

STATE OF KANSAS
BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

IN THE MATTER OF

Pittsburg State University Chapter of
Kansas Higher Education Association

Complainant,

vs.

Kansas Board of Regents
(Pittsburg State University)

Respondent.

CASE NUMBERS: 75-CAE-20-1980
75-CAE-21-1980

ORDER

Comes now on this 25 day JANUARY, 1982 the above captioned cases for consideration by the Public Employee Relations Board.

A P P E A R A N C E S

Complainant, Pittsburg State University/Kansas Higher Education Association, appears by and through its counsel, Mr. C. A. Menghini, Menghini and Menghini, Attorney at Law, 316 National Bank Building, Pittsburg, Kansas 66762.

Respondent, Board of Regents, appears by and through its counsels Mr. Robert Partridge and Mr. Larry Rapp; Foulston, Siefkin, Powers and Eberhardt, 700 Fourth Financial Center, Wichita, Kansas 67202 and Mr. Reid Stacey, Assistant Attorney General, Judicial Center, Topeka, Kansas.

PROCEEDINGS BEFORE THE BOARD

1. A petition of complaint against employer under the signature of Mr. Robert E. Medford was received by the Board on June 10, 1980, and was assigned case number 75-CAE-20-1980.
2. A petition of complaint against employer under the signature of Mr. Robert E. Medford was received by the Board on June 27, 1980, and was assigned case number 75-CAE-21-1980.
3. A copy of the petition in case number 75-CAE-20-1980 and a request for answer to the complaint was sent by the Board to Dr. John J. Conard on June 11, 1980.
4. A copy of the petition in case number 75-CAE-21-1980 and a request for answer to the complaint was sent by the Board to Dr. John J. Conard on June 30, 1980.
5. A request made by the respondent in case number 75-CAE-20-1980 for fourteen (14) additional days in which to file an answer was granted by the Board on June 19, 1980.

75-CAE-20-1980
75-CAE-21-1980

6. A request made by the respondent in case number 75-CAE-21-1980 for fourteen (14) additional days in which to file an answer was granted by the Board on July 9, 1980.

7. Respondent's answer in case number 75-CAE-20-1980 was received by the Board on July 3, 1980, a copy of which was sent to complainant.

8. Respondent's answer in case number 75-CAE-21-1980 was received by the Board on July 22, 1980, a copy of which was sent to complainant.

9. A representative of the Board met with the parties in a pre-hearing conference on July 17, 1980, and by agreement of the parties, cases 75-CAE-20-1980 and 75-CAE-21-1980 were consolidated for hearing.

10. The parties were notified on July 18, 1980, that pursuant to the agreement reached at the July 17, 1980, meeting, the parties would prepare for a hearing by taking depositions and making stipulations, and that further action by the Board would be withheld until the parties agreed to a hearing date.

11. During the deposition process, respondent presented to the Board a Motion to Compel, received by the Board on October 14, 1980. The motion requested the Board to enter an order directing a witness to answer certain questions. A copy of the motion was sent to complainant.

12. Complainant's answer to respondent's Motion to Compel was received by the Board on October 17, 1980.

13. Respondent's Motion to Compel reply to complainant's answer was received by the Board on October 22, 1980.

14. In a letter received by the Board on December 3, 1980, respondent requested the Board to consider convening a hearing on his Motion to Compel.

15. On December 6, 1980, the Board received the completed depositions.

16. On January 8, 1981, Mr. Jerry Powell heard oral arguments on respondent's Motion to Compel. The motion was denied and the parties' counsels agreed to draft the order to deny the motion.

17. On April 6, 1981, Mr. Jerry Powell mailed to the parties the order in which respondent's Motion to Compel was denied.

18. On April 6, 1981, the Board sent all parties a notification of hearing in the two cases and the hearing was set for April 21, 1981, in Pittsburg, Kansas.

19. On April 8, 1981, the Board received subpoenas duces tecum from complainant for John Conard, William Kauffman, James Appleberry, Darrell Hoffman, and Robert Stephan.

20. On April 21, 1981, respondent's Memorandum of Law was hand delivered to Mr. Jerry Powell.

21. On April 21, 1981, respondent's Motion to Quash Subpoenas Duces Tecum was hand delivered to Mr. Jerry Powell.

22. All parties first being properly notified, a hearing into the matter(s) was held on April 21, 1981, in Pittsburg, Kansas, before the hearing examiner, Mr. Jerry Powell.

23. In a letter received by the Board on June 5, 1981, counsel for respondent claimed that certain documents subpoenaed by counsel for complainant were privileged communication between attorney and client, and counsel for respondent requested that Mr. Powell examine said documents in camera and decide the issue document by document.

24. In a letter received by the Board on June 18, 1981, respondent suggested two dates for a meeting of the parties with Mr. Powell regarding privilege question, those two dates being June 29, 1981, or June 30, 1981.

