FACT-FINDING PROCEEDING
JOHN M. CREGER, FACTFINDER

In the Matter of:       )
)                           )
THE UNIVERSITY OF KANSAS )                           )
)                           )
and )                           )
)                           )
KANSAS ASSOCIATION OF )
PUBLIC EMPLOYEES )

REPORT OF FACT-FINDER

APPEARANCES:

For the University:

Sara L. Trower, Esq.
Associate General Counsel
The University of Kansas
Room 245 Strong Hall
1450 Jayhawk Boulevard
Lawrence, Kansas 66045

For KAPE:

Clinton Patty, Esq.
Frieden, Haynes & Forbes
P.O. Box 639
Topeka, Kansas 66601
STATEMENT OF THE CASE.

The University of Kansas (KU or the University) is an institution of higher learning operated by the Board of Regents of the State of Kansas. The Kansas Association of Public Employees (KAPE) is a labor organization and is the recognized bargaining representative of a unit of Graduate Teaching Assistants (GTAs) employed by the University at its Lawrence, Kansas campus. KU and KAPE have been parties to a collective bargaining agreement (Memorandum of Agreement or MOA) since 1996. On May 5, 2005, KAPE advised the University that it wished to reopen certain sections of the MOA that govern the terms and conditions of employment of GTAs represented by KAPE. This dispute arises from the inability of the parties to agree upon language contained in four (4) articles of the MOA.

Following 16 negotiation sessions and an unsuccessful mediation, the parties reached impasse on or about July 12, 2006. On or about August 3, 2006 the University and KAPE agreed to present the matter to a Fact-finder for his or her recommendations. This Fact-finder was selected by the parties from a panel submitted by the Kansas Public Employee Relations Board. A fact-finding hearing was held in Lawrence, Kansas on February 1st and 2nd, 2007, at which the parties provided the Fact-finder with argument and documentary evidence in support of their respective positions. Counsel for the parties submitted timely post-hearing briefs, proposed findings of fact and recommendations for the consideration of the Fact-finder.
ISSUES.

In substance, the parties agree that certain language contained in the following sections of the Agreement remains unresolved:

2. Article 5 – Appointments, Section 5. – Limitation on Number of appointments.
3. Article 6 – Wages.

Each unresolved contract provision is discussed below.

FINDINGS OF FACT, DISCUSSION AND RECOMMENDATIONS.

I. Article 4 Section 6 – Representation Issues.

(a) Proposals of the Parties.

KAPE seeks to broaden its on-campus representation activities. It proposes that Article 4 of the MOA be amended to permit KAPE to make a 30-minute presentation with presentation equipment to be provided by KU, immediately following new GTA orientation conducted by the University Center for Teaching Excellence. KAPE also proposes that it be allowed to make a brief announcement concerning the presentation during the initial orientation session. The purpose of the presentation would be to inform newly appointed GTAs about the location and content of the MOA and about the function, facilities and organizational benefits of KAPE.
KU rejects KAPE’s proposal. In addition to the rights given KAPE under Article 4 of the current MOA, KU is willing to announce at the orientation the time, date and location of a KAPE informational meeting, but is unwilling to allow KAPE to conduct the meeting on KU premises or during the orientation.

(b) Discussion.

KAPE is not without ways to communicate with bargaining unit members. Existing Article 4 requires KU to designate one bulletin board in each campus building in which GTAs have offices upon which KAPE-related communication to GTAs may be posted. In addition, the form advising GTAs of their appointments, by agreement contains the following language:

The Kansas Association of Public Employees (KAPE) has been certified by PERB as the exclusive employee representative of graduate teaching assistants for the purpose of meeting and conferring about conditions of employment and for the purpose of resolving grievances, as provided in K.S.A. 75-4321, et seq. KAPE may be contacted by calling 1-800-232-KAPE.

Furthermore, the current MOA allows KAPE to set up and occupy an informational table in a public area adjoining the area assigned for the orientation and KU agrees to send a copy of the MOA to all GTAs (and faculty) at the time of its ratification and, upon ratification, agrees to make the MOA available on line, and to notify GTAs of its web address. KAPE is prohibited from using University email, interoffice mail and telephones for communicating with its members.

