

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

INTERNATIONAL ASSOCIATION)
OF FIREFIGHTERS (IAFF),)
)
Petitioner,)
)
v.)
)
OFFICE OF THE KANSAS STATE)
FIRE MARSHAL,)
)
Respondent.)
_____)

Case No.: 75-UDC-2-2000

INITIAL ORDER

NOW on this 14th day of December, 2001, the above-captioned Petition for Unit Determination and Certification came on for decision pursuant to K.S.A. 75-4321 *et seq.* and K.S.A. 77-514(a) before presiding officer Douglas A. Hager.

APPEARANCES

International Association of Fire Fighters appears through counsel, James R. Waers, Blake & Uhlig, P.A.

Office of the Kansas State Fire Marshal appears through counsel, Allison Kelso, Attorney at Law, Kansas Department of Administration.

75-UDC-2-2000

PROCEEDINGS

On September 2, 1999, the International Association of Fire Fighters (hereinafter "Petitioner" or "IAFF"), filed a Petition for Unit Determination and Certification to this agency, the Public Employee Relations Board, on a special form provided by the Board for that purpose. Petitioner seeks the determination that a bargaining unit comprised of Fire Prevention Inspectors employed by the Office of the Kansas State Fire Marshal is an appropriate unit under Kansas' Public Employer-Employee Relations Act (hereinafter "PEERA" or the "Act"), K.S.A. 75-4321 *et seq.*, and certification of said unit. Petition, September 2, 1999.

Respondent filed its response to the Petition on October 7, 1999, initially through its assistant attorney general, and subsequently through the Department of Administration as representative of the public agency on October 15, 1999. Respondent asserted that because Fire Prevention Inspectors should belong in a statewide bargaining unit, the statewide Inspection and Regulatory Unit, a stand-alone unit for these employees would be inappropriate. Determination and certification of such a unit would contribute to overfragmentation of the state's work force and be contrary to the principle of efficient administration of government. Answer of Respondent Department of Administration, October 15, 1999.

Following an evidentiary hearing earlier this year before the presiding officer, the parties submitted post-hearing legal memoranda. The presiding officer considers this matter to be fully submitted and ready for issuance of an initial order. *See* K.S.A. 77-526(b).

ISSUES OF LAW

The legal issue for resolution in this matter is whether the state civil service classification of Fire Prevention Inspectors constitutes an appropriate bargaining unit.

FINDINGS OF FACT

1. Petitioner is an employee organization as defined by K.S.A. 75-4322(i).
Petition, September 2, 1999.
2. Respondent is a public agency or public employer as defined by K.S.A. 75-4322(f). Answer of Respondent State Fire Marshal, October 7, 1999.
3. The Public Employee Relations Board, by order dated May 16, 1974, concurred with hearing officer Matthew J. Dowd's recommendation that nine separate statewide bargaining units be established for administrative services employees, fiscal and staff professional employees, inspection and regulatory employees, professional-legal employees, operational service employees, patient care-professional employees, non-guards at penal institutions, physical and natural science professional employees and technical employees. Respondent Exhibit (hereinafter "R.Ex.") 2, Order, In re: Unit Determination of Appropriate Units for Public Employees of the State of Kansas, PERB Case No. UD-1-1974 (September 4, 1974). In addition to the nine statewide units, the unit determination order established seven separate units of nonprofessional employees of the Highway department, four units of security services employees in four designated areas, seven units of nonprofessional social services employees in designated areas, and nine units of nonprofessional employees at state institutions. *Id. See also, Raymond Goetz, The Kansas Public Employer-Employee Relations Law*, 28 KAN. L. REV. 243, 256 (1980)(hereinafter "Goetz").
4. Among job classifications listed for the Inspection and Regulatory unit were those of Building and Inflammable Liquids Safety Inspector, Fire Protection Technical Advisor, and Fire, Safety and Sanitation Consultant. R. Ex. 2. Class history card records maintained by the Division of Personnel Services, R. Ex. 7, and employment history cards for current and past employees maintained by the Office of the Kansas State Fire Marshal, R. Ex. 8, establish that the job classifications listed above were predecessor job classifications to the current

classification of Fire Prevention Inspector. Transcript (hereinafter "Tr."), pp. 77-85.