25. Complainant's and respondent's exhibits and transcript of testimony were received by the board on June 26, 1981.

26. The parties met in the Board's office in Topeka on June 29, 1981.

27. On July 8, 1981, Mr. Powell sent to the parties his memorandum on the privilege question.

28. In a letter dated July 17, 1981, complainant described additional exhibits that he requested be put into the record of hearing.

29. In a letter dated August 3, 1981, respondent described additional exhibits that he requested be put into the record of hearing.

30. On August 6, 1981, Mr. Powell advised the parties that any additional exhibits should be received by the Board prior to August 28, 1981, at which date Mr. Powell intended to close the hearing record.

31. Additional exhibits to be entered into the record as requested by both parties were received by the Board prior to August 27, 1981.

32. On August 27, 1981, the hearing record was closed.

33. Parties were notified on August 27, 1981, that counsel for complainant would have thirty (30) days from receipt of the notification to submit a closing statement or brief to the hearing examiner and also to the respondent; and upon receipt of complainant's brief, counsel for respondent would have thirty (30) days to submit his closing statement or brief to the hearing examiner and also to the counsel for complainant; further, that counsel for complainant would have fifteen (15) days to submit a rebuttal statement to the hearing examiner and also to the respondent.

34. Complainant's closing statement or brief received by the Board on October 1, 1981.

35. Respondent's closing statement or brief received by the Board on November 3, 1981.

36. Complainant's rebuttal statement received by the Board on November 19, 1981.

FINDINGS OF FACTS

1. That the law firm of Foulston, Siefkin, Powers and Eberhardt was retained by the Board of Regents from December, 1974 through November, 1977. Thereafter the law firm was retained by Pittsburg State University. (Complainant's Exhibits 1, T-14)

2. That the Faculty Senate adopted a series of resolutions or motions relating to the subject of retrenchment, which state that retrenchment is an issue that is properly addressed via Pittsburg State University/KHEA at the meet and confer table and that the Faculty Senate did not wish to address the issue. (Complainant's Exhibit 3, T-28)

3. That the general faculty, meeting in 1980, voted to address the subject of retrenchment via the Kansas Higher Education Association at the meet and confer table. (T-30)

4. That subject matter dealt with by the Faculty Senate is subject to change by the university president. (T-38)

5. That President Appleberry named a committee of faculty members to work on a retrenchment policy. (T-41)

6. That counsel for complainant and respondent stipulated to a definition of retrenchment as follows: 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. (T-43)

7. That an agreement was reached at one time between the parties to discuss local issues within informal sessions. (T-67)

8. That the executive officer for the Kansas Board of Regents could not find any written document indicating that the Kansas Board of Regents had delegated any of the Board of Regents' power to President Appleberry. (T-110)

9. That the Pittsburg State University/KHEA team included a proposal on retrenchment with the March, 1980 package supplied to the Pittsburg State University meet and confer team. The retrenchment proposal was also presented during negotiations in the previous year. (T-134 - 234)

10. That the Pittsburg State University/KHEA meet and confer team submitted a proposal on June 5, 1980 which provided that both parties would waive mediation and fact-finding in the event agreement could not be reached. This agreement provided for the existing agreement to continue if agreement could not be reached. (T-156, Complainant's Exhibit 14)

11. That Darrell Hoffman from the State Department of Administration attended some meet and confer sessions later in the year after the "local agreement" was made. (T-190, 196)

12. That the former chief spokesperson for the Pittsburg State University/KHEA team perceived the duration clause as a clause to provide a "rest" period between meet and confer sessions. (T-202)

13. That the duration clause was never discussed at the bargaining table. (T-202)

14. That the Pittsburg State University/KHEA team proposed a retirement clause for inclusion in the memorandum of agreement. (T-207)

15. That the former chief spokesperson recalled the Pittsburg State University team response to the retirement clause to be: the only thing the Pittsburg State University team could offer was the Regents policy on retirement and that the team could do nothing about the policy on the local level. (T-207)

16. That the ratification procedure for the 1978-1979 agreement was discussed at the meet and confer table. The Pittsburg State University/KHEA team was informed that the Regents would not vote on ratification. (T-211)

17. That the Pittsburg State University/KHEA meet and confer team has taken the position that retrenchment should be a subject of meet and confer. (T-236)

18. That Dr. Jones testified to the best of his recollection when the Pittsburg State University meet and confer team removed their May 29, 1980 proposal, the only proposal remaining on the table was possibly the salary proposal. It is unclear as to whether or not the KHEA proposal of March 28, 1980 was still on the table. (T-269)

19. That the attorney for the Board of Regents and Pittsburg State University defines local issues as those issues over which the chief executive officer of the institution has the authority to resolve on his own. (T-272)