KAPE points out that over 900 GTAs are employed by KU at any particular time and since University policy prohibits the use of its telephones, computers and email to
conduct Union business, it is very difficult for KAPE to inform GTAs of their rights under the MOA and recruit new members. It argues that its activities are not substantially different from those conducted by other organizations that are granted the use of University resources.

KU responds that policies of the Kansas Board of Regents require the use of its resources only to support the work and mission of the University. GTA orientation is a pedagogical conference, designed and intended solely to provide newly appointed GTAs with information and instruction on teaching. The conference is mandatory and attendance is considered to be paid work time. In addition, the evidence presented by Mr. Les Hughes, Director of Negotiation, Missouri Department of Administration, establishes that KU’s limitations on the use of its resources are consistent with statewide policies against the use of administrative agency resources for outside or union activities.

KAPE has not shown that its interest in communicating with its members is sufficiently strong to contravene the policies of the State of Kansas and the Board of Regents with respect to the use of University resources. Taking those policies into account, KAPE has not offered persuasive evidence that its activities are unreasonably limited by KU’s unwillingness to authorize its intrusion into a pedagogical conference for the purpose of conducting what amounts to a 30-minute recruiting meeting. In that regard, it is noted that KAPE also represents a unit of University Police Officers and that this unit has never been authorized to conduct any such meeting. I find unpersuasive testimony offered by a witness on behalf of KAPE that the University’s
offer to provide an e-mail notification of the MOA web address constitutes insufficient notice. There is no credible evidence that University email is “unreliable”, as the witness asserted.

GTAC.

The status of the organization known as GTAC (Graduate Teaching Assistants Coalition) and its relevance to this proceeding are in doubt. Ms. Katy Martin, Chief Spokesperson for KAPE, also testified on behalf of GTAC that GTAC was a “student organization” similar to the Young Republicans or a sorority or fraternity. She testified that as a “student organization,” GTAC should be allowed to use KU email and other resources to communicate with its membership and that KU had interfered with GTAC’s attempts to communicate with its members by taking the position that GTAC was an “outside organization.” However, GTAC’s own publications refer to GTAC as the “union for graduate teaching assistants at the University of Kansas” and represent that it is affiliated with KAPE. The Fact-Finder is empowered only to make recommendations with respect to the MOA between KU and KAPE. GTAC is not considered by the Fact-Finder to be a party to this proceeding.

(c) Recommendation.

I recommend that the language of Article 4, Section 6 of the MOA be amended in accordance with the University’s proposal.
II. Article 5 – Appointments – Section 5 -Limitation on Number of Appointments.

(a) Proposals of the Parties.

GTA appointments are made by KU to qualified students seeking advanced degrees. The purpose of such appointments is to provide financial assistance to such individuals who, in return, perform substantial teaching services for KU. The current MOA sets forth time limitations on the duration of GTA appointments and specifically states that such limitations are a management right.

KAPE proposes that the MOA be amended to remove the appointments of GTAs from the matters retained by the University as management rights, substituting for such language the following amendment to Section 5:

The parties agree to independent limits of eight semesters for GTAs pursuing Masters degree and ten semesters for those pursuing a PhD. Any appointments served during pursuit of a Master’s degree shall not count against the ten semesters allowed for the PhD.

KU proposes that the current MOA language be retained and that limitations on GTA appointments remain a management right.

b) Discussion.

KU has maintained a university-wide policy limiting GTA appointments to 10 semesters. It is the University’s position that the 10-semester rule is intended to encourage graduate students to finish their degree studies as quickly as possible and to discourage so-called “lingering” at University expense. Although the MOA contains a mechanism for granting exemptions from that limitation, exemptions are rarely, if ever, granted.
The 10-semester rule is the subject of considerable controversy between the parties. The rule has been applied to all University departments equally, although some advanced degree programs require more time for completion than do others. For example, the University does not dispute KAPE’s evidence that graduate studies in the English Department cannot be completed in ten semesters. The University points out that additional financial aid is available to many qualifying graduate students who have exhausted all 10 semesters of GTA appointment, who may continue to work as Graduate Research Assistants and Lecturers. The parties disagree whether Graduate Research Assistants and Lecturers are paid less than are GTAs.¹

The 10-semester rule has been applied equally to a KU student commencing work on a Masters degree and to an individual with such a degree transferring from another university to commence work at KU on his or her PhD. Thus, both individuals have available the same number of semesters of GTA appointment. In addition, the evidence tends to show that KU’s ten-semester rule is more restrictive than limitations on GTA appointments imposed by other universities.

