

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD

OF THE STATE OF KANSAS

IN THE MATTER OF THE COMPLAINTS *
AGAINST EMPLOYER FILED BY: *

Fraternal Order of Police *
Lodge #3 *

vs. *
Shawnee County Commissioners *

CASE NOS: 75-CAE-1-1988
75-CAE-2-1988

IN THE MATTER OF THE COMPLAINTS *
AGAINST EMPLOYEE ORGANIZATION *
FILED BY: *

Shawnee County Commissioners *

vs. *

Fraternal Order of Police *
Lodge #3 *

CASE NOS: 75-CAEO-1-1988
75-CAEO-2-1988

ORDER

Comes now this 13th day of May, 1988, the
above captioned matters for consideration by the Public Employee
Relations Board.

APPEARANCES

Fraternal Order of Police Lodge #3 (F.O.P.) by Mr. Larry
Crary, Chief Negotiator.

Shawnee County Commissioners (The County) by Mr. Joseph W.
Zima, Assistant County Counselor.

PROCEEDINGS BEFORE THE BOARD

- 1) Complaint 75-CAE-1-1988 filed by F.O.P. against Shawnee
County Commissioners on July 17, 1987.
- 2) Complaint 75-CAE-2-1988 filed by F.O.P. against Shawnee
County Commissioners on July 17, 1987.
- 3) Complaints 75-CAE-1/2-1988 sent to Shawnee County
Commission for answer on July 17, 1987.
- 4) Answers to 75-CAE-1/2-1988 received from Shawnee County
Commission on July 23, 1987 and submitted to the F.O.P. on July
28, 1987.

75-CAEO-1/2-1988

- 5) . Complaint 75-CAEO-1-1988 filed by Shawnee County Commissioners against the F.O.P. on July 28, 1987.
- 6) Complaint 75-CAEO-2-1988 filed by Shawnee County Commissioners against the F.O.P. on July 28, 1987.
- 7) Complaints 75-CAEO-1/2-1988 sent to the F.O.P. for answer on July 28, 1987.
- 8) Answers to 75-CAEO-1/2-1988 received from the F.O.P. on August 3, 1987 received from the F.O.P. on August 3, 1987 and submitted to the Shawnee County Commissioners on August 4, 1987.
- 9) Pre-hearing on all four (4) cases conducted on September 1, 1987, all parties in attendance.
- 10) Formal hearing scheduled for October 27 and 28, 1987. Notice sent to all parties on September 22, 1987.
- 11) Joint Stipulations of fact submitted by the parties on October 5, 1987.
- 12) Formal hearing conducted on October 22, 1987, all parties in attendance.
- 13) Brief of F.O.P. Lodge #3 received on November 18, 1987.
- 14) Shawnee County granted extension of time in which to file briefs until close of business on December 23, 1987.
- 15) No briefs received from Shawnee County.

STIPULATIONS OF FACT

75-CAEO-1-1988

- 1) At every meeting between the parties, one or more members of the F.O.P. negotiating team has recorded or attempted to record portions of the meetings.
- 2) The written ground rules, signed by the parties and dated February 23, 1987, did not provide for the taping of negotiations.

75-CAEO-2-1988

- 1) The written ground rules, signed by the parties and dated February 23, 1987 provides:

"There will be no press releases by either side without first notifying the other side. After said notification there will be a three (3) day 'cooling off period' prior to any press release."

2) On Tuesday, July 21, 1987, the Topeka Capital-Journal discussed the status of negotiations with Corporal Larry Crady. A subsequent article appeared in the Wednesday, July 22, 1987 edition of the paper quoting Corporal Larry Crady as its source.

3) Corporal Larry Crady did not inform Charles Wells that he intended to make a press release prior to doing so.

75-CAE-1-1988

1) On a date in February 1987, which date is in dispute by the parties, the County and the F.O.P. met to open negotiations for a 1988 contract.

2) The persons present at the first meeting were:

On Behalf of the F.O.P.