20. That there is a significant, a wide grant or great grant of authority from the Regents to the executive officer to administer the affairs of the institution including meet and confer authority. (T-273)

21. That the attorney for the Board of Regents and Pittsburg State University categorize mandatory issues as follows:

- a. Salary - a bit of a hybrid - set by the president subject to policy of the Board of Regents;
- b. Salary Generation - hybrid could have local significance;
- c. Hours of Work - defined as number of preparations - local;
- d. Vacation Allowances - not local;
- e. Sick and Injury Leave - probably not local;
- f. Number of Holidays - not local;
- g. Retirement Benefits - bits and pieces local - hybrid;
- h. Insurance Benefits - not local;
- i. Wearing Apparel - local;
- j. Premium pay for overtime - certainly has local
- k. Shift Differential Pay - has local qualities - hybrid;
- l. Jury Duty - local in most respects;
- m. Grievance Procedure - local. (T-274-275-276)

22. That any agreement concerning a term and condition of employment which was covered by a Regents policy would need, depending upon what the agreement said, Regents approval. (T-283)

23. That the subject of retirement has been discussed by the parties on many occasions. (T-286)

24. That the Pittsburg State University response to any proposal on retirement has been "You do know that these provisions are largely fixed by either policy and/or the statute". (T-286)

25. That discussions on retirement particularly in years when agreement was reached, centered on local privileges that could be afforded retirees. (T-286)

26. That the Pittsburg State University has responded to a salary generation and salary allocation proposal as, "We're not prepared to agree to that." (T-287)

27. That the attorney for Pittsburg State University and the Board of Regents can not recall the Pittsburg State University team making any specific counter-proposals on salary allocation or salary generation. (T-288)

28. That Mr. Darrell Hoffman of the Department of Administration attended the last meet and confer session of 1977, which was a change in the composition of the public employer team at previous meetings. (T-292)

29. That the Board of Regents has been given by law the authority to govern the seven institutions of higher education. (T-300-302, 304)

30. That the two agreements between Pittsburg State University and Pittsburg State University/KHEA were approved by President Appleberry. (T-307)

31. That the two memorandums of agreements referenced in finding 32 were never submitted to the Board of Regents for formal approval under the statute. (T-307)

32. That the chief executive officer of Pittsburg State University does not recall ever instructing the Pittsburg State University team that they could not reach agreement on any issue which was different than or conflicted with a Regents policy. (T-311)

33. That President Appleberry keeps informed on Board policy and "to the extent that authority is there for me (President Appleberry) to take action I do". (T-315)

34. That President Appleberry believes retrenchment can be "discussed" at the meet and confer table although it is not a term and condition of employment under the Public Employer-Employee Relations Act. Therefore, the Pittsburg State University team would not be willing to reach agreement and sign off on it. (T-316, 317, 318, 319)

35. That Darrell Hoffman of the Department of Administration was a member of the Pittsburg State University meet and confer team on the date in 1980 when Dr. Appleberry released the team to "go on about their business". (T-327)

36. That President Appleberry authorized the inclusion of the "note" on the Pittsburg State University May 29, 1980 proposals. (T-330)

37. That the intended purpose of the note on the May 29, 1980 Pittsburg State University proposal was to: "...if we were able to reach an agreement on those topics, have our options open as to when they would be effective, and that if the agreement did not occur that the 1980-1981 agreement would expire, and then we would start meeting anew and afresh on those topics". Dr. Appleberry then corrected the above statement to reflect the 1979-1980 agreement. (T-330-331)

38. That President Appleberry did not direct the Pittsburg State University team with regard to the Pittsburg State University/KHEA memorandum of understanding. He was out of town. (Complainant's Exhibit 14 - T-333)

39. That the president of Pittsburg State University was aware of the outcome of votes taken in the various schools regarding the request for an

(election of faculty from which a pool of persons would be established to eventually address the subject of retrenchment. (T-336, 337, 338)

40. That President Appleberry believes that the "local agreement" entered into in 1977 has continued. (T-354)

41. That the University took the position that they were under no obligation to meet and confer over any topics other than salary during the life of the 1979-1980 agreement because Pittsburg State University/KHEA failed to provide timely notice. (T-360)

42. That the Pittsburg State University team was proposing in their May 29, 1980 proposal, that only the topic of salary go to impasse in the event the parties could not reach agreement. (T-360)

43. That the purpose for only wanting to meet and confer over salaries was so that the parties would not be into the subsequent year before agreement was reached. (T-361)

44. That the impact of a reduction in force affects the entire campus. (T-372)

45. That the Board of Regents did not express their desire to be removed from the meet and confer process at Pittsburg State University to Dr. Appleberry during his interview process. (T-388)

46. That President Appleberry believes his team communicated the thought to Pittsburg State University/KHEA that the Pittsburg State University team desired to develop a successor agreement after the current agreement expired. (T-390)