In public and private sectors alike, the right to control the work force and establish its size, the qualifications required of individual employees and limitations imposed upon the length of employment are rarely the subject of collective bargaining and are generally considered to be firmly within those rights retained by management.

---

¹ The University offered an affidavit of an employee who reviewed KU pay records and found that no person who had previously worked as a GTA was now working as a lecturer making less than GTAs. The employee was not available for examination by KAPE.
Those rights, as well as many others, are reserved to the University by Article 4 of the MOA and apply to GTAs as well as all other classifications of employees:

Section 1. The University and the Board of Regents retain and reserve all rights, powers, authority and responsibility vested in them, whether exercised or not, to manage the University. This agreement shall not limit, restrict or modify the right to manage, and all rights inherent herein, except as expressly modified by the terms of this agreement. The right to manage shall include but not be limited to the right to:

A. manage and direct the work of University employees;
B. hire, promote, demote, transfer, assign and retain employees...
...
E. relieve employees from duties or lay off employees because of lack of work, lack of funds or for other legitimate reasons;
F. determine the methods, means and personnel by which operations are to be carried out and determine the size and composition of the work force;
...

To the extent the 10-semester rule has unintended consequences in the form of inequities between GTAs in various situations, KAPE’s arguments appear to be well founded. However, there is insufficient competent and substantial evidence in the record to justify a recommendation that GTA appointments become the subject of bargaining, so long as the University is willing to apply the rule in accordance with reasonable and fair policies. The University should consider whether it wishes to maintain the 10-semester rule as presently applied or whether inequities in its application suggest that it be altered.

(c) Recommendations.

1. I recommend that Article 5, Section 5 of the MOA be amended in accordance with the University’s proposal.
2. I recommend that the University undertake an independent and unilateral study of the advisability of its 10-semester rule with due attention to the above mentioned matters.

III. Article 6 – Wages.

(a). Proposals of the Parties.

Article 6 of the MOA contains 3 sections that deal with wage-related issues.

Section 1. Section 1 deals with the creation and funding of a salary pool for GTAs. The parties disagree as to the method for funding the pool, but agree that the amount of the pool should reflect the same increase as the increase in the merit pool for faculty in FY2005-FY2006 and later fiscal years.

Section 2. The University’s proposal continues the policy articulated in the present MOA by providing that except for the minimum salary increases provided by Section 3, all other salary increases will be given on a merit basis rather than on an across-the-board basis. It stresses the flexibility of individual department heads in the granting of merit increases by department heads.

KAPE’S proposal creates an entirely new Section 2 which, in substance, provides that merit salary increases will be calculated based on the current year’s salary rather than on the prior year’s salary. Specifically, KAPE’S proposal contains in part the following language:

All merit increases shall be added to GTA salaries after adjustments have been made to bring the GTA up to the new base minimum salary.
Section 3. The University proposes that the base minimum GTA salary will be based on the following schedule:

<table>
<thead>
<tr>
<th>Academic Year</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Academic Year</td>
<td>$11,000.00</td>
</tr>
<tr>
<td>Second Academic Year</td>
<td>$11,500.00</td>
</tr>
<tr>
<td>Third Academic Year</td>
<td>$12,000.00</td>
</tr>
</tbody>
</table>

KAPE proposes the following minimum salaries:

<table>
<thead>
<tr>
<th>Academic Year</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Academic Year</td>
<td>$11,000.00</td>
</tr>
<tr>
<td>Second Academic Year</td>
<td>$12,000.00</td>
</tr>
<tr>
<td>Third Academic Year</td>
<td>$13,000.00</td>
</tr>
</tbody>
</table>

b. Discussion.