5. Following their inclusion in two subsequent revisions to composition of the statewide Inspection and Regulatory unit, the job classification of Fire Prevention Inspector was deleted from the Inspection and Regulatory unit in an order issued in 1995. R. Ex. 5, Order to Amend, Kansas Association of Public Employees v. State of Kansas, Statewide Inspection and Regulatory, PERB Case No. 75-UCA-3-1995 (September 29, 1995). Competent testimony suggested that this deletion was inadvertent. *See generally*, Tr., pp. 97-103.

6. Composition of the current statewide Inspection and Regulatory unit was established by order dated August 27, 1997, and includes the following classifications: Agricultural Inspector, Barber Shop Inspector, Beauty Shop Inspector, Building Construction Inspector, Driver License Examiner, Funeral Home Inspector, Food, Drug & Lodging Surveyor, Grain Inspector, Grain Warehouse Examiner, Liquor Control Investigator I, Livestock Inspector, Motor Carrier Inspector, Safety & Health Inspector and Special Investigator. R. Ex. 7. Said current unit description fails to include Fire Prevention Inspectors, as did the prior order in Finding of Fact No. 5. At the time the instant petition for unit determination and certification was filed, the job classification of Fire Prevention Inspector was not assigned to any bargaining unit, statewide or otherwise.

7. Since issuance of the September 21, 1995 Order which omitted Fire Prevention Inspectors from the statewide Inspection and Regulatory unit, no action has been taken to correct said omission. Tr., p. 113.

8. In the nearly three decades since PERB's adoption of the nine statewide employee bargaining units described in Finding of Fact No. 3 above, there has never been an attempt to certify a bargaining representative for the Inspection and Regulatory unit. Tr., pp. 114, 116. Of the nine statewide units established in 1974, only the Administrative Services Employees unit, the Physical and Natural Sciences Professional Employees unit and the Technical Employees unit are represented. The remaining six statewide units, including the Inspection and Regulatory unit, are not represented. Tr., pp. 117-19.

9. Fire Prevention Inspectors are employed in the Inspection Department of the Office of the Kansas State Fire Marshal. Tr., pp. 8-9.

10. The direct supervisor of Fire Prevention Inspectors of the Office of the Kansas State Fire Marshal is Karl McNorton, Chief of Fire Prevention. Tr., pp. 9, 28.

11. Kansas State Fire Marshal Fire Prevention Inspectors are required to obtain Fire Inspector I certification within six months of their hire date. Tr., pp. 22, 54-5. The certification process involves "hands on" and "classroom" study and testing. This requirement is a "fairly recent development", "four to five years ago". Tr., p. 22.

12. The duties of a Fire Prevention Inspector, as set out in a Notice of Job Opening for said position, are as follows:

"Conducts fire and life safety inspections of facilities under the jurisdiction of the Kansas Fire Prevention Code within an assigned district of the State. Inspection work is governed by Division Director which addresses inspection preparation, type of inspections, inspection protocol, interpretive guidelines, local agency liaison, and limits of authority. Work is assigned by the Topeka office, however, inspector independently plans and schedules travel itineraries to minimize inspection time. Inspector may periodically be assigned to an inspection team conducting inspection at large facilities. Inspections are routine in nature, however, special inspections are periodically conducted to support ongoing enforcement activities or to investigate complaints. Inspector utilizes independent judgement in evaluating the facility, however the judgement is guided by Division Director."

Petitioner's Exhibit 1.

13. Each of the approximately 17 Fire Prevention Inspectors employed by Respondent inspects facilities within an assigned geographical area of the state. Tr., pp. 11, 33. The facilities inspected include educational facilities, major universities, private and community colleges, private and public K-12 schools, corrections facilities, county and local jails, filling stations, bulk fuel storage facilities, hospitals, nursing homes, surgical centers, day care facilities and any facility upon which a complaint is received by their office. Tr., pp. 11-2; 35-6.

