

IN THE MATTER OF FACT FINDING BETWEEN

*Graduate Teaching Assistants Coalition –
American Federation of Teachers – Kansas
(GTAC or Union)*

and

*University of Kansas
[Kansas Board of Regents]
(KU or University)*

Kansas Department of Labor Case No. 75-I-2-2022 (Impasse)

Fact Finding Public Hearing, February 8, 2022
(KU Campus - Lawrence, Kansas)

Fact Finding Record Closed March 10, 2022
(by agreement of the parties)

FACT FINDING REPORT

Appearing for:

GTAC: Zachary Madison, Chair GTAC Negotiating Committee; William C. Odle, Odle Law Firm, LLC; Brian Wood, Wickham & Wood LLC; Adam Rodger (Ph.D. Candidate); Nhung Nguyen (Ph.D. Candidate); Elise Higgins (Ph.D. Candidate)

KU: Ryan B. Denk, McAnany VanCleve & Phillips, P.A.; Mike Leitch, Senior Associate General Counsel for the University; Jeff DeWitt, University of Kansas CFO and Executive Vice Provost for Finance; Jennifer Roberts, Ph.D., Professor of Geology and Vice Provost for Graduate Studies; Julie Thornton, KU Director of Employee Relations

KDOL Fact Finder: Henry R. Cox

Issue for Fact-Finding

The parties stipulate that the single issue at impasse, and subject to fact-finding, is the wage rate, Article 6 Wages, Section 3. The wage rate in the 2018 MOA states:

Section 3: Each GTA with an appointment of 50% for the academic year will have a base minimum salary that is paid at a biweekly rate in accordance with the following schedule during the academic year, beginning the first pay period after the ratification of this agreement:

Academic Year 2018-2019: \$16,250.00

Academic Year 2019-2020: \$17,000.00

Academic Year 2020-2021: \$17,750.00

Each GTA with an appointment of less than or greater than 50% and/or less than an academic year will be paid on a pro-rata basis of the minimum amount. Nothing in this section prohibits the University from paying a GTA salary above these minimum amounts.

Summary Background Finding of Facts¹

1. The employer in this case is the Kansas Board of Regents, with its member institution, the University of Kansas. *See Kansas Bd. of Regents v. Pittsburg State Univ. Chapter of Kansas-Nat'l Educ. Assn.*, 233 Kan. 801, 812, 667 P.2d 306, 314 (1983) (“We conclude that PERB and the district court were correct in holding that the Board of Regents is the appropriate employer under the Act.”); The University is a state-supported institution of higher education and an agency of the State of Kansas. *See K.S.A. 76-711; Brennan v. Univ. of Kansas*, 451 F.2d 1287, 1290 (10th Cir. 1971).

2. Pursuant to Kansas statute, KU Chancellor Douglas A. Girod, MD, is responsible for “administer(ing) the affairs of” the University of Kansas. K.S.A. § 76-725. The Chancellor is appointed by the Kansas Board of Regents. K.S.A. § 76-714. The Board of Regents is authorized to make contracts and adopt orders, policies, or rules and regulations for the control, operation, management, and supervision of the State educational institutions. K.S.A. § 76-712. The members of the Board of Regents are appointed by the Governor, subject to confirmation by the Senate. Kan. Const., art. 6, sec. 3. The Chancellor is authorized to appoint such employees

¹ The Summary Background Finding of Facts (by numbered paragraphs) include the pre-session, joint fact statement requested by the Fact Finder and submitted by the parties. Additional Finding of Facts continue at page 15, below, with numbered paragraphs following the Summaries of each party’s contentions and proposed findings, at page 16.

as are authorized by the Board of Regents subject to policies approved by the Board of Regents. K.S.A. § 76-715. The Board ultimately approves any new Memorandum of Agreement, (MOA), between the parties. K.S.A. § 75-4331.

3. The employee organization recognized as the exclusive bargaining representative for the bargaining unit is the Graduate Teaching Assistants Coalition – American Federation of Teachers – Kansas (“GTAC” or “Union”).

4. The Union’s predecessor in interest, Kansas Association of Public Employees (KAPE), was originally certified as the exclusive bargaining representative for the bargaining unit by a unit certification order issued by the Kansas Public Employer-Employee Relations Board in 1995.

5. The bargaining unit is composed of approximately 1,000 employees employed in the position of Graduate Teaching Assistant (GTA).

