STATE OF KANSAS
PUBLIC EMPLOYEE RELATIONS BOARD
DEPARTMENT OF HUMAN RESOURCES
610 WEST TENTH, SECOND FLOOR
TOPEKA, KANSAS

KANSAS HIGHER EDUCATION ASSOCIATION Petitioner, vs. PITTSBURG STATE UNIVERSITY Respondent.	CASE CAE 2-1978

ORDER

Comes now on the 25th day of January, 1978, the above-captioned case for hearing. Proceedings were conducted on the 25th and 26th days of January. The hearing was conducted before the Public Employee Relations Board, the Honorable E. J. Rennick, Board Chairman, presiding. Members of the Board in attendance were:

E. J. Rennick - Chairman
Garold A. Been - Member
Richard R. Rock - Member
Louisa A. Fletcher - Member
John W. Smith - Member

APPEARANCES

Complainant, Kansas Higher Education Association - Pittsburg, appears by and through its counsel, Mr. Wesley A. Weathers and Vern Jarboe; and Mrs. Margaret A. Gatewood, Attorney at Law, 715 West 10th Street, Topeka, Kansas.

The Kansas State College of Pittsburg and the State Board of Regents appeared by and through its counsel, Foulston, Siefkin, Powers and Eberhardt, Attorneys at Law, 700 Fourth Financial Center, Wichita, Kansas, by Mr. Robert Partridge and Ms. Mary Kathleen Babcock.

This case comes before the board on petition of the Kansas Higher Education Association - Pittsburg alleging that the public employer, Kansas State College at Pittsburg and the Kansas State Board of Regents have failed to meet and confer in good faith with complainant in violation of KSA 75-4333(b)(5) and (6).

CAE-2-1978

Procedures before the Public Employee Relations Board:

1. Complaint filed September 30, 1977, by Mr. Wesley A. Weathers, Attorney-at-Law, on behalf of Pittsburg State University Chapter of Kansas Higher Education Association.

2. Answer to complaint received October 24, 1977, from Mr. J. R. Martin, First Assistant for Attorney General for State of Kansas on behalf of Pittsburg State University and Kansas Board of Regents.

3. Hearing set for November 29, 1977, before the Public Employee Relations Board.

4. Hearing canceled pursuant to a request by the attorneys involved. Hearing rescheduled for January 25th and 26th, 1978.

5. Briefs received from all parties.

FINDINGS OF FACT

1. Kansas Higher Education Association was certified November 13, 1973, by Public Employee Relations Board as the exclusive employee representative for unclassified non-administrative personnel of Kansas State College at Pittsburg.

2. That Pittsburg State University and the Kansas Board of Regents are the appropriate public employers within the meaning of KSA 75-4322(f).

3. That this matter is timely and is properly before the board.

4. That the budget preparation process for Pittsburg State University commences some twelve (12) to eighteen (18) months prior to the year in question and the formulation of the budget never stops. (T-336)

5. That during the budget formulation process there are endless discussions with administrators, the president, and when appropriate the faculty. (T-336)

6. At least one administrator and negotiating team member states the Pittsburg State University position to be that management should receive "input" at various stages of the allocation process. (T-206)

7. That the legislative appropriation comes to the university in a line item appropriation wherein there is a fixed amount to be used for unclassified salaries. (T-376)

8. That the appropriation for unclassified salaries includes salaries and increments for both administrators and faculty members as well as such other consideration as upgrading existing positions, attracting potential faculty members, etc. (T-75)

9. That the complainant limits its complaint in this case to the respondent's July 28, 1977, proposal and raises no issue of bad faith concerning events in the twenty-one (21) meet and confer sessions which preceded that date. (T-161-399)

10. That respondent's July 28, 1977, proposal contained no references to past practices of the parties to continue the practice of meeting and conferring over salaries in the spring of the year. Respondent intended for that practice to continue. (T-201-313 and 264)

11. Complainant states they had a basic misunderstanding of whether the past practice of meeting and conferring in the spring would be continued. (T-171)

12. That the chief spokesman for the Pittsburg State University negotiating team stated that there were several methods one could follow to meet the spirit of the meet and confer Statute, and that the July 28, 1977, proposal was only one approach. (T-216)

13. That the parties met and conferred on twenty-one (21) occasions prior to the July 28, 1977, meeting.

14. That as a result of meet and confer proceedings during the spring of 1976, the parties reached impasse on the issue of salary which was ultimately submitted to a fact-finder appointed by PERB, Case No. I-5-1976, with a hearing thereon being held during November, 1976, resulting in the fact-finding recommendations of Dean Henry Grether (Complainant's Exhibit 1), filed with the PERB on February 22, 1977, and distributed to the parties.

15. That Pittsburg State University-Kansas Higher Education Association was able to effect changes involving increases for various members of the unit in the total amount of $700.00 for the 1977-1978 fiscal year. (T-210)

16. The July 28, 1977, proposal was offered by Pittsburg State University in the form of a "package proposal" and as a final offer. (T-174-260)

CONCLUSIONS OF LAW - DISCUSSION

The Public Employee Relations Board views the two issues in the case to be as follows:

1. To what extent is the Pittsburg State University administration required by the PEERA to meet and confer over salary and does that include meeting and conferring over the allocation of funds to the various departments within the university?