47. That the Pittsburg State University team corresponded with the Pittsburg State University/KHEA to determine the Pittsburg State University/KHEA's desire to meet and confer over a 1980-1981 agreement. But no offer was made to meet and confer in said correspondence except as to salaries. (T-393)

48. That subsequent to the expiration of the 1979-1980 agreement President Appleberry placed into being an interim grievance procedure which was different than the one contained in the 1979-1980. (T-399)

49. That disbanding or releasing the Pittsburg State University team from further meet and confer sessions meant that individual team members could commence scheduling other activities in time slots which had previously been earmarked for meeting and conferring. (T-432)

50. That the Pittsburg State University/KHEA team indicated to Dr. Hay, Chief Spokesperson for the Pittsburg State University team that they could not proceed with meet and confer over other topics until such time as the intended meaning of the May 29 "note" was resolved. (T-447-449)

51. That Spokesperson Hay informed the Pittsburg State University/KHEA team that since the May 29 note seemed to cause problems, he would withdraw the May 29 proposal so that the parties could commence meeting and conferring over salaries. (T-452)

52. That Complainant's Exhibit 14 was presented to the Pittsburg State University team on June 5, 1980. (T-457)

53. That during a luncheon meeting with Judith Shaw, President of Pittsburg State University/KHEA, which was held sometime prior to March 27, 1980, Mr. Hay informed Ms. Shaw that the only issue Pittsburg State University was "for sure" prepared to discuss for inclusion in a 1980-1981 memorandum of agreement was salary. (T-465)

54. That the note on the cover sheet of the May 29, 1980, Pittsburg State University proposal was prepared by Mr. Robert Partridge, attorney for respondent. (T-498)

55. That Sandra McMullen was appointed to the Kansas Board of Regents by Governor John Carlin in January, 1978. (Respondent's Exhibit 25)

56. That both President Appleberry and Mr. Kauffman briefed Regent McMullen on the contents of the 1978-1979 memorandum of agreement and the 1979-1980 memorandum of agreement between Pittsburg State University and Pittsburg State University/KHEA. (Respondent's Exhibit 25, Page 6 and 7)

57. That the briefings referenced in finding number 60 were informal and not formal meetings to the Board of Regents. (Respondent's Exhibit 25, Page 6 and 7)

58. That Regent McMullen "feels comfortable" with the amount of information she received concerning the memorandums of agreement. Therefore, the lack of formal Board of Regents approval for the agreements "does not concern" Regent McMullen. (Respondent's Exhibit 25, Page 7-8)

59. That Regent McMullen is not aware of any Regents direction to President Appleberry concerning the meet and confer process at Pittsburg State University. (Respondent's Exhibit 25, Page 16)

60. That President Appleberry has been "very careful to make sure that Regent McMullen is informed adequately". (Respondent's Exhibit 25, Page 16)

61. That instructions were given by the Board of Regents to President Appleberry to go back to his faculty to formulate a plan for financial exigency. (Respondent's Exhibit 25, Page 18)

62. That Regent McMullen believed President Appleberry's request for faculty members to participate in preparing a retrenchment plan was because he (President Appleberry) believes he was doing what the Regents asked him to. (Respondent's Exhibit 25, Page 20)

63. That the Board of Regents hires the President of the University, they ask him to administer, and that they expect him to deal with the things that are being discussed. (Respondent's Exhibit 25, Page 13)

64. That Mr. Frank Lowman was appointed to the Kansas Board of Regents by Governor Bennett in 1977. (Respondent Exhibit 23)

65. That Regent Lowman is unaware of any specific direction from the Board of Regents to President Appleberry regarding meet and confer at Pittsburg State University. (Respondent's Exhibit 23)

66. That Mr. Jordan Haines was appointed to the Kansas Board of Regents by Governor Bennett in 1977. (Respondent's Exhibit 24)

67. That Regent Haines is unaware of any direction from the Board of Regents to President Appleberry regarding meet and confer at Pittsburg State University. (Respondent's Exhibit 24)

68. That Glee Smith was appointed by Governor Docking to the Kansas Board of Regents in 1975. (Respondent's Exhibit 26)

69. That Regent Smith was informed about the 1978-1979 agreement and the 1979-1980 agreement between the Pittsburg State University and Pittsburg State University/KHEA. (Respondent's Exhibit 26, Page 6)

70. That the Board of Regents took no particular action on the memorandum of agreement referenced in finding of fact number 73. (Respondent's Exhibit 26, Page 6)

71. That Regent Smith is aware of the "local agreement" at Pittsburg State University. (Respondent's Exhibit 26, Page 7)

72. That Regent Smith was informed about the agreements by President Appleberry and Mr. Bill Kauffman. Since he (Mr. Smith) approved of the Pittsburg State University negotiations he (Mr. Smith) did not have to do anything. (Respondent's Exhibit 26, Page 7)