Inspections are based on a standard checklist from which the Inspectors are not to vary absent unusual circumstances. Tr., p. 29

14. Fire Prevention Inspectors attend some training sessions provided through their training department. Tr., p. 31. Inspectors also receive training during quarterly staff meetings. *Id.* They are not required to attend training put on by other agencies. *Id.*

15. All Fire Prevention Inspectors are trained to conduct their inspections in a standard manner regardless of where they are working within the state. Tr., pp. 57-8. This is done so fire prevention inspectors can be cross trained and cover various areas of the state and so that each inspector can look at the same issues and the same type of reporting systems from the facilities. Tr., p. 57.

16. Fire Prevention Inspectors have little or no interaction, employee interchange, common experience, similar training, or common supervision with employees in the job classifications of the statewide inspection and regulatory unit set forth in Finding of Fact No. 6, above. Tr., pp. 14-8; 40-2; 145-46; 162-63. Fire Prevention Inspectors do not coordinate or conduct their inspections with inspectors from the other state agencies. *Id.*

17. Fire Prevention Inspectors routinely notify local fire departments of inspections being performed in their areas and invite their personnel to attend. Tr., pp. 19, 42-3. Local fire department inspectors from across Kansas attend training provided by the Fire Marshal's office on the Fire Prevention Code and the Kansas Buildings Fire Safety Handbook, which is used as a basic and minimum requirement for fire and safety inspections for the state of Kansas. Tr., pp. 47-8. Many of the Fire Prevention Inspectors attend training at conferences and seminars with representation from a majority of local fire departments from across the state. Tr., p. 48.

18. Employees in the Fire Prevention Inspector classification for Respondent's office desire representation by Petitioner. Tr., pp. 18, 42. Petitioner is the single peer group organization that Respondent's employees regularly affiliate and interact with through their inspection program, training and education. Tr., p. 42.

Petitioner represents personnel in the fire industry and understands the needs and problems of such personnel. Tr., pp. 62, 18.

CONCLUSIONS OF LAW/DISCUSSION

ISSUE

Whether the state civil service classification of Fire Prevention Inspectors constitutes an appropriate bargaining unit.

1. Respondent is an appropriate employer within the meaning of K.S.A. 75-4321 *et seq.* Employees classified as Fire Prevention Inspectors are "public employees" as that term is defined at K.S.A. 75-4322(a).
2. The Kansas Public Employer-Employee Relations Act (hereinafter "PEERA", or "the Act"), found at K.S.A. 75-4321 *et seq.*, is the statutory framework governing public employee labor relations in Kansas. The Kansas legislature enacted PEERA for the express purpose of serving the public's "fundamental interest in the development of harmonious and cooperative relationships between government and its employees." K.S.A. 75-4321(a)(1). The Act provides that "[p]ublic employees shall have the right to form, join and participate in the activities of employee organizations 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." K.S.A. 75-4324.
3. Consistent with its declaration of policy and objectives, the PEERA provides a framework of laws for the formation and recognition of organizations as employee representatives for the purpose of meeting and conferring with public employers with respect to grievances and conditions of employment. See K.S.A. 75-4327. PEERA is administered by a five-member Public Employee Relations Board (hereinafter "PERB", or the "Board"). "The primary functions of the Board are to make determinations as to the appropriate unit, conduct representation elections, and adjudicate charges of prohibited practices." Goetz,

supra, at pp. 250-51. The source of the Board's authority to determine the scope of a proper unit is found in K.S.A. 75-4327(c), which provides:

“When a question concerning the designation of an appropriate unit is raised by a public agency, employee organization, or by five 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.”