Larry Crady, Chief Negotiator & Team Spokesman
Jerry Petrel
Don Christie
Dave Bentley
Rick Atteberry

On Behalf of the County

Charles Wells, Chief Negotiator & Team Spokesman
Undersheriff Dale Collie
David Holstead, Legal Advisor

3) During the first meeting ground rules were proposed.

4) The parties ultimately met with Mr. Buford Thompson, Federal Mediator, on May 14, 1987.

5) During the May 14, 1987 meeting, Mr. Wells made a final offer to the F.O.P. bargaining team of a three percent (3%) raise with the specific wages for each classified position in the bargaining unit to be agreed upon by the parties.

6) On July 16, 1987, the F.O.P. caused prohibited practice charges to be filed with the Kansas PERB.

75-CAE-2-1988

1) On a date in February 1987, which date is in dispute by the parties, the County and the F.O.P. met to open negotiations for a 1988 contract.

2) The persons present at the first meeting were;

On Behalf of the F.O.P.

Larry Crady, Chief Negotiator & Team Spokesman
Jerry Petrel
Don Christie
Dave Bentley
Rick Atteberry

On Behalf of the County

Charles Wells, Chief Negotiator & Team Spokesman
Undersheriff Dale Collie
David Holstead, Legal Advisor

3) During the first meeting ground rules were proposed.

4) The parties ultimately met with Mr. Buford Thompson,
Federal Mediator, on May 14, 1987.

5) During the May 14, 1987 meeting, Mr. Wells made a final
offer to the F.O.P. bargaining team of a three percent (3%)
raise with the specific wages for each classified position in
the bargaining unit to be agreed upon by the parties.

6) Mr. Crady advised Mr. Wells that the three percent (3%)
salary offer referred to in Stipulation 5 would need to be
submitted to the entire bargaining unit membership.

7) On July 16, 1987, the F.O.P. caused prohibited practice
charges to be filed with the Kansas PERB.

FINDINGS OF FACT

1) That the parties commenced their negotiations on the
1988 contract of employment at some time in February of 1987.

2) That on February 19, 1987, the F.O.P. presented the
negotiators for Shawnee County with a set of suggested ground
rules for negotiations. (F.O.P. Exhibit #1)

3) That the suggested ground rules for negotiations
submitted by F.O.P. Lodge 3 were not totally acceptable to the
county negotiators. (T-17)

4) That the parties were able to arrive at a mutually
agreeable set of ground rules on February 23, 1987. (County
Exhibit #2)

5) That the suggested ground rules contain a provision for the tape recording of meetings while the agreed upon rules contain no such provision.

6) That all bargaining sessions were tape recorded by members of the F.O.P. negotiations team. (T-19)

7) That the chief negotiator voiced no objection to the tape recording of bargaining sessions at any time other than during discussions regarding the ground rules in February of 1987 and subsequently in the complaint in case 75-CAEO-1-1988 filed in July of 1987. (T-19)

8) That throughout negotiations the county position in regard to wage increases was zero percent until such time as the parties met with the Federal Mediator at which time a three percent increase was offered. (T-25, 28, 47)

9) That the county did not make the discussion of overtime provisions of the contract contingent upon F.O.P. acceptance of any of its wage offers. (T-47, 48)

10) That the counties' three percent wage offer was submitted to the F.O.P. membership for a ratification vote and was rejected. (T-26)

11) That the county negotiator ceased to be willing to meet and confer with negotiators for the F.O.P. once impasse was declared. (T-59)

12) That the county indicated it was willing to adopt the F.O.P. overtime proposal if coupled with a zero percent wage increase. (T-47)

13) That the county indicated that it was willing to adopt a three percent wage increase if coupled with no change in current contract language regarding overtime. (T-94, 95, 134)

14) That the county may have indicated a willingness to discuss changes in the overtime provisions of the contract if and when the three percent wage increase was accepted. (T-105, 113, 130, 131)

15). That the ground rules in effect for the 1988 negotiations (County Exhibit #2) were arrived at through discussions and agreement or disagreement with the rules proposed by the F.O.P. (F.O.P. Exhibit #1). (T-147, 148, 149, 150)

CONCLUSIONS OF LAW/DISCUSSIONS

The four instant cases come before the Public Employee Relations Board in the form of two complaints by the Fraternal Order of Police Lodge 3 against the Shawnee County Commissioners, and two complaints by the Shawnee County Commissioners against the Fraternal Order of Police Lodge 3, cases 75-CAE-1-1988, 75-CAE-2-1988, 75-CAEO-1-1988 and 75-CAEO-2-1988 respectively.