73. That if Regent Smith had an objection to the "matter" (agreements between Pittsburg State University and Pittsburg State University/KHEA) he would have brought that objection to the attention of President Appleberry and perhaps the full Board of Regents. (Respondent's Exhibit 26, Page 8)

74. That the Board of Regents had delegated meet and confer authority to President Appleberry in the same manner as it has other administrative matters. (Respondent's Exhibit 26, Page 11)

75. That Regent Smith believes the Kansas Board of Regents approved the two previous memorandums of agreement between Pittsburg State University and Pittsburg State University/KHEA when the Board was informed and subsequently took no action. (Respondent's Exhibit 26, Page 23)

76. That Regent Smith has complete confidence in President Appleberry and believes that President Appleberry stays within Board policy. However, Board of Regents control over a president is to remove a president rather than

second guess a president in the event the Board believes a president is not exercising his administrative responsibilities properly. (Respondent's Exhibit 26, Page 30)

77. That Regent Smith agreed and believed that other members of the Board of Regents agreed with the 1976 decision to meet and confer on a local level. (Respondent's Exhibit 26, Page 33)

78. That Regent Smith recalls that each member of the Kansas Board of Regents talked with the Board of Regents counsel or Mr. Max Bickford, Executive Officer for the Board of Regents, during 1976 and concurred that meet and confer should proceed at a local level. (Respondent's Exhibit 26, Page 36)

79. That Regent Smith is kept informed of progress or lack thereof in the meet and confer process at Pittsburg State University by President Appleberry or Mr. Bill Kauffman counsel for the Board of Regents. (Respondent's Exhibit 26, Page 40)

80. That the Board of Regents has delegated complete authority to Dr. Appleberry but President Appleberry does keep Regents members informed. (Respondent's Exhibit 26, Page 41)

81. That Regent Smith believes the Pittsburg State University team position regarding their obligation to meet and confer during 1980 was appropriate if the union failed to give notice and, therefore, the contract was continuing for another year. (Respondent's Exhibit 26, Page 42)

82. That Regent Smith views the duration clause in the 1979-1980 memorandum of agreement as ambiguous but that he assumes that the "contract" would continue in the event no modifications were requested by either side. (Respondent's Exhibit 26, Page 43)

83. That Regent Smith believes that the Board of Regents must rely on the President of the University to relay communications from the faculty to the Board of Regents. (Respondent's Exhibit 26, Page 50)

84. That Mr. Kauffman, acting as attorney for Pittsburg State University during meet and confer at Pittsburg State University does occasionally report on the meet and confer session to the Board of Regents. (Respondent's Exhibit 27, Page 6)

85. That the Pittsburg State University/KHEA have for several years made a proposal on a subject (merit pay raises) which has a Regents wide impact. (Respondent's Exhibit 27, Page 23, 24)

86. That the Board of Regents has deliberately delegated the responsibility for meet and confer at Pittsburg State University to the chief executive officer of the University. (Respondent's Exhibit 27, Page 35)

87. That Mr. Kauffman as counsel for the Board of Regents has discussed the nature of the specific prohibited practice complaint and the answer with most members of the Board of Regents. (Respondent's Exhibit 27, Page 41)

88. That Attorney Kauffman sent a memorandum to Regents members regarding the difference of opinion of the Pittsburg State University team and the Pittsburg State University/KHEA team on the note attached to the May 29, 1980 Pittsburg State University proposal. (Respondent's Exhibit 27, Page 59-60)

89. That Bruce Cooper, K-NEA Representative, was occasionally present for meet and confer sessions for the 1978-1979 memorandum of agreement. (Respondent's Exhibit 27, Page 62)

90. That the Personnel Reduction Committee, established at President Appleberry's request, submitted a draft proposal of a tenured faculty reduction plan to the teaching faculty and invited comments and suggestions from the faculty regarding the proposal. (Respondent's Exhibit 1)

91. That correspondence between the parties in December, 1976, and January, 1977, resulted in an agreement to enter into a "local process of conferring". (Respondent's Exhibit 3)

92. That the Pittsburg State University administration teams' chief spokesperson was notified in writing by the Pittsburg State University/KHEA team's coordinator that Pittsburg State University/KHEA desired to open negotiations for the 1980-1981 contract; the note was dated January 25, 1980. (Respondent's Exhibit 7)

93. That the spokesperson for the administration's team communicated to Pittsburg State University/KHEA's president an offer to talk informally about areas of concern regarding meeting and conferring for 1980-1981 and that President Appleberry had disbanded the administration team but would reconstitute the team to meet and confer on salary. (Respondent's Exhibit 11)

94. That the administration team spokesperson communicated to Pittsburg State University/KHEA's president a concern about an "open question about the limitation on discussion of other topics brought about by the association failing to notify us by January 1 of its wish to modify the existing agreement". (Respondent's Exhibit 13)