4. In Goetz' “comprehensive article examining the nature and operation of PEERA”, *State v. Public Employees Relations Bd.*, 894 P.2d 777, 782, 257 Kan. 275 (1995), the author observed that “[u]nder any orderly procedure for resolving disputes over representative status and recognition of an employee organization, a threshold question is whether the group of employees the organization seeks to represent constitutes ‘an appropriate unit’.” Goetz, *supra*, at 252. “The unit consists of a designated group of employees described by classes of jobs or positions”. *Id.*

5. A bargaining unit is a group of employees who may properly be grouped together for the purposes of participating in a PERB election and for meeting and conferring relative to terms and conditions of employment. The PERB's role in determining the appropriateness of a unit arises only when there is an unresolved disagreement over the proposed unit or when such a unit is contrary to the policies of PEERA. It is the Board's duty to determine whether the unit set out in the petition for unit determination is “appropriate”.

6. State law does not require that the bargaining unit approved by the Board be the only appropriate unit, or even the most appropriate unit; it is only required that the unit be an appropriate unit. *Teamsters Local Union #955 v. Wyandotte County, Kansas*, Case No. 75-UDC-3-1992 (August 5, 1993); *United Rubber Workers Local Union 851 v. Washburn University of Topeka*, Case No. 75-UDC-3-1994 (September 16, 1994); *City of Wichita, Kansas v. Fraternal Order of Police, Lodge No. 5*, 75-UCA-1-1994 (October 27, 1995).

7. In each case where the question of unit composition is at issue, K.S.A. 75-4327(c) requires the PERB to rule on the definition of the "appropriate unit" in accordance with specific factors set out in K.S.A. 75-4327(e). The PERB

"shall take into consideration, along with other relevant factors: (1) The principle of efficient administration of government; (2) the existence of a community of interest among employees; (3) the history and extent of employee organization; (4) geographical location; (5) the effects of overfragmentation and the splintering of a work organization; (6) the provisions of K.S.A. 75-4325 and amendments thereto; and (7) the recommendations of the parties involved."

K.S.A. 75-4327(e).

8. To aid in the implementation of the foregoing, K.A.R. 84-2-6 was enacted, providing that

"(1) Any unit may consist of all of the employees of the public employer, or any department, division, section or area, or party or combination thereof, if found to be appropriate by the board, except as otherwise provided in the act or these rules. (2) In considering whether a unit is appropriate, the provisions of K.S.A. 75-4327(e) and whether the proposed unit of the public employees is a distinct and homogeneous group, without significant problems which can be adjusted without regard to other public employees of the public employer shall be considered by the board or presiding officer, and the relationship of the proposed unit to the total organizational pattern of the public employer may be considered by the board or presiding officer. Neither the extent to which public employees have been organized by an employee organization nor the desires of a particular group of public employees to be represented separately or by a particular employee organization shall be controlling on the question of whether a proposed unit is appropriate."

9. Because of the number of factual considerations that must be taken into account in deciding upon an appropriate bargaining unit, the PERB has not found it possible to enunciate a clear test. *Teamsters Local Union #955 v. Wyandotte County*, Kansas, Case No. 75-UDC-3-1992 (August 5, 1993). While the applicable statute and regulation enumerate specific factors to be considered in making the unit determination, the list is not exclusive, and the weight to be assigned to each factor is within the sole discretion of PERB. *Kansas Association*

of Public Employees v. Department of Social and Rehabilitative Services, Rainbow Mental Health Facility, Case No. 75-UCA-6-1990 (February 4, 1991). In deciding upon an appropriate bargaining unit, the PERB uses a case-by-case analysis and is given considerable discretion in making a decision. *City of Wichita, Kansas v. Fraternal Order of Police, Lodge No. 5*, 75-UCA-1-1994 (October 27, 1995).

10. As previously stated, K.S.A. 75-4327(e) provides that in determining whether a proposed bargaining unit is "appropriate", the PERB must consider, "along with other relevant factors", the efficient administration of government, a community of interest among employees, history and extent of employee organization, geographical location, overfragmentation and splintering of a work organization, K.S.A. 75-4325 (excluding supervisors from the definition of public employees), and the parties' recommendations. One of the foregoing factors can be disposed of summarily. Neither party presents an argument with regard to supervisory status of any position proposed for inclusion in the unit. The remaining factors for consideration are addressed as follows.