In the order listed above the complaints allege violations of K.S.A. 75-4333 (b) (5), (b) (1), (c) (3) and (c) (3). All of the conduct complained of arose during the bargaining between the parties over their 1988 contract of employment. For that reason the complaints were consolidated for hearing purposes. It should also be noted that the only two issues open for bargaining were wages and overtime.

PRELIMINARY ISSUE

As a preliminary issue the examiner must address the status of three audio recording tapes submitted by the F.O.P. as evidence in regard to cases 75-CAE-1-1988 and 75-CAE-2-1988. Those tapes were received by the examiner at the formal hearing on October 27, 1987 and marked as F.O.P. Exhibits 2, 3 and 4. These tapes were clearly and openly recorded by the F.O.P. during the negotiation and mediation sessions relative to this case.

It is important to note that the very production and existence of those tapes is the substance of the complaint in case number 75-CAEO-1-1988 which is also discussed in this order. The examiner is also keenly aware that the parties are accorded the right to appeal to the courts the decisions of the Public Employee Relations Board, which are framed at least in part on the recommendations of the examiner.

If the examiner were to admit the tapes as evidence and was later overturned in that decision on appeal, that reversal would have direct impact on three of the four cases under consideration. Similarly, if the examiner were to refuse to admit the tapes as evidence, that decision could also be overturned on appeal and would also impact three of the four cases. The point of the examiner is this; If the tapes are properly to be excluded, and the tapes are excluded, the information on the tapes has not influenced the decisions rendered. Similarly, if the information on the tapes should properly be included and they are excluded, the tapes can be reviewed at a later date. In the worst case scenario, however, if the tapes should be excluded and are included, it would be impossible for this examiner to dismiss from memory the information contained on those tapes, thereby altering the decisions rendered.

Based on the foregoing, it is the decision of the examiner to maintain the tapes in order to preserve a complete record of these proceedings. He however, precludes the inclusion of those tapes as evidence in these matters unless and until ordered to do so by the Public Employee Relations Board or the courts on appeal.

75-CAE-1-1988

In case number 75-CAE-1-1988 the Complainant alleges that certain statements and/or conduct of the chief negotiator for the Respondent, which occurred at some time during or after mediation, constituted a violation of K.S.A. 75-4333 (b) (5). That provision of the statute states:

"(b) It shall be a prohibited practice for a public employer or its designated representative willfully to:
(5) Refuse to meet and confer in good faith with representatives of recognized employee organizations as required in K.S.A. 75-4327;"

A review of K.S.A. 75-4327 indicates only two subsections of that statute which deal with the obligations of the public employer to "meet and confer in good faith" with the certified or recognized employee organization. Specifically, those are subsections (b) and (g) which state:

"(b) Where an employee organization has been certified by the board as representing a majority of the employees in an appropriate unit, or recognized formally by the public employer pursuant to the provisions of this act, the appropriate employer shall meet and confer in good faith with such employee organization in the determination of conditions of employment of the public employees as provided in this act, and may enter into a memorandum of agreement with such recognized employee organization."

and;

"(g) It is the intent of this act that employer-employee relations affecting the finances of a public employer shall be conducted at such times as will permit any resultant memorandum of agreement to be duly implemented in the budget preparation and adoption process. A public employer, during the 60 days immediately prior to its budget submission date, shall not be required to recognize an employee organization not previously recognized, nor shall it be obligated to initiate or begin meet and confer proceedings with any recognized employee organization for a period of 30 days before and 30 days after its budget submission date."