95. That President Appleberry invited the Faculty Senate to contribute to the development of University policy on reduction of personnel to include a staff reduction policy and that the Faculty Senate resolved that "the issue of retrenchment is one that is the province of Pittsburg State University/KHEA" and the senate president should take no part in the process as provided for in the report of the ad hoc Personnel Reduction Committee. (Respondent's Exhibit 17)

96. That President Appleberry provided the Board of Regents with a copy of the tentative agreement reached in 1979, describing the agreement as "a 'local' agreement" and thus not requiring Board approval except for approval of revised salary amounts covered by the agreement. (Respondent's Exhibit 18)

97. That the firm of Foulston, Siefkin, Powers and Eberhardt was contracted to provide legal services to Pittsburg State University in connection with labor negotiations at Pittsburg State University beginning November 21, 1977. (Complainant's Exhibit 1)

98. That subsequent to the Faculty Senate's resolution to not participate in the ad hoc Personnel Reduction Committee, President Appleberry asked the dean of each school and the director of the vocational technical institute to conduct an election among the members of the faculty in each school for the purpose of establishing a "pool", from which members of the committee would be chosen. (Complainant's Exhibit 2)

99. That the Faculty Senate resolved in 1976 that Pittsburg State University/KHEA was supported by the Senate as the sole legal representative of the faculty in discussions relating to the establishment of modifications of conditions of employment of the faculty. (Complainant's Exhibit 3)

100. That there existed an agreement between Pittsburg State University/Kansas Higher Education Association and Pittsburg State University for 1979-1980, signed by the president of Pittsburg State University/KHEA and the president of Pittsburg State University. (Complainant's Exhibit 4)

101. That there existed an agreement between Pittsburg State University/Kansas Higher Education Association and Pittsburg State University for 1978-1979, signed by the president of Pittsburg State University/KHEA and the president of Pittsburg State University. (Complainant's Exhibit 5)

102. That Pittsburg State University/KHEA submitted to Pittsburg State University a proposed agreement which contained sections regarding hours of work, salaries, wearing apparel, sick leave, jury duty, retirement benefits, and grievance procedures, including proposals regarding academic freedom, tenure, retrenchment, contract renewal and personnel files. (Complainant's Exhibit 15)

103. That in Pittsburg State University/KHEA's proposed agreement, Article VII of the proposed Grievance Procedure section contains language regarding retrenchment. (Complainant's Exhibit 15)

104. That the spokesperson for the administrative team notified the Pittsburg State University/KHEA team coordinator that because Pittsburg State University was not notified of Pittsburg State University/KHEA's desire to modify the existing agreement, Pittsburg State University/KHEA's request (to open negotiations for the 1980-1981 contract, see Respondent's Exhibit 7) was received "with some surprise"

and that the Pittsburg State University team assumed that the parties would not meet on "most" matters that year and that the Pittsburg State University team believed that the notification commitment made in the agreement was binding. (Complainant's Exhibit 16)

105. That the principal duties and responsibilities of the Board of Regent's staff attorney are: 1) To serve as legal counsel for Pittsburg State University, and 2) To represent the Board in meet and confer sessions in such manner and with such authority as the Board may direct. (Complainant's Exhibit 17)

106. That in a letter to Dr. James Basham, dated January 18, 1977, Dr. Appleberry summarized the background which led to the resumption of talks. In the letter, Dr. Appleberry refers to telephone conversations with persons on campus, with Executive Officer Conard, with selected members of the Regents' staff, and with Chairman Smith, subsequent to which a discussion of plans for the future took place at a meeting in Wichita. Out of this meeting came an agreement to propose to the association that meet and confer sessions resume at the local level and that such discussion would involve issues that had only campus-wide impact. (Complainant's Exhibit 21)

107. That in the letter described in finding number 110, Dr. Appleberry reiterated his understanding that the Board of Regents members had no objection to a written memorandum of agreement; he further stated that "as we prepare to resume discussion of issues which have impact beyond the local campus, we will want to reassess the composition of our meet and confer team. Without making a firm decision at this time, I will likely propose that the current team be retained, and that it be augmented by Mr. Hoffman from the Department of Administration". (Complainant's Exhibit 21)

108. That President Appleberry provided background information to the Board of Regents members regarding the process and progress of meeting and conferring at Pittsburg State University. (Complainant's Exhibit 21 through 38)

CONCLUSIONS

1. Under the Public Employer-Employee Relations Act (PEERA) a governing body and a public employer can be one and the same entity. The Board of Regents is a state agency and has policymaking responsibilities under not only the Constitution but also the laws of Kansas.