6. From 1995 through the present, the Union and its predecessor in interest, have continually represented GTAs employed by the University of Kansas in collective bargaining with the University as required by the Kansas Public Employer-Employee Relations Act, (PEERA).

7. The parties’ first “meet and confer” session to negotiate a successor Memorandum of Agreement was held on September 30, 2020.

8. From the time of the first meet and confer session through the present, the parties have conducted over 30 meet and confer sessions, inclusive of several mediation sessions facilitated by the Federal Mediation and Conciliation Service, (FMCS).

9. The parties have reached agreement on all contractual issues with the sole

exception of the issue of wages for Academic Years AY 2021-2022, AY 2022-2023, and AY 2023-2024. [*“AY” Academic Year*].

10. The last wage increase for the union was from \$17,000 to \$17,750 in August 2020 under the previous MOA.

11. The final wage proposal from the Union was a wage freeze for AY 2021-2022 at \$17,750 followed by a base raise to \$18,815 for AY 2022-23 and to \$19,200 for AY 2023-2024.

12. The final wage proposal from the University of Kansas was a wage freeze for AY 2021-2022. For AY 2022-2023 and AY 2023-2024 GTAs would receive the same across the board wage increases as received by University faculty, when and if across the board increases were provided to University faculty, unless the Legislature imposes restrictions prohibiting such increases. For these years, when merit pay is awarded, GTAs will participate in the merit pool. In the year following the award of merit pay, the minimum salary for GTAs would increase by the same percentage as that of the average percent merit pool allocated by the University the previous year. If wage increases for these years result in less than a 2% average wage increase for GTAs, then GTAC can reopen negotiations on wages.

13. On December 27, 2021, a Petition for Impasse Declaration was filed as a joint request and executed by representatives of both parties, with the Kansas Public Employer-Employee Relations Board / Kansas Department of Labor, (PERB/KDOL). Within this Petition the parties identified, “Wages for Contract / Academic Years AY 2021-2022, AY 2022-2023, AY 2023-2024,” as the single issue upon which they had failed to reach agreement.

14. This Fact-Finding proceeding arises under the Kansas Public Employer-Employee

Relations Act,² KSA 75-4332 (e)-(g), based upon the submission to the PERB through the KDOL.

15. KDOL provided a list of potential fact-finders and the parties selected Henry R. Cox as the fact-finder. The parties held pre-session discussions with the fact-finder where the parties mutually asked that the primary fact-finding process be conducted with a joint fact-finding session, scheduled for February 8, 2022 at the KU campus, Lawrence, Kansas. The parties mutually requested that the fact-finding session use a “presentation” style format as opposed to a “witness” style session. The fact-finder determined the presentation session would be open to the public for attendance, but not participation.

16. The fact-finding session was held at the KU campus, Lawrence, Kansas, on February 8, 2022, beginning at 10:30 AM and ending at approximately 3:00 PM. The parties submitted evidence of proposed facts using various presenters, exhibit documents, and explanatory statements from the presenters. Each party was allowed to question presenters and the proposed fact exhibits, in addition to rebutting any proposed facts.

17. The parties mutually agreed to submit post-session briefs and any proposed findings of fact. Post-session briefs were concurrently submitted on March 9, 2022, and the fact-finding record was closed on March 10, 2022.

KU Contentions and Proposed Findings of Facts

KU proposes three issues which influence wages: (1) *ability to pay* – the University’s budgetary capacity to pay for proposed wage increases; (2) *external equity* – how graduate teaching assistants’ compensation compares with their peers at other universities; and (3)

² K.S.A. 75-4321 *et seq.*

internal equity – how graduate teaching assistants have fared in their compensation relative to other employees of the University.

KU points out that the final proposals of both parties included a wage freeze for Academic Year 2021-2022, AY 21-22.³

KU contends that there is ongoing uncertainty regarding the funding provided through the State Legislature, with the State General Fund and tuition receipts (the primary sources of funds for budgeting, “Fund”). This uncertainty is increased by various unknown factors arising out of the two-year pandemic, along with the future absence of Federal funds provided through economic allocations in various COVID legislation.⁴

In 2020, 88.6% of the wages for GTAs came from this Fund. The amount for funding GTAs was \$22 million.

Historically, over the past 14-year period, funding has remained relatively *flat* in the gross amount. However, in terms of CPI adjustment (inflation) the amount of funding has steadily gone *down*.