The principal issue in dispute under Sections 1 and 2 is whether merit pay should be calculated on the basis of the year in which it is earned or on the basis of the subsequent year in order to increase its amount. KAPE argues, in substance that that KU’s proposal would, deny merit increases to GTA’s in some cases. For example, the current MOA provides three (3) levels of salaries for GTAs, $8000 for the first year, $9,000 for the second year and $10,000 for the third year. Assuming that a first-year GTA is paid the minimum $8,000 wage and is retained for a second year, Section 2 specifies that he or she would be paid a wage increase of two-thirds of the departmental average percent merit increase. Assuming a wage increase of 10%, the GTA’s second year wage would be raised by only $800. The parties agree that inasmuch as the minimum salary provided by Section 3 is $9,000, KU would pay no more than that amount, allegedly denying the GTA the two-thirds merit increase specified in Section 2. KAPE’s solution to this apparent problem is to calculate merit increases on next year’s salary rather than on current salary.
Robert Vodicka, KAPE’s team leader for the current MOA at the time of its negotiation in 2002, believed the University would not merge merit increases into minimum salaries, and that merit increases would always be granted in addition to minimum salaries. However, that is not what the MOA says. I find credible the testimony of Linda Fund, the University’s Assistant Director of Human Resources and Equal Opportunity, that the University has always calculated merit pay based on the past year’s salary. I find equally credible the testimony of Mr. Hughes that the University’s method for calculating merit pay is consistent with the method used to calculate merit pay for employees in other state agencies. Furthermore, in the experience of the Fact-finder the University’s method of computing merit pay is the method used uniformly throughout public and private sectors alike. KAPE’S proposal in that regard is unrealistic and is contrary to common and usual practice. Apparent anomalies in the merit pay system such as the example given by KAPE, are best handled by the exercise of discretion by department heads in determining the amount of merit pay to be granted in individual cases, as permitted by the MOA.

Section 3.

KU offered evidence regarding the University’s budget and the manner in which it is created. The evidence shows that GTA’s salaries are funded out of general use funds, which include revenues generated by tuition.

In 2003, KU commenced a program of “tuition enhancement” which gradually increased University tuition to a level similar to tuition charged by peer institutions. FY2006-2007 is the final year of that program. During the period of time commencing
with 2003 and ending in 2007, a percentage of “tuition enhancement” revenues were allocated to GTA salaries. After 2007, no additional “tuition enhancement” revenue is available for allocation to those salaries. The sole source of funds for GTA salaries after Y2007 are general use funds, again including tuition-generated revenues, which have been permanently increased by the “tuition enhancement” program.

GTA Katy Martin’s estimated Financial Aid Budget for F2006-2007 was $13,762 after the tuition waiver. Her estimate does not take into account campus fees waived or paid by the University and the contributions to the cost of the Student Health Insurance Plan paid by the University. With those exceptions, the Fact-finder assumes that Ms. Martin’s budget is representative of other GTAs employed by the University.

Both parties rely to some extent on Graduate Teaching Assistant income information from other institutions. KAPE offers data obtained from internet web sites for the Universities of Colorado, Iowa, North Carolina, Oklahoma, and Oregon. Those data are difficult to compare, although it appears that all the universities sampled forgive some or all tuition, make some contribution toward the cost of mandatory student fees and fund part or all of the cost of health insurance.

Minimum salary data for those institutions for one or both years appears to have been the following:

- **Iowa** - (2005-2006) $15,736 (50% Academic Year Appointment). $19,233 (50% Fiscal Year Appointment).
Oklahoma (2005) Minimum Salary $8,000. 
Average Salary $10,638.

Oregon –(2005) “50% Appointment” $10,738.