Article 6, Section 2 (b) of the Kansas Constitution provides that the legislature shall provide for a state board of regents and for its control and supervision of public institutions of higher education. (Emphasis added)

The legislature promptly fulfilled the constitutional direction. (K.S.A. 74-3201 and K.S.A. 76-712). It is obvious that the executive officer of institutions of higher education has certain statutory powers but always subject to the authority of the Board of Regents. The Board is the ultimate power. On page 8 of Volume I of the transcript Mr. Partridge, attorney for Respondent, stated that they were not contesting that the Board of Regents could be the appropriate employer for certain issues. If it is the public employer then it is such for all issues arising under the Public Employer-Employee Relations Act.

We find that the Board of Regents is the public employer in this matter.

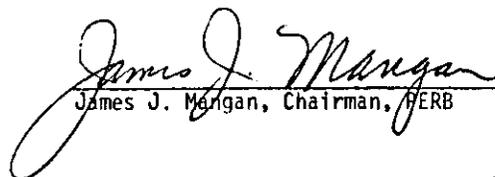
2. Much has been said about the "local" nature of the former agreements, and whether or not the Board of Regents approved them. We believe the Board did approve them. However, this Board (Public Employee Relations Board) concludes, that the 1979-1980 agreement came to an obvious screeching halt on July 31, 1980. By its clear provisions it terminated on that date. Further, the facts are clear that neither party utilized the notice option and it obviously, died its own death on January 1, 1980. This left merely the third paragraph of the "duration" clause which again is obviously extremely limited in its scope and to the existing agreement. This Board is of the opinion and finds that the argument of Respondent relative to the meaning placed by it on the "duration" clause is devoid of substance and the Board of Regents had no right to limit the meet and confer procedure as dictated in the Public Employer-Employee Relations Act. We repeat, the meaning of the "duration" clause was so clear and unambiguous that the agents and representatives of the Board of Regents did not act in good faith in giving any other interpretation to it and refusing to meet and confer in good faith relative to all negotiable items under the provisions of the Act.

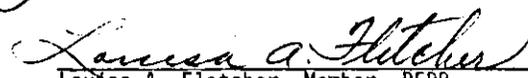
3. We further find that the University team was the designate representatives of the Board of Regents and as such the Board is responsible for its actions.

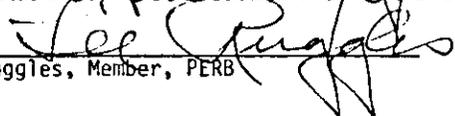
4. There is no question but that there is a good faith dispute as to whether "retrenchment" is a mandatorily negotiable item. We cannot, therefore, find Respondent guilty of a willful prohibited practice on this phase of the matter.

It is therefore the finding and order of this Board that Respondent, by and through its designated representatives, committed a prohibited practice in refusing to meet and confer in good faith relative to conditions of employment as defined by K.S.A. 75-4322 (t) with representatives of the recognized employee organization contrary to K.S.A. 75-4333 (b) (5).

IT IS SO ORDERED THIS 28 DAY OF JANUARY, 1982, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.


James J. Mangan, Chairman, PERB


Louisa A. Fletcher, Member, PERB

I hereby dissent. See my
attached dissenting opinion

Lee Ruggles, Member, PERB


Art Veach, Member, PERB


Donald Allegrucci, Member, PERB

DISSENTING OPINION-PERB CASE
NUMBERS 75-CAE-20-1980 and 75-CAE-21-1980

Lee Ruggles, PERB Member, dissenting:

I

I respectfully dissent. After a careful review of the two volumes of Hearings on these cases, a review of all briefs by the Complainant and the Respondent, hearing the attorneys for both parties give oral argument on January 25, and finally in long days and evenings of PER Board consideration of the issues on January 25, 26 and 28, I am sincerely convinced that the findings by the majority are arbitrary and capricious, do not have a legitimate basis when the entire record is considered, and finally are completely at odds with the statutes and with the mandates of the Kansas Supreme Court.

The Respondent's briefs to the Hearing Examiner and the Respondent's Exceptions and Briefs filed with the Board have convinced me of the merits of its position. These documents set forth the errors, both in findings of fact and conclusions of law, with such precision that I hereby adopt those arguments as my response to the majority's order on these cases. Several specific observations as to points made by the majority require comment and are stated below.

II

The majority has seriously erred in their finding that the Board of Regents is the public employer in this case. As I will document, the public employer is now, and always has been, since the original petition by the employees and the Kansas Higher Education Association (KNEA) on September 19, 1974, Pittsburg State University (PSU). This 1974 unit determination petition was filed with the PERB by the PSU chapter of the American Association of University Professors and the Kansas Higher Education Association naming as the public employer, Pittsburg State College of Pittsburg, subsequently named Pittsburg State University. No mention was made of the Board of Regents. Finally the PERB Order on Case No. VE2-1974, dated

October 23, 1974, certified that KHEA was selected as the representative for the Kansas State College of Pittsburg Faculty and that the public employer was Kansas State College of Pittsburg (PSU). There have been no orders by PERB to the date of those cases that have changed this official PERB designation of Pittsburg State University as the public employer and absolutely no PERB order to reflect that the Board of Regents was or could be the public employer.