Subsection (a.) stated above specifies the obligations which are imposed on an employer relative to bargaining and subsection (g.) outlines the extremely limited times when those obligations

are waived. Even then, the limited waiver granted only applies to the commencement or initiation of meet and confer proceedings when dealing with a recognized employee organization. It appears to the examiner that the legislature intended to obligate the parties to conduct their meet and confer activities at any time which could lead to the resolution of their disputes regarding the establishment of conditions of employment. This interpretation takes on even greater credence in light of the language outlined at K.S.A. 75-4323 (d) (1) which states:

"(d) In addition to the authority provided in other sections, the board may:
(1) Establish procedures for the prevention of improper public employer and employee organization practices as provided in K.S.A. 75-4333 except that in the case of a claimed violation of paragraph (5) of subsection (b) or paragraph (3) of subsection (c) of such section, procedures shall provide only for an entering of an order directing the public agency or employee organization to meet and confer in good faith. The pendency of proceedings under this paragraph shall not be used as the basis to delay or interfere with determination of representation status pursuant to K.S.A. 75-4327 or with meeting and conferring."

If the legislature did not intend for prohibited practice proceedings to interrupt meeting and conferring, it is impossible for the examiner to believe that meet and confer impasse resolution proceedings should serve that end. The two concepts seem to be totally incompatible.

In the instant case, the parties were operating under a multi-year contract and the issues of wages and overtime were the only two issues which were reopened for bargaining. Clearly wages and overtime are listed at K.S.A. 75-4322 (t) as "conditions of employment" and are accordingly, therefore, mandatory subjects of bargaining.

When one recognizes that meeting and conferring must continue at any reasonable time requested until an agreement is reached or until a unilateral decision is made by the employer,

then one should also understand that an absolute refusal to bargain will, in nearly every case, be found to constitute a bad faith action.

In reviewing the instant case the examiner notes that the parties were vastly separated on their offers and demands when bargaining began. The record also indicates that little if any alteration of those offers and demands took place until after impasse had been declared and the parties were meeting with the mediator. Traditionally, an adjudicative body, when asked to rule on bad faith bargaining charges, considers two primary factors; reasonableness of offers, and movement. The examiner cannot, however, find that any offers or demands are unreasonable simply because they are vastly separate nor can he find that movement is required simply for the sake of movement. Stated another way, the firm adoption of a position and a refusal to move from that position may be done at times in good faith. There is an expectation inherent in the process that both parties will come to the table with positions on the issues which have been thought out and framed utilizing all the information available rather than through the use of instinct and/or biases. The bargaining process not only contemplates but dictates that the parties will meet to exchange their respective data which led them to their respective positions. When reasonable people meet and share all their information on any subject it is possible that they may arrive at a mutual agreement on the conclusions to be drawn from that information. It is the participation in that process of exchange rather than the outcome of the process that the Kansas Act dictates. The identification of an unreasonable position in bargaining may be accomplished in an unfair labor practice complaint such as this but is more frequently accomplished in fact-finding. In that

process the amount of movement or how soon one arrives at a position is of no consequence. The fact-finder rather looks at the totality of information available to both sides and rules on the positions which should have been reached based on that information.

In this case movement, or lack thereof, was made an issue without any accompanying evidence regarding reasonableness. As stated earlier, a simple lack of movement is not prima facie evidence of bad faith bargaining. There was also considerable evidence presented attempting to show a refusal on the part of the county to bargain one mandatory subject unless agreement was reached on another mandatory subject. As mandatory subjects, the county has an obligation to negotiate both items without pre-conditions. Pre-conditioning of bargaining has long been recognized as an unfair practice. Neither party has the right to unilaterally take away what the legislature has granted. The right to bargain is one such item. It should be noted, however, that both of the items noticed dealt with the wages to be paid. Naturally, the amount of money to be expended on overtime would have direct correlation to the amount of money paid in "straight time" wages. For that reason it would be foolhardy to negotiate either item without regard for the other. Negotiations of the type where one proposal is contingent upon the other is generally referred to as "total package bargaining". It appears to the examiner that the representative of the county may have been attempting to engage in this type of bargaining. It is obvious from the record, however, that those intentions were never clearly communicated to or understood by the representative for the employee organization. The record indicates that the representative for the county communicated not less than two alternate positions to the F.O.P. The first was adoption of the F.O.P. overtime proposal if coupled with a zero percent increase in the wage scale. The second was a three