To generate more revenue for the Fund, KU has steadily increased tuition rates, with a greater increase on out-of-state tuition rates. KU is near the top of in-state tuition rates for universities in the Big XII Conference. Thus, simply increasing tuition rates is not a sustainable method to counter increasing operating costs and flat or lower State allocations. Further, the State has frozen in-state tuition rates.

³ GTAC contends that its proposal for the freeze is contingent only upon agreement to its proposal for AY 22-23 and AY 23-24.

⁴ HEERF I, II, and III – COVID relief funds provided to students through Federal legislation, with priority given to graduate students, including GTAs.

Other budget considerations must also be taken into account. For example, KU has cut other expenses in 12 of the past 15 budget years including capital improvements, maintenance, and construction. Some of these cuts involve deferring projects that at some point must be funded and performed for the campus infrastructure. KU forecasts that it has deferred \$200 million in maintenance which will cost up to \$1billion to accomplish over the next ten years.

During the pandemic, KU instituted a number of *austerity* measures, such as, cutting administration and faculty salaries, a hiring freeze, voluntary separation incentive program, and a resulting cost reduction in fringe benefits.

KU contends that with these austerity measures it was able to meet the budget.

KU's central point is that during these difficult budget times, and budget cuts, the GTAs still received their bargained for salary with the 4.4% wage increase.

KU states that for AY 21-22 almost every academic and administrative budget was cut, some in double-digits. Even with these cuts, the budget forecast for AY 23-24 shows a deficit.

Given a State surplus, the State proposes wage increases of 5% for most State employees. However, the current, proposed budget through the Kansas Board of Regents shows an anticipated decrease in overall funding to KU. It remains uncertain if the funding to KU will increase to comply with the overall State goal of 5% wage increases.

In summary, KU contends the uncertainty of State funding allocations makes it impractical to contract a GTA guaranteed wage increase. KU has a goal to increase all wages if the funding is available. This is the reason KU's wage proposal is in a contingent format and not fixed dollar amounts.

The University contends that internal equity considerations must also be taken into account where many employees were required to take pay cuts during the pandemic where GTAs

did not have a cut in pay, and many were eligible for added payments through Federally allocated COVID relief programs administered through the University.⁵ Thus, if the GTAs receive a pay increase, then equitably, the University would likely need to make-up for the prior pay cut rates of pay and look at an equitable increase for those employees.

The University is not opposed to pay increases for any employee sector, including GTAs. However, the funding must be available, and the University has a responsibility look at the equitable distribution to the overall workforce, especially those who took cuts.

The GTAC proposal has a six-percent (6%) increase for AY 22-23, and another two-percent (2%) increase for AY 23-24.⁶ Based on the budget forecasting (including anticipated State funding and tuition revenues), the GTAC proposal would not allow for an equitable allocation regarding the wage rates of other employees and would be “financially reckless.”

Regarding internal equity, from a comparative standpoint, KU asserts that KU faculty salaries rank #33 out of the 36 of peer, public universities in the Association of American Universities, (AAU), and #6 out of 10 in the Big XII. Depending on the method of comparison, KU contends KU faculty rank #9 out of 11 in self-identified, peer institutions. Thus, KU contends the KU GTAs are comparatively paid higher than the KU faculty.

KU contends that based upon external equity factors, the current wage rate is appropriate and the proposed contingency for increases, tied to increased funding, is the fiscally responsible approach.

⁵ KU contends that the COVID economic relief funds, HEERF I, II, and III, with priority to graduate students, provided up to \$9,725 (for domestic students) in addition to their salary for GTAs – a benefit that was not available to most KU employees, including those who had pay cuts.

⁶ The GTA minimum salary increase amounts under the 2018 KU/GTAC Memorandum of Understanding were:
AY 2018-2019 \$15,500 to \$16,250 (5% increase)
AY 2019-2020 \$16,250 to \$17,000 (4.6% increase)
AY 2020-2021 \$17,000 to \$17,750 (4.4% increase)

For the Fall of 2021, there were 953 GTAs. For wage purposes, 814 (86%) were appointed at a 0.5 FTE (Full-time Equivalent) and 139 were appointed at less than a 0.50 FTE.

The assignments and duties of individual GTAs can vary significantly based on the particular appointment, academic department, and coordination with supervising faculty. The 0.50 FTE contemplates a 20-hour workweek. The MOA discourages a GTA from working more than 20 hours. Further, GTAs are generally appointed on a 9-month basis, and the wage/salary amount is not for a 12-month period.