Efficient Administration of Government

11. The evidence of record relating to this factor is limited¹ and neither party submitted proposed findings of fact under this heading. Respondent recommends nonetheless that Petitioner's request be denied and the job classification of Fire Prevention Inspector be returned to the statewide Inspection and Regulatory unit from which it was inadvertently deleted in 1995. *See* Finding of Fact No. 5. "Because of the size and diverse functions of state government," Respondent urges,

¹Labor Relations Specialist for the Department of Administration testified based upon his extensive experience and Petitioner's testimony and on the history of the evolution of PEERA units, that it would not be appropriate to establish a stand-alone unit for Fire Prevention Inspectors. The concern was expressed that if PERB were to "dramatically alter the established pattern of units" it would lead to overfragmentation, inefficiency in the administration of government and diminished effectiveness of employees to be able to lobby the state as an employer regarding terms and conditions of employment. Tr., pp. 105-6.

“the statutory consideration of ‘efficient administration of government’ takes on a heightened importance given that the State of Kansas has in excess of 30,000 employees and more than 100 agencies, boards and commissions, and over 700 job classifications. If employee unions are allowed to organize in increasingly smaller pockets of employees, escalating pressures will be placed on administrative support functions and these groups will intensify their efforts to gain a share of the available resources.”

Respondent’s Post-Hearing Brief to the Presiding Officer, Aug. 13, 2001, p. 10. Although Petitioner counters that there is no evidence in the record that establishing this stand-alone unit would result in government inefficiency, the presiding officer would suggest that when viewed as a general proposition, Respondent’s assertion is correct. “[T]he more units of employees with which a public employer must deal, the more time and effort will have to be devoted to employee relations problems, the greater the number of disputes and likelihood of impasse, and the more rivalries between different employee organizations.” Goetz, *supra*, at 252. As Goetz’ article suggests, “the [statutory factor of] efficient administration is designed to protect the interest of the public in having a particular agency or subdivision of government that is capable of carrying out its designated functions with a minimum expenditure of time, effort and money.” *Id.*, at 255. Common sense suggests that this factor weighs against this or any other Petitioner’s request to form a stand-alone unit. The evidence of record, however, does little to identify specific inefficiencies or problems that would merit assignment of greater weight to this factor relative to the other statutory factors.

Community of Interest Among Employees

12. “Community of interest” is not susceptible to precise definition or to mechanical application. Morris, *The Developing Labor Law*, Ch. 11, p. 417 (2nd ed. 1989). Though “its determinants are so vague that application to specific cases leaves considerable room for discretion”, the requirement of a community

of interest among employees of a unit is the "most fundamental" of the statutory factors set out at K.S.A. 75-4327(e), and was described by Goetz as being "essential" to an appropriate bargaining unit. Goetz, *supra*, p. 254. "The reasons for its preeminence are quite practical. . . . by requiring a cohesiveness within the unit and a degree of isolation from other employees of the same employer, it tends to assure effectiveness of any bargaining or meeting and conferring that may occur." *Id.* "Representatives of both employer and the employees are then able to concentrate on issues of real concern to a majority of the employees in the unit, without being distracted by demands of minority factions that might be militant enough to block settlement." *Id.* "Second, it protects the interests of an identifiable and unified group whose numbers might be too small to provide an effective voice if they had to be combined with a larger number of other employees intent on promoting their own interests." *Id.*

13. The "touchstones" historically used by the PERB in analysis of unit appropriateness include the following elements: (1) common supervision of employees; (2) functional integration of operations and job duties; (3) similar skills, training and qualifications; (4) interchangeability and contact between employees; (5) similar work situations; (6) common wages and benefits; (7) payment of wages; (8) working hours; (9) regularity of work (full-time, part-time, temporary, seasonal); and, (10) geographic proximity.² See *City of Wichita, Kansas v. Fraternal Order of Police, Lodge No. 5*, 75-UCA-1-1994 (October 27, 1995); *Teamsters Local Union #955 v. Wyandotte County, Kansas*, Case No. 75-UDC-3-1992 (August 5, 1993). Consideration of these elements suggests that the Fire Prevention Inspectors share a strong community of interest with one another. See Findings of Fact Nos. 9, 10, 13-5. All state employees "have certain interests in common by virtue of their having the same employer", that is, the state of Kansas. Goetz, at 254. For example, all state employees share certain of the above elements, such as benefits, and time and manner of payment of wages. However, when judged by other elements of the unit appropriateness analysis set