percent increase in the wage scale if coupled with no change in the overtime provision. Neither of those proposals on their face would automatically constitute bad faith bargaining. There was reference in the record to a third position allegedly taken by the county negotiator which does give the examiner cause for concern. That was: an indicated willingness to discuss overtime if and when the three percent wage increase was accepted. Tactics of that type could be found to constitute pre-conditioned bargaining which the examiner has previously stated could be viewed as an unfair act and bad faith.

There are several factors, however, which lead the examiner away from a finding of bad faith. First, the record indicates that the parties experienced difficulty in clearly communicating with each other. Second, if made, the proposal was made during mediation at a time when ideas aimed at settlement are normally explored. Third, if made, it is impossible to tell if the agreement allegedly required was proposed as a tentative or a final agreement. And finally, the record lack conclusive evidence that the alleged statement was ever made. While the record is clear that the efforts made by the parties did little, if anything, toward prompting movement, concession, understanding, and ultimate agreement on the issues open for bargaining, the examiner is without sufficient evidence to find that a prohibited practice has occurred as alleged in this case.

Based on the foregoing it is the recommendation of the examiner that the complaint in case number 75-CAE-1-1988 be dismissed as unmerited.

75-CAE-2-1988

In case number 75-CAE-2-1988 the Complainant alleges that a statement made by the chief negotiator for the Respondent, which at some time during or after mediation, constituted a violation of K.S.A. 75-4333 (b) (1). That provision of the statute states:

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

(1) Interfere, restrain or coerce public employees in the exercise or rights granted in K.S.A. 75-4324;"

K.S.A. 75-4324 then states:

"Public 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 of their designated representatives with respect to grievances and conditions of employment. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations."

The record in this case, however, is void of any evidence that any employee of the sheriff's department was in any way interfered with, restrained, or coerced in regard to their forming, joining, or participation in the activities of any employee organization. It appears rather that the Complainant is seeking to demonstrate the existence of coercive tactics in the bargaining which took place between the parties. If that is the case, the appropriate complaint would be one of bad faith bargaining, which would be similar or identical to the complaint filed in case 75-CAE-1-1988. As stated earlier, the record is insufficient to establish a violation of K.S.A. 75-4333 (b) (1).

Based on the foregoing, it is the recommendation of the examiner that 75-CAE-2-1988 be dismissed as unmerited.

75-CAEO-1-1988

In case number 75-CAEO-1-1988 the Complainant alleges that the actions of the Respondent in tape recording or attempting to record portions of all meetings of the parties in negotiations, in light of the ground rules for negotiations approved by the parties, constitutes a violation of 75-4333 (c) (3). That portion of the statute states:

"(c) It shall be a prohibited practice for public employees or employee organizations willfully to:

(3) Refuse to meet and confer in good faith with a public employer as required in K.S.A. 75-4327;"

As a point of departure, the examiner notes that the act and the regulations for implementation of the act are silent in regard to ground rules. There is nothing in the act or regulations that says what should or should not, or may or may not be included in ground rules. There is certainly nothing which mandates nor even encourages the existence of ground rules. As a practical matter, the examiner believes that ground rules are more than just a good idea. He believes they are an essential element to productive negotiations. In addition to the record keeping, which is the subject of this complaint, ground rules can and should address a multitude of issues which normally arise in bargaining which include, for example, frequency and length of bargaining sessions, treatment of tentative agreements, calling of caucuses, meeting locations, spokesperson authority, and many, many other items known as "shape of the table" issues.

Negotiations ground rules are designed and intended to provide solutions to potential problems before they arise rather than when they arise at bargaining. As might be expected, if bargaining an agreement has been particularly difficult, then reaching a mutual solution even to an apparently simple problem can be virtually impossible. Prior agreements on ground rules can help to keep negotiations progressing when they might otherwise collapse.

