

Kansas Report Regarding Collective Bargaining/Unit Structure

March 1, 2007

The State of Kansas retained this consultant to review the current collective bargaining structure of its state employees and to make recommendations regarding areas for improved delivery of services. The primary focus has been consideration of the bargaining unit structure - whether the current structure or an alternative structure best serves the interests of the taxpayers, of the State, and of the affected state public employees.

Current Kansas Organization

The State currently employs approximately 23,000 employees. Of these, 16,222 are included in one of 62 collective bargaining units.

These 62 units are represented by the following 9 unions: KAPE, AFSCME, CGES, KSTA, FOP, NAGE, GCIU, IAFF and Teamsters.

Most of the 62 units are "vertical" in nature. By "vertical" I mean most employees employed by a single department or agency, or a sub-group within a single department or agency. Certain of the current 62 units, particularly some of those created in the "1974 Comprehensive" Kansas PERB unit decision (*Kansas Law Review*, Vol. 28, pg. 256 (1980)) are partially "horizontal" in nature. They aren't strictly horizontal because they do not include all employees and all job classifications of state employees doing similar work. Some of the units are neither vertical nor horizontal and seem to reflect simply the interests of the petitioner union that filed with the Kansas PERB in the first instance and do not reflect a "community of interest" reason based upon a management need or interest.

What's Wrong With the Current System?

One consequence of the current structure is fragmentation of personnel management. The effect of this total number of units is that management of key decisions is harder to achieve. Bargaining under this structure is difficult when different unions are simultaneously bargaining for the same job classification.

Employees are also short-changed. Small bargaining units cannot bring to bear the proper resources and focus to effectuate improvements in wages, hours, and other working conditions that might benefit both the State of Kansas as an employer and the State's employees.

Collective bargaining in the current structure does not result in creative improvements for both unions and management. Rather, management simply tries to hold the line - continue the status quo while the unions' rank and file dismiss negotiations as not meaningful. The Kansas experience to date bears out this conclusion. In virtually all of the interviews I have conducted, both managers and union officials confirm these conclusions.

The most serious challenge is in how to assure the public and the employees uniformity in benefits and working conditions. The policy in favor of equal pay for equal work and uniform wages, hours and conditions of employment for all employees doing similar work in the State is in conflict with multiple bargaining units, each separately negotiating for one job classification.

New PERB Unit Recommendations

The existing statutory standards provide the basis for forming state-wide horizontal bargaining units. For that reason, I am not recommending a statutory change. The existing standards set forth in *KSA 75-4327(e)* and the existing employer initiated unit determination procedures, *KSA 75-4327(c)*, provide a solid basis for a change to horizontal units.

The obvious simple reform is to adopt broad based "horizontal" units in which all state employees performing similar jobs are placed in a unit with all of the other employees doing similar work. This reform is similar to that adopted by many other states which have addressed the problem of unit structure.

I recommend the following unit structure:

		Total No. of Employees
Unit 1	Maintenance, Trades & Technical	2,968
Unit 2	Administrative Support	2,199
Unit 3	Health & Human Care Non-Professional	2,421
Unit 4	Social Services & Counseling	729
Unit 5	Administrative Professional	1,330
Unit 6	Protective Service	1,858
Unit 7	Uniformed Police Employees	426
Unit 8	Health & Human Care Professional	106
Unit 9	Examining, Inspection & Licensing	727
Unit 10	Engineering, Science & Resources	397
Unit 11	Printers*	27
Unit 12	Fire Service Employees*	28
Unit 13	Operations Professionals	272
Unit 14	Youth Protective Services*	221
Unit 15	Natural Resource Officers*	79
Unit 16	Law Enforcement Investigators*	112
Total		13,900

* These units are currently in existence. I am not recommending any change in their composition, except to consolidate four printer units into a single unit.

The employee counts, job codes and job titles relied upon in this report and other related data were provided by a team in Kansas that completed the task of placing job titles/codes in the 16

recommended units. These individuals gave guidance regarding substantive aspects of the recommendations.