KU is a member of The Association of American Universities (AAU), which, among other things, conducts studies of the salaries paid by member universities to several classifications of employees. An AAU study of “Graduate Teaching Assistant Average Cash Salaries” paid by KU and 13 comparable institutions in FY2004 and FY2005, shows that KU’s average GTA salary increased from $11,756 to $12,647, an increase of 7.6%. The study shows that the average GTA salary of the 14 institutions sampled, including KU, increased from $12,909 to $13,321, an increase of 3.2% and that the average GTA salary of institutions sampled, excluding KU, increased from $12,998 to $13,373, an increase of 2.9%. The FY2005 ranking of the 14 institutions lists KU 9th from the top.

The University correctly believes that total compensation rather than cash salary is the more reliable comparison figure for determining where a university ranks among its peers. As mentioned above, GTA total compensation at KU includes waiver of tuition and certain campus fees as well as medical insurance at University cost. An AAU study of “Average Compensation/Resident/Student/ 9 Hours” paid by the same 14 institutions shows that in FY2004 and FY2005, KU’s average GTA compensation increased from $11,470 to $12,361, an increase of 7.8%. The study also shows that the average compensation of GTAs employed by the 14 institutions sampled, including KU, increased from $11,804 to $12,208, an increase of 3.1%, while the average compensation
of institutions sampled, excluding KU, increased from $11,830 to $12,197, an increase 3.1%. The FY2005 ranking of the 14 institutions sampled lists KU 8th from the top.

The university points out that both studies are similar to studies of average salaries and total compensation paid KU faculty, in which KU ranked 6th. Both studies, however, show that average salaries and average compensation paid by KU to GTAs are slightly below average when compared to peer institutions.

The University argues that its salary proposal is based in part on money available to it and in part on its desire to maintain or increase its ranking for GTA compensation among its 14 AAU peers. The University does not claim that it lacks the ability to pay the salary increases proposed by KAPE. However, the ability to pay salary increases never implies an obligation to pay them.

Neither party provided the Fact-finder with cost-of-living data. Such information is of always of interest in determining the adequacy of compensation when compared to increases in the costs of food, clothing and other necessities, including rising housing prices and the ever-increasing cost of gasoline and other energy. Reference to the CPI-U, the “Consumer Price Index, all Urban Consumers,” despite its name, the index used to determine cost-of-living indexes throughout the United States. The CPI-U index (attached) indicates that during the University’s 2004-2005 fiscal year, the cost of living increased by 2.73% while average GTA compensation increased from $11,470 to

---

2 Cost-of-living increases are calculated using the following formula: month 2-month 1 = index point change ÷ month 1 x 100.
$12,361, an increase of 7.8%, below average compensation increases paid by KU’s peers, but well ahead of the increase in the cost of living during that fiscal year.

I agree with the University that total compensation, rather than cash salary represents the most accurate information. My review of the data in the record shows that GTAs employed by the University generally receive total compensation sufficient to meet or exceed cost-of-living increases. However, additional factors are relevant in considered the proposals of the parties. These include the University’s discouragement of GTA outside employment, its desire to maintain or exceed its present salary and total compensation positions in comparison with its peer institutions and of course, its need to keep its salary budget within reasonably affordable levels.

KAPE has provided no argument why its salary proposal should be accepted by the University, other than its obvious belief that all GTAs should be better paid. The goals of both parties will be met, at least in part, with a compromise on the issue of base minimum salaries.

**c. Recommendations.**

Section 1.

I recommend that Article 6, Section 1 of the MOA be amended in accordance with the University’s proposal.

Section 2.

I recommend that Article 6, Section 2 of the MOA be amended in accordance with the University’s proposal.
Section 3.

I recommend that Article 6, Section 3 of the MOA be amended by striking therefrom the minimum salary schedule therein contained and by substituting therefore the following:

First Academic Year:- $11,250.00
Second Academic Year: $11,750.00
Third Academic Year
And all subsequent years: $12,250.00

Article 14 - Grievance Procedure.

a. Proposals of the Parties. The grievance procedure provided by the current MOA consists of three 3 steps: (1) oral submission of the grievance to the Grievant’s immediate supervisor within ten (10) days after the event or events complained of; (2) submission to a written grievance to the Grievant’s immediate supervisor; (3) submission of a written grievance to the Dean or Provost.

