

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

Shirley Thomas
Petitioner,

vs.

University of Kansas Medical Center
Respondent

Case No: 75-CAE-3-2007

ORDER ON RESPONDENT'S MOTION FOR SUMMARY JUDGMENT
AND MOTIONS TO DISMISS PETITIONER'S COMPLAINT

NOW, on this 5th day of September, 2008, Respondent University of Kansas Medical Center's Motion for Summary Judgment and its Motions to Dismiss Petitioner's Complaint came on for consideration before presiding officer Douglas A. Hager in the above-captioned matter.

APPEARANCES

The Petitioner, Shirley Thomas, appears *pro se*. The Respondent, University of Kansas Medical Center, appears through counsel, Richard R. Fritz, Attorney at Law, Polsinelli, Shalton, Flanigan & Suelthaus, PC.

PROCEEDINGS

Petitioner Shirley Thomas filed this prohibited practice claim November 6, 2006, alleging that the employer, University of Kansas Medical Center, had "harassed and disciplined" her for engaging in "union and other protected, concerted activities . . . in the workplace". Complaint Against Employer, 75-CAE-3-2007, filed November 6, 2006.

Respondent filed its response on December 11, 2006, denying Petitioner's general allegations of harassment. See Respondent's December 8, 2006 letter to the Public Employee Relations Board (hereinafter "PERB"). In its response, the Employer noted that Petitioner Thomas had submitted no evidence of wrongdoing on its part and had not filed a grievance, asserting that such a failure to exhaust her available contractual remedies was fatal to her claim. *Id.* Respondent requested the Board to dismiss Petitioner's action. *Id.*

During subsequent conference calls with the parties, the presiding officer directed that the Petitioner provide more specific information regarding how the Employer treated her discriminatorily in retaliation for her protected labor activities. These calls took place on February 15, and April 12, 2007. Additional information was submitted by Petitioner following the calls referenced above. See Letter from Public Service Employees Union, Local 1132 Business Agent Gerry B. Lacy to PERB counsel Darren B. Root, dated February 26, 2007; Statement from Shirley Thomas, re: Administrative Leave, received April 25, 2007. An additional conference call was set between the parties and held on August 22, 2007. In the meantime, additional disciplinary actions were instituted by the Employer against Ms. Thomas, culminating in her termination on August 7, 2007. See, e.g., University of Kansas Hospital Corrective Action Form, for Employee: Shirley Thomas, imposing a five-day suspension, dated May 9, 2007; Grievance filed by PSEU, Local 1132 and Shirley Thomas, regarding corrective action of 8/7/07 termination, dated August 13, 2007.

During the August 22 conference call, attended by Petitioner *pro se*, by Respondent's legal counsel, Mr. Fritz, and by PSEU Local 1132's business agent Gerry

Lacy, this presiding officer encouraged Petitioner to seek and retain legal counsel to assist in an orderly and coherent presentation of her case. The presiding officer cautioned that although he has a duty to ensure the compilation of an adequate evidentiary record upon which to base findings of fact and legal conclusions, it was also his ethical duty to remain fair and objective and to not cross the line from being an objective, neutral fact-finder to subconsciously serving as a *pro se* litigant's advocate. See, e.g., *Hall v. Bellmon*, 935 F.2d 1106, 1110 (C.A.10 1991) ("We believe that this rule [to construe *pro se* litigants pleadings liberally] means that if the court can reasonably read the pleadings to state a valid claim on which the plaintiff could prevail, it should do so despite the plaintiff's failure to cite proper legal authority, his confusion of various legal theories, his poor syntax and sentence construction, or his unfamiliarity with pleading requirements. At the same time, we do not believe it is the proper function of the district court to assume the role of advocate for the *pro se* litigant."). Petitioner acknowledged an understanding of the presiding officer's concerns and expressed her desire and intent to find an attorney to assist in the presentation of her cause. At a subsequent September status conference, Petitioner advised that she had been unsuccessful in securing legal representation.¹

A telephone prehearing conference was set for October 16, 2007. See Notice of Telephone Prehearing Conference, issued October 9, 2007. In its prehearing question-