Given the differences in individual GTA duties and academic departments, KU contends the average GTA wage is \$18,460⁷ which is \$710 above the MOA rate. Further, under the IRS Tax Code, GTA salaries are exempt from FICA withholding taxes. KU also contends that even though GTAs at most universities receive a tuition waiver,⁸ and some campus fees, (similar to KU), there remains a real economic value in the waivers that cannot be ignored.

In sum, KU contends that it must be kept in mind that a GTA appointment is a *parttime* job, that is intentionally not a *career job*, and is uniquely tied to GTAs ability to advance their education to earn the applicable masters or doctorate degree to benefit their own career path.

KU is a member of the Association of American Universities (AAU) comprised of 66 leading research universities in the United States. KU, along with 15 other AAU universities in the Midwestern states share compiled data. This is called the AAU Data Exchange (AAUDE).

⁷ KU acknowledges that there are a few GTAs compensated at over \$27,000 in a specialty science area. The GTAC asserts that given the high compensation, KU's *average* of \$18,460, is skewed and that instead of the mean, the calculation should be the *median* or mode. KU contends that with only two or three higher paid GTAs the mean/average is not significantly skewed.

⁸ KU states that tuition is waived at 100% for a GTA appointed to at least 0.40 FTE (pro rata scale < 0.40 FTE). The Resident tuition is a \$10,000 value and Non-resident \$24,000.

According to the AAUDE, for 2020, KU ranks 10th (out of 16) in GTA salary at \$17,840, [calculation based on an average compensation rate of \$18,460 minus a calculation offsetting tuition and fee waivers]. The top AAUDE average rate was \$23,367 and the low was \$14,074.

KU proffered the calculation database from MIT, for a “living wage,” using the geographic location, at an hourly wage rate. KU states that the living-wage calculation was \$11,201 for a single person with a 9-month appointment working at a 0.50 FTE in Douglas County, Kansas.⁹ The GTAC amount in the MOA, \$17,840, is 159% of the calculated living wage. The GTA average salary, at \$18,359 is 164% of the living wage.

KU also presented a comparison using a GTA wage study from Oklahoma State University (OSU), for AY 2019-2020. The OSU study used data from 49 state universities. Using AY 2019-2020 data, KU asserts that KU GTAs were paid 3.9% above the average in the OSU study.

The third comparison by KU was a compilation of MOA’s from several universities by comparing the wage terms for union represented GTAs. Comparing that selection, the average wage/stipend was \$17,097 and KU was at \$18,488 (*the comparison was intentionally not adjusted for tuition waivers*).

GTAC Contentions and Proposed Findings of Fact

The GTAC contends that the GTA salary is substandard for basic living conditions and basic costs of living.

⁹ The actual MIT living-wage calculation for 2022 (single) appears to be \$24,044 (discounting the before tax figure). KU has adjusted that amount to \$11,201 by calculating the amount using 0.50 FTE at 9-months. The MIT data only indicates, “working”, and does not indicate full-time work or other factors. The MIT data appears to calculate what a living-wage is, regardless of work status (full-time, part-time, seasonal, multiple jobs), based upon customary costs of living such as food, healthcare, transportation, childcare, housing, civic, and other, (*e.g.*, a person working at 0.5FTE does not drive half of a car, or pay half the cost for a loaf of bread).

The GTAC presenters used photos, and personal accounts, showing the various low-cost housing conditions an average GTA can afford to rent given the GTA salary. The presenters indicated that a number of GTAs need to retain second and third jobs to pay for basic costs of living. The photos show “rundown” apartments, in need of repair, with poor insulation or energy efficiency which also increases utility costs to the GTA.

The GTAC contends that the MIT living-wage data is not accurately used by KU to contend that the GTA salary is “above” the living-wage for the area. The MIT chart shows the basic living-wage for a single person (before taxes) at \$24,044. GTAC contends that KU’s modification of that amount (using 0.50 FTE and 9-months, at \$11,201) is meaningless. Regardless of employment status, the living-wage for basic costs of living remains \$24,044.

GTAC also contends that a significant number of GTAs are married and/or have children. With those factors, the MIT living-wage increases dramatically and the GTA salary does not come close to creating a living-wage. For example, a married GTA with one child would have a minimum, living-wage need of \$54,575, with both parents working, or a single GTA with one child would need a living-wage of \$49,865.