It is provided in K.S.A. 76-712 that the state educational institutions of this state are state agencies. Pittsburg State University is therefore a statutory state agency. K.S.A. 75-4322(f) defines "public employer" and includes state agencies as a public employer. Thus, statutorily Pittsburg State University is clearly the public employer in this case and not the Board of Regents. Since Pittsburg State University was not named in these complaints and since, the Board of Regents, which is the Respondent, is clearly not the "public employer" under either PERB orders or under the statutes, these prohibited practice charges against the Board of Regents should therefore be dismissed.

III

On the question of the two former memoranda of agreement by the parties, the majority stated that they "believed" that the Board of Regents approved them. This is pure speculation that is not supported by the record. The record reflects that the official ratification of the two agreements was by the signature of the President of the University with no official action or ratification by the Board of Regents.

On the question of the Duration Clause of the 1979-1980 agreement, I agree with the majority that the agreement terminated on July 31, 1980. However, the conclusion reached by the majority on the third paragraph of the Duration Clause simply makes no sense when read and compared with the actual language of the third paragraph. If the parties could agree when the agreement terminated and when the notification of any desire to

initiate meet and confer for a successor agreement is to be given, it is absolutely logical that the parties could reopen the existing agreement if either legislation or policy changes occurred.

Furthermore, the facts indicate that the PSU Team did not refuse to meet and confer in good faith as charged by the majority. Both the record and exhibits clearly prove that the PSU Team met its duty to meet and confer in good faith. For example, see Respondent's Exhibits 13 and 14. Further, see Finding of Fact #51 and Respondent's Exception #12 for documentation of the good faith efforts by the PSU Team. Dr. Richard Hay, spokesperson for the PSU Team withdrew the May 29 PSU proposal to facilitate discussion by the KNEA Team of those proposals still on the table. I feel the record supports the fact that the PSU Team was acting in good faith and within their contract rights. I also am convinced that the PSU Team went the "extra mile" to facilitate a resolution of the KNEA Team's admitted failure to provide the notice required by the Duration article of the agreement.

Frankly, I am disturbed by the arbitrary, and I feel bad faith action, by the KNEA Team that occurred at the final meet and confer session on June 5, 1980. At this session, the KNEA Team submitted a written proposal for a "Memorandum of Understanding" whereby the University would agree to continue the 1979-80 contract for the 1980-81 school year and KNEA would agree to waive impasse and factfinding. KNEA demanded that the PSU Team sign this written understanding on that very day, June 5, 1980, or it announced a prohibited practice charge would be filed the next day. The PSU Team then notified the KNEA Team that they were not rejecting the proposal but needed a "few days" to consider it as President Appleberry was out of town. The KNEA refused this request and filed a prohibited practice charge. This for me is an arbitrary and bad faith action by the KNEA Team in refusing to further meet and confer in good faith as required by the PEER Act.

In view of the above, I can find no credible evidence that warrants the majority's finding that the Board of Regents committed a prohibited practice in refusing to meet and confer in good faith relative to conditions of employment as defined by K.S.A. 75-4322(t) with representatives of the recognition employee organization contrary to K.S.A. 75-4333(b)(5). If this prohibited practice charge had been filed against Pittsburg State University, I would also have the same opinion in view of the evidence to be considered.

IV

The finding by the majority that the University Team was the designated representative of the Board of Regents is not supported by the record or by the statutes. In no place does the record support a finding that Pittsburg State University was acting for any party other than Pittsburg State University. I am convinced that the PSU Team believes that the "local agreement" still exists. I did not read nor hear from the Counsel for the Complainant any credible evidence that this "local agreement" had been terminated by the KNEA Team. I find no evidence that the PSU Team ever acted as an agent for the Board of Regents.

V

The majority opinion acknowledged that there is a good faith dispute as to whether "retrenchment" is a mandatorily negotiable subject and thus, the majority refused to find the Respondent guilty of a willful prohibited practice on this phase of the matter. My dissent on the scope of conditions of employment in Case No. 75-CAEO-1-1982 is incorporated in this dissent on the "retrenchment" issue. For reasons expressed in that dissent, I find that retrenchment is not a mandatory subject under K.S.A. 75-4322(t).

VI

In summary, the conclusions as set forth in this Order by the majority of the Board are not supported by substantial

evidence, by statute, or by appropriate court decisions as cited in the Respondent's Briefs. I predict they would be set aside on appeal.

For the foregoing reasons, I respectfully dissent.

Lee Ruggles
Lee Ruggles, Member PERB
Dissenting on Case Numbers 75-
CAE-20-1980 and 75-CAE-21-1980