¹ In a subsequent letter, Petitioner noted that she had contacted no less than ten attorneys, whom she named individually, in regard to assisting her in this case, but that each of them advised that "due to the nature of [her] claim they were unable to help" her. See Letter from Shirley Thomas, received December 6, 2007. In addition, at our September conference call, Petitioner indicated that she had discussed this matter with an attorney from Blake & Uhlig, P.A., a Kansas City-area law firm well-known regionally for its practice of labor and employment law, but did not retain their services. Finally, in a May 4, 2008 letter to the presiding officer, Petitioner listed an additional four attorneys she had contacted, unsuccessfully, in her continuing effort to secure the services of a legal advocate.

naire, the Employer reiterated its oft-stated position that Petitioner had failed to allege her claim with sufficient particularity to enable it to defend the allegations and to allow Petitioner to proceed to hearing. *See* Respondent's Prehearing Questionnaire, received October 16, 2007. Respondent's Prehearing Questionnaire noted its intention to file a motion to dismiss for failure to state a claim upon which relief can be granted and a motion for summary judgment for failure to exhaust contractual remedies. *Id.* December 28, 2007 was the deadline set for submission of dispositive motions. *See* Scheduling Letter from Respondent's counsel Richard R. Fritz, dated October 17, 2007; Prehearing Conference Order, dated December 7, 2007.

Respondent filed its motion to dismiss on November 29, 2007. Respondent University of Kansas Medical Center's Motion to Dismiss Petitioner's Complaint, filed November 29, 2007. In its motion, Respondent asserts that "Petitioner has repeatedly refused to amend her complaint to properly allege that the Hospital violated a specific section of Kansas statutes." *Id.*, p. 4. Respondent continued: "Petitioner's complaint is fatally flawed and fails to give the Hospital enough information to understand Petitioner's allegations and to prepare a response or properly defend this matter. *Id.*, p. 3. "[A]s a result of Petitioner's failure to amend her complaint, [the Hospital] does not have a clear understanding of Petitioner's allegations [and the complaint] should therefore be dismissed for failure to state a claim upon which relief can be granted." *Id.*, p. 4.

On December 10, 2007, copy of a Notice of Deposition was received at the Labor Relations office, indicating that Respondent would be taking the deposition of Petitioner at its offices on Wednesday, December 19, 2007. Petitioner failed to appear for the deposition. *See* Transcript, Petitioner's Deposition, December 19, 2007, pp. 3-5. On

December 28, 2007, the Labor Relations office received Respondent University of Kansas Medical Center's Second Motion to Dismiss Petitioner's Complaint. *See* Respondent University of Kansas Medical Center's Second Motion to Dismiss Petitioner's Complaint, filed December 12, 2007. In support of its motion, Respondent averred that "[d]ismissal is warranted because Petitioner has disregarded the Board's [discovery] order and refused to appear for her deposition." *Id.*, p. 1. Respondent's statement of facts and its legal arguments were thoroughly reviewed and considered by the presiding officer when, on January 15, 2008, he conferred with the parties during a telephonic status conference call. During that call, the presiding officer questioned Petitioner about her failure to attend the previously scheduled deposition. Based upon her responses, the presiding officer concluded that said failure was not willful, rather it reflected Petitioner's misunderstanding of the mandatory nature of her obligation. *See also*, Petitioner's January 15, 2008 Amended Complaint, p. 2. Accordingly, the presiding officer explained Petitioner's obligation to engage in the discovery process, directed that Petitioner attend and participate in a deposition and set new deadlines for the completion of discovery, for submission of dispositive motions and for a formal evidentiary hearing.

Petitioner Shirley Thomas' deposition was subsequently taken on February 18 of this year. *See* Thomas Deposition, February 18, 2008. Soon thereafter Respondent filed another motion to dismiss this case. *See* Respondent University of Kansas Medical Center's Third Motion to Dismiss Petitioner's Complaint, filed March 10, 2008. *See also*, Memorandum in Support of Defendant University of Kansas Medical Center's Motion for Summary Judgment, filed March 10, 2008 (first paragraph of memorandum indicating that Respondent was moving for summary judgment). The previously-

scheduled formal evidentiary hearing, set for April 17, 2008, was continued *sua sponte* by the presiding officer to allow time for consideration and for rulings on Respondent's dispositive motions. See Order Continuing Hearing *Sua Sponte*, April 8, 2008.

