on at least two occasions requested that the issue of retrenchment be negotiated with the employee representative. In addition, the testimony indicates that the Faculty Senate voted unanimously to endorse the position that the retrenchment issue was properly a subject of negotiations. In the opinion of the examiner, the repeated attempts by the Faculty Senate to remove the issue of retrenchment to the negotiating teams should have placed the employer on notice that the negotiability of the issue was questionable. Had the employer team requested a ruling from the Public Employee Relations Board concerning the negotiability of this issue, this would have been evidence of a good faith doubt concerning this issue. Rather than attempting to resolve the negotiability question, the Pittsburg State University team simply and repeatedly denied the request to negotiate retrenchment. In addition, the administration of Pittsburg State University chose to ignore the question and unilaterally enacted a retrenchment policy. This act, in the opinion of the examiner, is evidence that Pittsburg State University had no good faith desire to resolve the question. The fact that the action was taken without attempting to resolve the question of negotiability is evidence that the violation was committed in a willful manner.

The complaint also cites a violation of K.S.A. 75-4333 (b) (1) which states:

"(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) of this act;"

Section 4 (75-4324) states:

"Public employees shall have the right to form, join and participate in the activities of employees organization of their own choosing, for the purpose of meeting and conferring with public employers or their designated representatives with respect to grievances and conditions of employment. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations."

It should be noted that the examiner has already identified the failure of the employer to meet its responsibility as required by 75-4327 (b). In addition to being a simple failure to fulfill the responsibility to deal exclusively with the employees representative, the examiner is of the opinion that

the statute contemplates such an act to be bad faith. K.S.A. 75-4324 sets forth the employees' rights to meet and confer over conditions of employment through representative "of their own choosing". Furthermore, K.S.A. 75-4333 (b) (1) identifies any act which interferes with the exercise of these rights by public employees to be a prohibited practice. It is undisputed that the employees had properly selected an exclusive representative for the meet and confer process. It has also been shown through testimony that the employer chose to deal directly with the faculty or Faculty Senate rather than the exclusive representative (KHEA) over retrenchment, a condition of employment. These facts are unquestionable evidence of interference with the employees' rights to meet and confer through their selected representatives.

In addition to showing that the action of the employer is a violation, it is necessary according to the statute to show the "willful" nature of the violation. The testimony indicates that the employer repeatedly brought the question of retrenchment before the faculty and/or the Faculty Senate, despite the protest from the Senate that the issue should be a subject of negotiations.

The conclusions of the examiner are:

1) The subject of retrenchment, as defined by stipulation from the parties, is a "condition of employment" and thus a mandatory subject of the meet and confer proceedings.

2) The act of unilaterally developing a retrenchment policy despite protest from KHEA and without making an attempt to settle the negotiability question is a willful violation of K.S.A. 75-4333 (b) (5).

3) The act of refusing to meet and confer over a condition of employment (retrenchment) with the exclusive representative, but rather attempting to deal with the Faculty Senate despite its protest, is a willfull violation of K.S.A. 75-4333 (b) (1).

It is therefore the recommendation of the hearing examiner that the Public Employee Relations Board enter findings of violations of the Act and order respondent to meet and confer in good faith with the exclusive representative regarding the subject matter of retrenchment.

Jerry Powell, Hearing Examiner
Public Employee Relations Board

2-5-85 Att. #5

Mr. Chairman and members of the committee, once again I appreciate the opportunity of appearing before you. You will recall from our previous meeting that I apologized for the haste in which I prepared my written handout. I am sure you all know and experience the problem of trying to do three or four things at one time. In my haste to prepare the written communication I failed to include some of the units which now exist in state government.

Kansas State University now bargains with three units on campus. Those units are;

- 1) teaching faculty (unorganized)
- 2) service and maintenance (organized)
- 3) clerical (organized).

There is also a unit which was determined some years ago which I failed to include. That unit is the 17 person unit at the Kansas Industries for the Blind in Kansas City, Kansas. This unit is comprised of the mattress assemblers and packers and is an organized unit.