KU’ proposal would reduce the three-step process to two steps by providing that the first step be submission of the oral grievance to the Grievant’s immediate supervisor with written notice of the grievance to HR/EO and the Dean of the School, followed by the second step being submission of the grievance to the Provost.

KAPE’s proposal retains the three step grievance procedure, but increases to 30 days the time in which the oral grievance is submitted to the Grievant’s immediate supervisor. In addition, it provides an appeal from the denial of a grievance by the Provost to a “Labor-Management Committee.”
Discussion.

The Union believes that an increase in the time for initial filing of the grievance from ten to thirty days is necessary because its members may be unfamiliar with their rights and may require additional time in which to obtain Union assistance in determining whether to pursue a grievance. In addition, the Union argues that the addition of a “Labor Management Committee” to the grievance process would insure that grievances are ruled upon fairly.

KU points out that very few grievances have been filed during the entire term of the relationship between the parties and that no that the Union has presented no evidence showing that the existing grievance procedure is unfair or requires the addition of a “Labor Management Committee.” The University also notes that an academic term is only 80-days in length and believes all grievances should be disposed of during the term in which they occur. For that reason, the University argues that a ten-day time limitation is adequate under the circumstances.

The purpose of any grievance procedure is the prompt and fair disposition of grievances. The Union has offered no evidence to convince me that its proposed changes to the Grievance Procedure are necessary or advisable. I agree with the University that the disposition of grievances during the academic term in which they arise is a desirable goal. A 30-day filing period would unnecessarily delay the commencement of the process. If KAPE believes its members are unaware of their rights, it is free to take whatever steps it believes necessary to educate them. It is
KAPE’s responsibility to insure that Union representation is readily to its members available when they are in need of it.

Although “Labor Management Committees” are common in some industries, they introduce a level of complexity unnecessary and inadvisable in the University environment, especially in the absence of evidence that the University has abused the existing grievance procedure. The University correctly points out that if any particular grievant believes the disposal of his or her grievance has been unfair, review of the grievance is available under the provisions of the Kansas Judicial Review Act.

I am equally unconvinced that KU’s proposed changes to the existing procedure are appropriate. There is no evidence that the existing procedure is unduly time-consuming or that it has resulted in unwarranted delay in the disposal of the relatively few number of grievances that have been filed. The 3-step procedure has stood the test of time and should be retained.

(c). Recommendation.

I recommend that Article 14 of the current MOA be retained in its present form.

SUMMARY OF RECOMMENDATIONS.

1. I recommend that Article 4, Section 6 of the MOA be amended in accordance with the University’s proposal.
2. I recommend that Article 5, Section 5 of the MOA be amended in accordance with the University’s proposal.
3. (a) I recommend that Article 6, Section 1 of the MOA be amended in accordance with the University’s proposal.

(c) (b) I recommend that Article 6, Section 2 if the MOA be amended in accordance with the University’s proposal.

(d) I recommend that Article 6, Section 3 of the MOA be amended by striking therefrom the minimum salary schedule and substituting therefor the following:

<table>
<thead>
<tr>
<th>Academic Year</th>
<th>Salary</th>
</tr>
</thead>
<tbody>
<tr>
<td>First Academic Year</td>
<td>$11,250.00</td>
</tr>
<tr>
<td>Second Academic Year</td>
<td>$11,750.00</td>
</tr>
<tr>
<td>Third Academic Year</td>
<td></td>
</tr>
<tr>
<td></td>
<td>$12,250.00</td>
</tr>
<tr>
<td>And all subsequent years</td>
<td></td>
</tr>
</tbody>
</table>

4. I recommend that Article 14 of the Current MOA be retained in its present form.

CONCLUSION.

The parties are reminded of their obligations to meet and consider the above recommendations.

I wish to thank the parties and their representatives for their courtesy during the entire course of this proceeding and, in particular, thank and commend Counsel for their excellent presentations during and after the fact-finding hearing.

April 5, 2007.                          Respectfully submitted,

John M. Creger, Fact-finder
1829 Columbine Road
Ozark, Missouri 65721