FINDINGS, CONCLUSIONS AND DISCUSSION

The instant prohibited practice complaint, akin to what under federal labor relations law is known as an "unfair labor practice" complaint, arises under the Kansas Public Employer-Employee Relations Act, K.S.A. 75-4321 *et seq.*, (hereinafter "PEERA"). Under PEERA, the quasi-judicial legal administrative proceedings for determination of prohibited practice complaints "shall be conducted in accordance with the provisions of the Kansas administrative procedure act." K.S.A. 75-4334(a). The Kansas Administrative Procedures Act, set forth in Kansas statutes at K.S.A. 77-501 *et seq.*, in turn provides that "the presiding officer, at appropriate stages of the proceedings, shall give all parties full opportunity to file pleadings, objections and motions, including, but not limited to, motions to dismiss and motions for summary judgment." K.S.A. 77-519(a).

Respondent's Motions to Dismiss

Kansas law with regard to such motions, both motions to dismiss and for summary judgment, is abundant, easily attained and well-established. Both statute and case law dictate to the parties and to the presiding officer determination of the outcome with regard to Respondent's motions. As noted by Respondent in its third motion to dismiss, a motion to dismiss for failure to state a claim is justified when, in the light most

favorable to the Petitioner and with every doubt resolved in Petitioner's favor, the complaint states no valid basis for relief. Respondent University of Kansas Medical Center's Third Motion to Dismiss Petitioner's Complaint, filed March 10, 2008, p. 3. When the presiding officer considers such a motion,

"[t]he question for determination is whether in the light most favorable to [petitioner], and with every doubt resolved in [petitioner's] favor, the petition states any valid claim for relief. Dismissal is justified only when the allegations of the petition clearly demonstrate [petitioner] does not have a claim."

Weil & Associates v. Urban Renewal Agency, 206 Kan. 405, 413 (1971). Respondent asserts in addition that "[t]he complaint must be sufficient to give notice of what the claim is and the grounds upon which it rests." *Id.* (citing *City of Andover v. Southwestern Bell Telephone, L.P.*, 37 K.A.2d 358, 153 P.3d 561 (2007)). Respondent fails to note, however, that the case he cites also admonishes that "[t]he plaintiff is 'entitled to have the petition interpreted liberally in his favor with respect to any indefiniteness or uncertainty in its allegations and to have all inferences reasonably to be drawn therefrom resolved in his favor.'" *City of Andover v. Southwestern Bell Telephone, L.P.*, 37 K.A.2d 358, 153 P.3d 561 (2007)(citing *Horton v. Atchison, T. & S.F. Rly. Co.*, 161 Kan. 403, 406, 168 P.2d 928 (1946)).

The presiding officer is also mindful that when a complaint, liberally construed, states a claim cognizable under law within the tribunal's jurisdiction, it should not be dismissed based on the factfinder's belief that the petitioner will fail to provide adequate evidentiary support or prove the claim to the factfinder's satisfaction. *See, e.g., Continental Collieries, Inc. v. Shober*, 130 F.2d 631, 635 (C.A.3 1942)("No matter how likely it may seem that the pleader will be unable to prove his case, he is entitled, upon

averring a claim, to an opportunity to try to prove it.”); *Scheuer v. Rhodes*, 416 U.S. 232, 236, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974)(a district court weighing a motion to dismiss asks “not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims”); *Leimer v. State Mut. Life Assur. Co.*, 108 F.2d 302, 305 (C.A.8 1940)(“ ‘[I]f, in view of what is alleged, it can reasonably be conceived that the plaintiffs . . . could, upon a trial, establish a case which would entitle them to . . . relief, the motion to dismiss should not [be] granted’ ”).

At the outset the presiding officer notes it is readily apparent from the pleadings, taken as a whole and including submissions subsequent to Petitioner's initial complaint, that, her failure to identify specifically-enumerated PEERA subsections notwithstanding, Petitioner's assertions, contained in both her petition and subsequent submissions, as well as in her February 18, 2008 deposition, albeit inartfully expressed are sufficient to give notice of, and grounds for, charging Respondent with a violation of K.S.A. 75-4333(b)(4). *See, e.g.*, Thomas Deposition, February 18, 2008, pp. 146-153. By way of an abbreviated summation, Petitioner's complaint, subsequent submissions and portions of her deposition suggest her position to be as follows: that after working for Respondent apparently without incident for more than six years, upon assuming and performing the duties of a union steward, including that of filing and pursuing numerous grievances against the employer, Respondent began disciplining Petitioner, allegedly, in part at least, for conduct engaged in by fellow employees without repercussion, and ultimately terminated her employment.