²In his article, Goetz notes that the statutory factor of unit determination "geographical location" set out at K.S.A. 75-4327(e) is unnecessarily listed separately as it is "merely one determinant of community of interest", which is already listed as a factor. Goetz, *supra*, at 255.

out above, the employees Petitioner seeks to represent do not share a strong community of interest with the classifications comprising the current statewide Inspection and Regulatory unit suggested to be more appropriate by Respondent. For example, there is no common supervision of employees, no functional integration of operations and job duties, little in the way of similarity in skills, training and qualifications, no interchangeability or contact between employees and no geographic proximity. See Findings of Fact Nos. 11-2, 16. Accordingly, the presiding officer concludes and recommends to the PERB that the statutory factor "community of interest" favors granting Petitioner's request and that this factor be accorded substantial import in the Board's ultimate decision.

History and Extent of Employee Organization

14. The statutory factor of history and extent of employee organization also favors Petitioner's request. In the instant matter, the record reflects no history of employee organization in the statewide Inspection and Regulatory unit. Finding of Fact No. 8. In the nearly three decades since PERB's 1974 order establishing the statewide Inspection and Regulatory unit, there has never been an attempt to certify a bargaining representative for the many classifications contained therein. *Id.* The only indicia of the "extent of employee organization" with regard to classifications either now or previously contained in the statewide Inspection and Regulatory unit is Petitioner's attempt to determine an appropriate unit and become certified as its representative in this proceeding. In his authoritative 1980 law review article on the PEERA, Professor Goetz suggests that this factor is redundant because history and extent of employee organization are elements of the "community of interest" factor, and noted that

"the *extent* of organization at the time of petitioning for a unit determination would be better evidence than an organization's history that the employees themselves--perhaps the best judge of their own community of interest--feel a common bond within the organized group. To force them into a broader unit would frustrate their expressed desire to determine their future welfare together with those who share the same problems."

Goetz, *supra*, at 255 (emphasis in original). As noted above, this factor weighs in favor of Petitioner's request, but should not be deemed of controlling significance. K.A.R. 84-2-6(a)(2).

Geographical Location

15. The statutory factor of geographical location has been construed by the PERB to mean "where members of the proposed unit work in the same physical area". *Teamsters v. Wyandotte County, supra*. As noted above, classifications in the statewide Inspection and Regulatory unit do not work in the same physical area as Fire Prevention Inspectors. As the record demonstrates, there is little or no interaction between Fire Prevention Inspectors and members of the statewide Inspection and Regulatory unit. Finding of Fact No. 16. And while the record indicates that the 17 Fire Prevention Inspectors work in assigned districts spread across the state, there is nonetheless a relatively greater degree of interaction between their individual members through training, staff meetings, team inspections of large facilities, conferences, seminars and organizational efforts. *See* Findings of Fact Nos. 12, 14-5, 17-8. The presiding officer concludes and recommends that the statutory factor of geographical location supports Petitioner's request that the classification of Fire Prevention Inspectors be determined to be an appropriate bargaining unit.

Effects of Overfragmentation and Splintering of a Work Organization

16. With regard to this factor, Goetz observed that

"[a] crazy quilt of small units in competition with each other and out of kilter with the organizational lines of the agency undoubtedly would result in needless inefficiency. It might even be argued that the most efficient unit would be one coextensive with the unit of government involved. If the legislature had intended that result, however, it could have simply mandated statewide units and omitted the factor of geographical location. Because the legislature did not take that simplistic approach, it has

left PERB with the delicate task of balancing the public interest in efficiency of administration with the legitimate aspiration of public employees to be represented in a unit that can work effectively toward common goals.”