Plan Implementation

Kansas law permits employer-filed petitions to determine the appropriate bargaining unit (*KSA 75-4327(c)*). The scope of these recommendations affects all employees for the executive branch. I believe that the legal characterization of the petition is a Petition for Unit Determination. However he proposed changes really constitutes consolidations or realignment of classifications into a new structure. This petition can be filed by the State even when there is no union seeking an election or asserting a representation right. It can be filed by the State to establish units made up in whole or in part of employees currently in existing units. It should seek to re-organize the existing unit structure. I recommend utilizing this approach, filing one petition establishing all of the new units in one matter before the PERB.

Historical Representation Rights

Unions currently have certifications covering a substantial number of state employees. It is this consultant's recommendation that those historical certifications continue to provide the basis for recognition in the new system. (1) When more than 50% of employees in one of the newly formed units previously were in one or several units represented by a particular certified representative, that certified representative should continue to be certified as the representative of the newly formed unit. (2) Existing certified unions should be allowed to merge and consolidate using their combined totals to meet this >50% requirement. (3) The determination of 50% status should be based on the current unit composition, including the current supervisory and confidential status of the employees.

Election or Card Check

In a new unit where there is no historical certification, employee organizations should be allowed to petition for representation rights in the new unit. The employer would be free to recognize the petitioning union based upon either a card check or a PERB-held election.

Transition

Unions currently certified for an existing unit will be impacted when a new certification is issued to a union as a result of representation petition. I propose the following transition guidelines:

Until new units are authorized by PERB and a new representative is chosen by historical representation, card check or election, all existing units continue as they have in the past. Existing certified representatives continue as the exclusive bargaining representatives.

When a new unit is authorized by PERB and the employees in the new unit are granted historical representation (using the >50% standard) or select a union, that union is the exclusive bargaining representative for all employees in the new unit.

As long as >50% of the employees in a current unit are not in any new unit that has selected a certified representative, the employer shall continue to recognize the current

certified representative and that representative shall continue as the exclusive bargaining representative. If, as a result of this unit reorganization and representation process in the new units the number of represented employees in a currently existing unit drops to below 50% (of its total 06-07 f.t.e.), the certification shall lapse.

Supervisory, Managerial and Confidential Exclusions from the Prepared Bargaining Units

By statute certain job classifications or positions within a job classification are excluded from bargaining units due to the supervisory, managerial or confidential nature of their duties. *KSA 75-4322(b)&(c)*. My recommendations on bargaining units above do not include consideration of supervisory or confidential status of particular job classifications. The statute and administrative rules provide for a petition process where this issue can be submitted to an administrative hearing before the PERB. In my discussions with various certified representatives, interest has been expressed in establishing a more timely, efficient and less adversarial process to make determinations on exclusions from units. I agree and recommend the following:

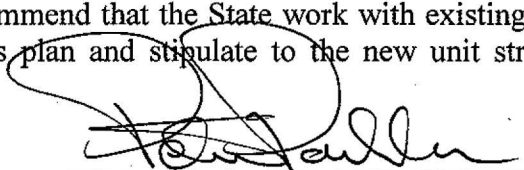
For each bargaining unit proposed above, the state and the certified representative consider agreeing on each appointing one individual to jointly fashion a working definition based on applicable statutes, precedent and the parties' past practice.

The representatives shall meet and seek through administrative review to arrive at a stipulation as to supervisory, managerial or confidential status. This administrative review would allow for techniques that normally are not relied upon in administrative hearings such as management or employee surveys and telephone interviews. This review should be completed in six to twelve months.

Should the parties be unable to agree on placement of all of the job classifications or positions in question, they should consent to utilize an agreed-upon "arbitrator" or "adjudicator" to finally resolve the matter.

Stipulation of Units

The State should anticipate considerable interest by the employee organizations, particularly those who currently have certification. I recommend that the State work with existing certified representatives to secure their support of this plan and stipulate to the new unit structure at PERB.



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