The presiding officer notes that a discriminatory, retaliatory or anti-union motivation may reasonably be inferred from a variety of factors including the proximity

between the protected employee activity and the alleged unlawful action of the employer. See *Service Employees Union Local 513 v. City of Hays, Kansas*, Case No. 75-CAE-8-1990, p. 33 (April 14, 1991); *Fraternal Order of Police, Lodge #4 v. City of Kansas City, Kansas*, Case No. 75-CAE-4-1991 p. 25 (Nov. 15, 1991). As was stated in the *F.O.P. Lodge #4* case, "[t]iming remains one of the singularly most important elements of circumstantial proof."

K.S.A. 75-4333(b)(4) provides that "it shall be a prohibited practice for a public employer or its designated representative willfully to: . . . [d]ischarge or discriminate against an employee because he or she has filed any affidavit, petition or complaint or given any information or testimony under this act, or because he or she has formed, joined or chosen to be represented by any employee organization." K.S.A. 75-4333(b)(4). Commission of a section (b)(4) violation would also constitute commission of a (b)(1) violation. See Raymond Goetz, *The Kansas Public Employer-Employee Relations Law*, 28 KAN. L. REV. 243, 264 (1980)(observing that "[a]ny conduct which would violate [K.S.A. 75-4333(b)] (2) through (8) would also violate [K.S.A. 75-4333(b)] (1)").

Consequently, the presiding officer concludes that Respondent's assertions that Petitioner has failed to state a claim upon which relief can be granted are not persuasive. Although PERB's prohibited practice complaint forms request the specific subsection of PEERA's prohibited practice provision alleged to have been violated, Petitioner's failure to so specify is not fatal to her cause. Requests for information contained in PERB's complaint form are directory in nature and designed to secure a more orderly and efficient administrative process. They are not mandatory nor jurisdictional in nature.

See, e.g., Expert Environmental Control, Inc. v. Walker, 13 K.A.2d 56, 58, 761 P.2d 320 (1988)(“ ‘In determining whether a legislative provision is mandatory or directory, it is a general rule that where strict compliance with the provision is essential to the preservation of the rights of parties affected and to the validity of the proceeding, the provision is mandatory, but where the provision fixes a mode of proceeding and a time within which an official act is to be done, and is intended to secure order, system and dispatch of the public business, the provision is directory.’ ”(citation omitted)). Respondent has cited no statute, nor any case law on point compelling the conclusion that Petitioner's failure to so specify is fatal to her claim, nor for good reason is the presiding officer aware of any. Respondent's motions to dismiss on that basis are therefore denied.

Regarding Petitioner's failure to comply with discovery by attending her deposition, that issue is now moot. Petitioner's deposition was taken on February 18, 2008. Likewise, in view that it is apparent from the record that Petitioner alleges violations of K.S.A. 75-4333(b)(4) and (b)(1), Respondent's motion to dismiss her complaint for failing to file a more definite statement of her claim is denied with regard to the (b)(1) and (b)(4) claim.

In view, however, that Petitioner has failed to assert other specific violations of PEERA prohibited practices subsections, and in view that such other complaints would needlessly complicate and prolong this administrative dispute, Respondent's motion to dismiss as to any other potential PEERA violation is appropriate. With regard, therefore, to Respondent's motions to dismiss, same shall be treated as granted in part and denied in part. Petitioner's allegation of a (b)(4) violation for adverse disciplinary action, culminating in the termination of her employment, allegedly in retaliation for protected

union activities, and an attendant (b)(1) violation, survive Respondent's motions to dismiss. We shall address Respondent's motion for summary judgment next.

Respondent's Motion for Summary Judgment

Kansas law applicable to summary judgment is set forth in the Rules of Civil Procedure, K.S.A. 60-201 *et seq.*, which provides in pertinent part as follows:

(b) For defending party. A party against whom a claim, counterclaim or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and proceeding thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

K.S.A. 60-256.