The Chairman asked that I speak briefly concerning the PSU cases. There were a total of three cases charging bad faith bargaining by either the Board of Regents or PSU/KHEA. Those three cases were designated:

- 75-CAE-20-1980 - filed 6-10-80
- 75-CAE-21-1980 - filed 6-27-80
- 75-CAEO-1-1982 - filed 12-08-81

75-CAE-20-1980 was filed by the PSU/KHEA alleging that the Board of Regents had committed prohibited practices by preconditioning bargaining. That is the PSU team had served notice that in the event of impasse the PSU team would not take any subject to mediation and fact-finding except salary. PSU representatives answered that the Board of Regents was not the proper respondent. Further that the PSU/KHEA had failed to file a timely notice to negotiations and therefore the only subject for negotiation in that year was salary. The previous contract contained the following clause;

"On or before January 1, 1980, either party may notify the other that it desires to modify the agreement. In such event, the parties shall begin on or after January 7, 1980, to meet and confer with respect to a successor agreement."

75-CAE-21-1980 was filed by the PSU/KHEA alleging that the Board of Regents acting through its representatives had committed prohibited practices by refusing to negotiate the subject "retrenchment". Further,

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PSU/KHEA alleged that PSU officials had instructed the faculty senate (bargaining unit members) to devise a policy on retrenchment thus circumventing the bargaining process. The Board of Regents and PSU answered the charges by stating;

- 1) That the Board of Regents was not the proper respondent.
- 2) That retrenchment was not a mandatorily negotiable subject.

75-CAEO-1-1982 was filed by Robert Partridge, Special Assistant Attorney General on behalf of Pittsburg State University. This case alleges bad faith bargaining by PSU/KHEA in that the union insisted on taking nine (9) nonmandatory subject to mediation and fact-finding. PSU/KHEA answered by stating that the nine (9) issues were mandatorily negotiable subjects.

I met on numerous occasions with the parties and subsequently conducted a hearing on the cases. Mr. Paul Dickhoff wrote a recommended order for the PERB on 75-CAEO-1-1982 and I prepared the recommended order for PERB on 75-CAE-20-1980 and 75-CAE-21-1980. The issues in these cases were as follows;

75-CAE-20-1980 and 75-CAE-21-1980 - who is the appropriate respondent - PSU or Board of Regents. The Regents and/or PSU's attorney argued that a "local agreement" was in effect therefore, the PSU administration was responsible for all actions of the PSU team during negotiations. The record of the hearing indicates that such an agreement was indeed entered into. However, the record also indicates that the agreement was broken by the Board of Regents or PSU and that the PSU/KHEA served notice of its intent to negotiate other than local issues. I therefore concluded that the local agreement was not in existence at the time of the alleged prohibited practice and that the Board of Regents was the appropriate respondent. (See attached order) The PERB chose not to address the local agreement issue and rather quoted the constitution relating to the authority and responsibility of the Board of Regents.

75-CAE-20-1980 also contained an allegation that the Board of Regents refused to meet and confer with PSU/KHEA. The clause, found on page 19 of the attached order, was ruled to be ambiguous and therefore actions by Board of Regents were in bad faith. (See attached order for a complete explanation).

75-CAE-21-1980 dealt with a question of negotiability of the subject "retrenchment". I found retrenchment to be a mandatorily negotiable subject and the Board of Regents failure to negotiate or to seek clarification of the the issue to be an act of bad faith. I have previously related to the committee the procedure for determining negotiability as specified by the Supreme Court. That is, one must look at various proposals to see whether such proposals fall within "topical heading" found in the definition section of the PEERA. Further one must look at those proposals in light of their impact - effect - or whether they are significantly related to a defined condition of employment. Let us look at page 24 of the recommended order for an explanation. The portion highlighted in yellow is my best explanation of the above statement.

Please note that I have not stated that the decision to retrench is negotiable but that procedures for retrenchment were negotiable.

While the recommended order you have before you was not adopted by the PERB I assure you that this order was the basis of their thought process.

75-CAE0-1-1982 raised the negotiable question of eight "subjects" in addition to "retrenchment". The PERB order relating to these eight issues has previously been given to the committee by Mr. Barrett.

I hope I have clarified the PERB position on the PSU matter. I will be happy to answer any questions.