For example, assume the parties have agreed to meet every Tuesday night for not less than three hours. And assume on one particular Tuesday night bargaining becomes extremely heated and results in a shouting match with anger exhibited on all sides. In a case of that type it could be difficult for either side to make the first move toward scheduling the next bargaining

session. With a ground rule in effect, however, the parties would meet the next Tuesday without the necessity for special scheduling efforts by either party. The existence of a ground rule in this example would serve to allow negotiations to progress even in the face of adversity. Obviously, the more comprehensive the ground rules, the greater the opportunity for the avoidance of "shape of the table" disputes which serve to impede bargaining. Most knowledgeable negotiators embrace the idiom that an ounce of prevention is worth a pound of cure and welcome the establishment of ground rules. If ground rules exist through mutual agreement and are followed by the parties, they can serve their second function of limiting both parties exposure to charges of unfair labor practices. Ground rules are the expressed guidelines for conduct that the parties have the right to expect from each other.

While the parties have no obligation to enter into ground rules, most acknowledge their value and do so. As the parties meet to formulate those ground rules, many agreements on rules are easily achieved through the give and take efforts of the parties. The subject matter of ground rules is seldom controversial or costly thus lending itself to those easy agreements. Ground rules in that way accomplish a third function of demonstrating to the parties the ability of the parties to arrive at mutual agreements.

That joint agreement referred to above will not, obviously, be possible on every issue. The instant case deals with just such a circumstance. The Respondent wanted to tape record all bargaining sessions while the Complainant wanted to record none. The Complainant alleges that the existence of a proposed ground rule in F.O.P. Exhibit 1 coupled with its absence in County Exhibit 2 is evidence that the parties had agreed that negotiations would not be recorded. Obviously, the F.O.P. had a

different understanding regarding that recording. Testimony on the record indicates that the recording was done openly and in clear sight of the Complainant at every bargaining session. The record also indicates that the Complainant expressed his displeasure with the recording at only the first bargaining session. From the available information the examiner finds that there was no ground rule, agreed upon or otherwise, in regard to the recording of meetings. Logically, if there were no rule in existence, there was no rule to be violated. The examiner is not, however, condoning the actions of the F.O.P. in recording the bargaining sessions. Neither party has the right to impose its wishes on the other in the establishment of ground rules. The employee representative must be allowed to approach the table as an equal and is granted that right at K.S.A. 75-4327 (b), and 75-4328. The act does not, however, provide any resolution machinery when the parties are unable to agree on particular ground rules. There must be some way to resolve those disputes, but with parties that are equals and no resolution machinery enunciated within the act, that resolution process is not clearly evident to the casual observer. The examiner is of the opinion that in the absence of an agreement each parties wishes should be alternately observed. In the instant case that type of resolution would dictate recording of alternate meetings. Certainly, a ground rule of that type would recognize the parties equality at the table while permitting the interests of each to be addressed. A solution of this type could be utilized in resolving nearly any type of a "shape of the table" dispute without granting either party any unwarranted advantage.

Based on all the foregoing the examiner is convinced that no ground rule was in existence regarding the tape recording of bargaining sessions. Lacking the existence of a rule, there was

o rule to be violated and therefore no bad faith to be evidenced by the violation of a nonexistent rule. The examiner, therefore, recommends the dismissal of the complaint in case number 75-CAEO-1-1988 as unmerited.

75-CAEO-2-1988

In case number 75-CAEO-2-1988 the Complainant alleges that the actions of the Respondent in making a press release without waiting the three day "cooling off period", required by the ground rules for negotiations approved by the parties, constitutes a violation of K.S.A. 75-4333 (c) (3).