Kansas appellate court decisions inform this tribunal's judgment regarding Respondent's motion for summary judgment. The burden of proof on a party seeking summary judgment is a strict one. *Kerns By and Through Kerns v. G.A.C., Inc.*, 255 Kan. 264, 875 P.2d 949 (1994). This tribunal must resolve all facts and inferences that may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought. *Bacon v. Mercy Hosp. of Ft. Scott*, 243 Kan. 303, 756 P.2d 416 (1988). The party opposing summary judgment, however, must come forward with facts to support its

claim, that is, with evidence to establish a dispute as to a material fact. *Mays v. Ciba-Geigy Corp.*, 233 Kan. 38, 661 P.2d 348 (1983); *Busch v. City of Augusta*, 9 K.A.2d 119, 123, 674 P.2d 1054 (1983). Through her deposition, Petitioner's testimony serves as evidence in support of her claim. This evidence and other circumstantial links establish a factual dispute regarding Respondent's reasons for its adverse employment actions concerning Petitioner.

Ultimately, a party alleging a prohibited practice complaint under PEERA has the burden of proving that violation by a preponderance of substantial, competent evidence of record. *See, e.g., Garden City Educators' Ass'n. v. U.S.D. No. 457*, 15 K.A.2d 187, 195, 805 P.2d 511 (1991)(affirming decision of trial court under PEERA's sister statute, the Kansas Professional Negotiations Act, K.S.A. 72-5413 *et seq.*, because of negative finding that GCEA failed to carry its burden of proof); *U.S.D. No. 314 v. Kansas Dept. of Human Resources*, 18 K.A.2d 596, 601, 856 P.2d 1343 (1993)(finding that substantial competent evidence supported determination that Board's refusal to negotiate evaluation procedures constituted failure to bargain in good faith, a prohibited practice under the Professional Negotiations Act). No presumption for the commission of a prohibited practice is created by the mere filing of such a complaint. *Louisburg Teachers Association v. U.S.D. No. 416*, 72-CAE-1-1991, p. 20 (June 24, 1991)(citing *Boeing Airplane Co., v. National Labor Relations Board*, 140 F.2d 423 (10th Cir. 1944)). In its memorandum in support of its motion for summary judgment, Respondent asserts that "Petitioner is unable to prove these two elements of her *prima facie* case [anti-union animus and a causal relationship between protected activities and adverse employment action], therefore the Hospital is entitled to summary judgment." Memorandum in

Support of Defendant University of Kansas Medical Center's Motion for Summary Judgment, filed March 10, 2008, p. 11. Respondent misapprehends the standards for determining a motion for summary judgment. Contrary to Respondent's assertion, the evidence necessary to sustain a Petitioner's ultimate burden of proof need not be apparent in the limited record of a proceeding at this pre-hearing stage; administrative procedures provide for a formal hearing for eliciting testimony and for submission of other evidence to establish an evidentiary record from which ultimate findings and conclusions must be made. At this stage of the proceedings, Petitioner need do no more than demonstrate evidence establishing a dispute with regard to these elements of the case.

In the instant matter, it is important to recognize this distinction between the Petitioner's ultimate burden to prove her case by a preponderance of substantial and competent evidence and the more demanding burden on a party seeking summary judgment. Summary judgment is appropriate only when "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Cunningham v. Riverside Health System, Inc.*, 33 K.A.2d 1, 99 P.2d 133 (2004). *See also*, K.S.A. 60-256(c). An entry of summary judgment is mandated when, after allowing adequate time for discovery and upon motion, the non-moving party fails to make a showing sufficient to establish the existence of an element essential to that party's case. *See Crooks for Williams v. Greene*, 12 K.A.2d 62, 736 P.2d 78 (1987)(citation omitted).

In this matter, in order ultimately to prevail on a claimed (b)(4) violation, and hence a concomitant (b)(1) violation, Petitioner bears the initial burden of establishing a

prima facie showing that her protected union activity was a motivating factor in the employer's taking of adverse action, for example, her termination.² Once a *prima facie* case is established, the employer can only avoid being held in violation of PEERA's prohibited practice provisions by showing that the adverse action rested on the employee's unprotected conduct and that the same action would have been taken anyway. *See, e.g., Wright Line*, 251 NLRB 1083 (1980) (holding that once a *prima facie* case is established, the employer can avoid being held in violation of the NLRA section 8(a)(1) and (3), only by showing that the adverse action rested on the employee's unprotected conduct and that the same action would have been taken "in any event"). *See also, Goetz, supra*, at p. 267 (suggesting that when evidence established a dual motive, such as discouragement of union membership and some other cause, the burden should be on the employer to show that the action would have been taken without regard to the union activity).