2. Have the respondents met the statutory duty to meet and confer over salary or have they failed in that effort?

The Public Employee Relations Board will not concern itself with any determination of good faith or lack thereof prior to the position taken by the July 28, 1977, proposal. Both parties agree, and the facts indicate that movement was made by both parties during the twenty-one (21) meet and confer sessions prior to the July 28, 1977, meeting.

It is not the Board's intention to draft guidelines or timelines for the parties to follow during the course of the meet and confer process.

It is, however, the statutory obligation of the Board to interpret KSA 75-4321 et seq. and to determine factual matters which have taken place during past meet and confer sessions.

The question of the parties' requirement to meet and confer versus negotiation has previously been addressed by the Public Employee Relations Board. (See Printing Pressmen vs. Kansas State Printer). In the above-cited case the Public Employee Relations Board ruled that a good faith give and take negotiation process is required by KSA 75-4321 et seq.

KSA 75-4328(g) states in part:

> "(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."

The above-quoted section of the law indicates to the board that a certified employee organization may legally expect to meet and confer with the appropriate public employer in a timely fashion which would assure the employees that adequate financing would be available (subject to KSA 75-4330(c)) to implement any resultant memorandum of agreement, or at very least adequate time would be available for the impasse procedures at KSA 75-4332 to be implemented before allocations of funds are crystalized.

KSA 75-4328(g) further states:

> "A public employer, during the sixty (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 thirty (30) days before and thirty (30) days after its budget submission date."

The board concludes that a recognized or certified employee organization may legally expect to commence meet and confer sessions over terms and conditions of employment at any time other than the thirty (30) days prior to or thirty (30) days after budget submission date. Here again, any resultant memorandum of agreement would be subject to the provisions of KSA 75-4330(c). The facts have shown that the budget preparation process and allocation process are complicated and time-consuming procedures involving much more than simply the amount of funds necessary to adequately compensate unit members. Dr. Grether's fact-finding report speaks in part to the allocation process with regard to administrators' salaries. Finding of Fact number nine (9) states:

> "9. The meet and confer process involves jurisdiction over salaries of employees not represented by Kansas Higher Education Association <u>only to a very limited extent</u>. Thus questions concerning administrative salaries are not properly at issue in these proceedings, except as to their direct impact on salaries of employees represented by Kansas Higher Education Association and to the extent administrative salaries causes teaching faculty salaries to be <u>smaller than reasonably can be expected from the appropriated monies</u>." (Emphasis added)

This same reasoning can be applied to all criteria involved in appropriating funds from the line item of salaries. That is, a certified employee organization has no legal right to expect to meet and confer concerning any subject other than the salaries of unit members. However, since there is only one "pie" so to speak, the employee organization must be guaranteed the right to meet and confer prior to the final disposition of the "pie." The Public Employee Relations Board finds no allegation that the complainant has tendered a request to meet and confer at any time which was refused by the public employer.

Complainant has argued that respondent's position on July 28, 1977, constitutes bad faith. The position has been characterized as a "package proposal" and as management's "final offer." The Board finds nothing unusual or unique in either the package proposal tactic or the taking of a final position. Complainant further views the section entitled "Procedures for merit salary determination" as taking away the complainant's statutory right to meet and confer. The board is of the opinion that the employer intended to continue to meet and confer over individual salaries of faculty members as had been done in the past. At very least the employer would have done so in the event of complainant's rejection of the July 28, 1977, proposal. It would seem that the intent of the proposal was to enhance the amount of input by the employees into the allocation process.

The past practice of the parties concerning faculty salary has been demonstrated to contain some flexibility, however, minimal. That is the Pittsburg State University-Kansas Higher Education Association was able to effect a change of $700.00 in a past negotiation session. Therefore, the board views the July 28, 1977, proposal as just that, a proposal which the employer made in good faith with no intent to deprive Pittsburg State University-Kansas Higher Education Association of their rights under KSA 75-4321 et seq.

The board has previously ruled the law requires a good faith give and take negotiation effort to reach agreement. The board has concluded that an employee organization has a limited interest in budget preparation and allocation processes. The board has concluded that an employee organization is limited in when they may request meet and confer sessions only to the extent as set out at KSA 75-4327(g). The board also concludes that the July 28, 1977, proposal and resultant position of the employer does not in and of itself constitute a lack of good faith.

Therefore, it is the order of the board that this complaint CAE 2-1978 be dismissed.

IT IS SO ORDERED THIS 11th DAY OF July 1978, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.

E. J. Kennick, Chairman, PERB

Garold A. Been, Member, PERB

Louisa A. Fletcher, Member, PERB

Richard R. Rock, Member, PERB

John W. Smith, Member, PERB

JP:lm