As stated previously in case number 75-CAEO-1-1988, ground rules establish the guidelines for conduct that the parties have the right to expect from each other during bargaining. If there is no obligation to follow the rules and no penalty for their violation, then there is very little reason to establish rules which can be so easily ignored. The examiner believes that ground rules do have meaning and do establish guidelines for bargaining conduct. It appears to the examiner that in a majority of cases the violation of a ground rule would be extremely indicative of bad faith in the bargaining process. Each case, however, has its own particular set of facts and must, therefore, be judged on its own merit. For example, a press release that advises the public that bargaining has been successful, if not predicated with a three day "cooling-off period" would certainly be difficult to characterize as an unfair labor practice despite the fact that it would violate the precise language of the ground rule. Naturally, complaints of this type would be rare at best but underline the necessity to judge each case on its own merit.

In this case the evidence is scarce at best to establish that a discussion with the press regarding the negotiations between the parties even took place. There is certainly nothing in the record to indicate who might have initiated the contact,

of what was said. The only direct quotes within County Exhibit 1 were attributed to the Complainant. It is also unclear who authored County Exhibit 1 as no byline appears on that article. In the opinion of the examiner, a finding of bad faith requires considerably more evidence than appears in the record of these proceedings. Moreover, even if a discussion was initiated by the Respondent between the Respondent and the press which directed the press to this office, the examiner would find it very difficult to define that action as a "press release".

Based on all the foregoing the examiner finds no bad faith on the part of the Respondent and recommends the dismissal of the complaint in case number 75-CAEO-2-1988 as unmerited.

In summary, as the examiner reviews the record of all four cases addressed in this order a picture of fruitless bargaining emerges. The parties began their bargaining more than twelve months ago and that process remains incomplete at this time. The product of their efforts has been little more than the creation of the four unfair labor practices currently before this board. The examiner notes the declaration of policy and objectives portion of the act outlined at K.S.A. 75-4321 (a) (1) which states:

"(a) The legislature hereby finds and declares that:
(1) The people of this state have a fundamental interest in the development of harmonious and cooperative relationships between government and its employees;"

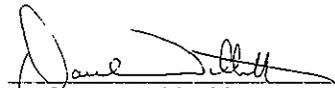
The legislature goes on to state that those relationships may best be developed through full and open communication between the parties. That process is referred to as "meeting and conferring in good faith" and is defined at K.S.A. 75-4322 (m) which states:

"'Meet and confer in good faith' is the process whereby the representative of a public agency and representatives of recognized employee organizations have this mutual obligation personally to meet and confer in order to

exchange freely information, opinions and proposals to endeavor to reach agreement on conditions of employment."

In total, it is difficult to believe that the process engaged in by these parties is the good faith free and open exchange of information, leading toward the development of a harmonious and cooperative relationship, and resulting in a mutual agreement on conditions of employment as contemplated by the legislature. Individually, however, none of the four complaints, when viewed on their own particular individual merits, constitutes an act of bad faith and the examiner cannot find the sum to be greater than the total of the parts. It is, therefore, the recommendation of the examiner that cases 75-CAE-1-1988, 75-CAE-2-1988, 75-CAEO-1-1988 and 75-CAEO-2-1988 be dismissed as unmerited.

It is so recommended this 11th day of March,
1988.

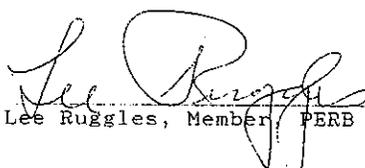


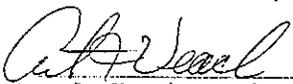
Paul K. Dickhoff, Jr.
Hearing Examiner

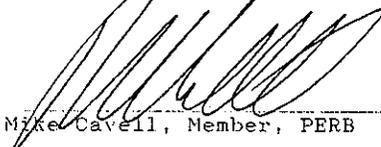
The hearing examiner's report and recommended findings are hereby approved and adopted as a final order of the Board.

IT IS SO ORDERED THIS 18th DAY OF May, 1988, BY
THE PUBLIC EMPLOYEE RELATIONS BOARD.


Dorothy N. Nichols, Member, PERB


Lee Ruggles, Member, PERB


Art J. Veach, Member, PERB


Mike Cavell, Member, PERB