If an employer fails to present evidence suggesting that adverse action taken was motivated by non-discriminatory reasons and would have been taken in any event, the inquiry is over and a petitioner would prevail. *Wright Line, supra*. If, however, the employer presents evidence of a non-discriminatory motive, that is, if the employer rebuts the employee's *prima facie* showing, it is incumbent upon the charging party to demonstrate that the employer's stated and allegedly non-discriminatory reason is merely pretextual and that the primary motivation for its imposition of adverse action upon the employee was the employee's membership in or his activities on behalf of an employee organization. *N.L.R.B.*

² It should be noted, however, that membership in an employee organization or participation in concerted activities does not immunize an employee against discipline. Maintaining discipline in the workplace is a part of an employer's inherent managerial prerogative and not restricted by the PEERA unless motivated by anti-union animus or done in retaliation for employee organization activity or affiliation. *See generally, Service Employees Union, Local 513 v. City of Hays, Kansas*, 75-CAE-8-1990, pp. 26-28 (September 18, 1990).

v. Ogle Protection Service, Inc., 375 F.2d 497, 505 (6th Cir. 1967). As noted previously, however, the time for presenting such proof is reserved for a formal hearing.

The inquiry that is relevant for purposes of Respondent's motion for summary judgment is whether, resolving all facts and inferences that may reasonably be drawn from the evidence in favor of the party against whom the ruling is sought, Petitioner has come forward with evidence in support of her claim establishing a dispute as to a material fact, *e.g.*, evidence that the motivating factor in her termination was anti-union animus or was in retaliation for Petitioner's union activities. Despite the presiding officer's grave misgivings about her ability to prove her case, which appears to be based largely upon circumstantial evidence, as are most (b)(4) retaliation claims, Petitioner is entitled under the law to try to prove her case. There remain genuine issues as to the material facts in this matter, most notable of which are whether Respondent's actions adverse to Petitioner were motivated by Petitioner's union activities. Petitioner's deposition testimony and other circumstantial evidence establishes a dispute regarding the material facts, the employer's motive for adverse action, and thus the movant is not entitled to judgment as a matter of law. Respondent's motion for summary judgment is denied.

This matter will come on for a further scheduling conference in the coming weeks. Per the directions given below, the parties will be contacted for scheduling purposes by telephone by the presiding officer.

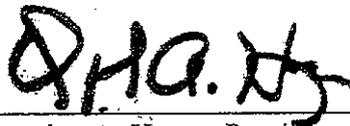
THEREFORE, it is the order of the presiding officer that Respondent's motions to dismiss are granted in part and denied in part. Petitioner's claims for hearing are limited to the charges and circumstances described above at page ten.

IT IS FURTHER ORDERED, that Respondent's motion for summary judgment is denied.

IT IS FURTHER ORDERED, that within ten days of the date of this order, each of the parties shall contact PERB's Office Administrator, Sharon Tunstall, at (785) 368-6224, to provide her with dates and times each is available over the coming few weeks and a phone number where they can be reached by the presiding officer.

IT IS SO ORDERED.

DATED, this 5th day of September, 2008.



Douglas A. Hager, Presiding Officer
Office of Labor Relations
427 SW Topeka Boulevard
Topeka, KS 66603-3182

CERTIFICATE OF MAILING

I, Loyce McKnight, Administrative Officer for the Office of Legal Services, Kansas Department of Labor, hereby certify that on the 5th day of September, 2008, a true and correct copy of the above and foregoing Order was deposited in the U. S. Mail, first class, postage prepaid, addressed to:

Shirley Thomas, Petitioner
3600 Chestnut
Kansas City, MO 64128

Richard R. Fritz, Attorney at Law
Polsinelli Law Firm
700 West 47th Street, Ste. 1000
Kansas City, MO 64112-1802



Loyce McKnight, Administrative Officer