Goetz, *supra*, at 255. The proposed unit is comprised of all Fire Prevention Inspectors employed in the Inspection Department of the Office of the Kansas State Fire Marshal. State law provides that an appropriate unit may consist of all employees of a public employer, or any department, division, section or area, or party or combination thereof, if found to be appropriate by PERB. K.A.R. 84-2-6(a)(1).

17. Previous orders of the Board have dealt with this factor by noting that

“[o]verfragmentation, if allowed, causes an employer to bargain on a nearly neverending basis with a proliferation of highly individualized units, each accorded all the rights of a certified representative. And, if allowed to exist, the employer can be caused to expend vast amounts of time and resources on bargaining and impasse resolution over issues which could have been addressed for all such unit employees in a single set of bargaining sessions. Once fragmented units are certified, a refusal to accord each with all of their rights creates the grounds for unfair labor practice charges, further depleting the employers time and resources.

Splintering of a work organization is a condition wherein the employees have been separated into units of such little importance, size, or strength that their requests and/or demands may be ignored by the employer with impunity from the consequences of its actions.”

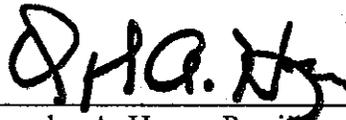
Kansas University Police Officers Association v. University of Kansas, Police Department, Case No. 75-UDC-6-1988 (July 25, 1988). Neither party submitted proposed findings of fact regarding this factor. Further, nothing in the record of this matter compels the presiding officer to conclude that the unit proposed by Petitioner would have the adverse effect of overfragmentation or splintering.

CONCLUSION

Based upon a careful review of the record and arguments in this matter, and after consideration of all statutory and regulatory provisions bearing on the question here in dispute, it is the conclusion and recommendation of the presiding officer that the bargaining unit proposed by Petitioner, comprised of all full-time and regular part-time fire prevention inspectors, and excluding the fire marshal, assistant fire marshal and all others, is an appropriate unit as that term is contemplated by the Kansas Public Employer-Employee Relations Act, K.S.A. 75-4321 *et seq.* Petitioner's request that a certification election among the said employees be ordered is hereby granted.

IT IS SO ORDERED.

Dated this 14th day of December, 2001.



Douglas A. Hager, Presiding Officer
Public Employee Relations Board
1430 SW Topeka Blvd.
Topeka, Kansas 66612
(785) 368-6224

NOTICE OF RIGHT TO REVIEW

This Initial Order is your official notice of the presiding officer's decision in this case. The order may be reviewed by the Public Employee Relations Board, either on the Board's own motion, or at the request of a party, pursuant to K.S.A. 77-527. Your right to petition for a review of this order will expire eighteen days after the order is mailed to you. See K.S.A. 77-527(b), K.S.A. 77-531 and K.S.A. 77-612. To be considered timely, an original petition for review must be received no later than 5:00 p.m. on January 2, 2002, addressed to: Public Employee Relations Board & Labor Relations, 1430 SW Topeka Blvd., Topeka, Kansas 66612-1853.

CERTIFICATE OF SERVICE

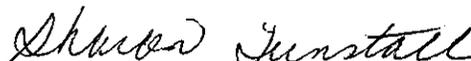
I, Sharon Tunstall, Office Manager for Labor Relations, Kansas Department of Human Resources, hereby certify that on the 14th day of December, 2001, a true and correct copy of the above and foregoing Initial Order was served upon each of the parties to this action and upon their attorneys of record, if any, in accordance with K.S.A. 77-531 by depositing a copy in the U.S. Mail, first class, postage prepaid, addressed to:

Mr. James R. Waers, Attorney at Law
Blake & Uhlig, P.A.
753 State Avenue, Ste. 475
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Ms. Allison Kelso, Attorney at Law
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Topeka, KS 66612-1251

Ms. Cheryl Whelan, Attorney at Law
Office of the Kansas State Fire Marshal
700 Southwest Jackson St.
Topeka, KS 66603

And to the members of the PERB on January 4th, 2002.


Sharon Tunstall