Regarding healthcare costs, again the GTAC points out that a number of GTAs have families where the student health plan is designed for younger, single undergraduates. The GTAC concedes that healthcare costs are not a specific issue at impasse, but contend the reality of such costs need to be taken into consideration when evaluating the GTA salary.¹⁰

¹⁰ The GTAC also contends that the statute addressing whether healthcare costs is “ambiguous,” and healthcare should be considered a mandatory subject of collective bargaining.

Additionally, the GTAC contends that cost-of-living anticipation must account for inflationary trends where the costs of housing and basic costs, from food to used cars, is significantly rising.

The GTAC contends that its proposed salary increase only amounts to about \$950,000. This amount can be reasonably allocated in the KU budget. The GTAC effectively contends that KU will perpetually argue there are unknown State General Fund and tuition revenue funding issues. KU's budget *forecasting* is a matter of planning "allocation" and not an issue of "ability" to pay, nor does it show the amounts of actual budget expenditures post-forecasting. The ongoing contingency of State allocations does not relieve KU of its duty to bargain in good faith on GTA salaries.¹¹

Financially, the GTAC asserts that the number of teaching hours assigned to GTAs amounts to \$41 million in tuition revenue, and the total cost of GTA appointments is about \$17 million. Thus, based upon revenue generation, the GTAs pay for themselves, plus significantly more, and create, "sufficient resources," or value.

The GTAC cites to several court cases (including the Tax Court) recognizing that GTAs are appointed to supplement the teaching faculty and their work is a "benefit" to the university, and not merely an academic benefit to the GTA, (quoting, *Pelz v. United States*, 551 F.2d 291 (Ct. of Claims 1977), the GTA stipend is not a non-taxable scholarship, where the GTA teaching assignments are the same as those, "any new faculty member would expect to assume.").

The GTAC contends that it is, "audaciously false," for KU to assert that the GTAs are "part time" employees. While the level of preparation, classroom time, and non-classroom time

¹¹ The GTAC also proffers that the large salaries paid to the KU Head Basketball and Football coaches shows KU's ability to pay. However, those salaries are paid through an entirely different process, including funding sources, and not through the Kansas General Fund allocations passing down to the Board of Regents.

can vary from GTA-to-GTA and the department, it is unrebutted that many (or most) GTAs expend more than an average of 20-hours per week to carry out their assignments. The GTAC contends that KU cannot reasonably argue that the GTA is expected to only work 20-hours per week. Further, the grievance process is not a realistic avenue, because some positions simply require more hours, and it creates a, “significant burden to identify exploitive departments.”

The GTAC contends that factoring in tuition waivers is a, “red-herring,” because the vast majority of universities provide tuition waivers for GTAs, and, “it is implausible that KU could attract qualified candidates if it failed to so...”

The GTAC challenges the comparative data used by KU in relation to GTA salaries at other universities.

The GTAC contends KU failed to show whether comparative universities had the same, or different, alleged “inabilities” to pay higher salaries; the comparative data uses mean/average calculations and not more significant median or mode; the median salary for KU GTAs is lower figure than the mean/average used by KU; and there is a basic problem with defining what constitutes a “peer university.”

The GTAC contends the OSU data used outdated salaries from AY 2019-2020, used a number of non-comparable universities, such as R2 rated research schools, and the survey makes a number of unsupported assumptions, such as, 0.50 FTE status and using mean averages as opposed to median salaries.

In conclusion, the GTAC contends that KU has the ability to pay an increased salary at a living wage and the failure to do so is neither internally or externally equitable, fair, or legally justified.

Fact-Finder’s Preface and Additional Findings of Fact

The negotiations utilize a “meet and confer” process.¹² Fact-finding is a non-binding process where the impartial, neutral fact-finder investigates the information in the negotiation leading to impasse, sets out the parties’ contentions, the factual elements involved, and provides non-binding “recommendations” for the parties to adopt or consider in a further attempt to negotiate an agreement. If the parties remain unable to reach agreement, “the governing body shall take such action as it deems in the public interest, including the interest of the public employees involved.” [KSA 75-4332 (f)].

Absent a ‘bad faith’ allegation, the negotiation and fact-finding process does not involve ‘claims’ and proving various ‘burden of proof’ standards as seen in most legal proceedings.

The statutory structure of PEERA also distinguishes public and private labor bargaining purposes and objectives.¹³

¹² KSA 75-4327 (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.

KSA 75-4322 (m) Meet and confer in good faith is the process whereby the representative of a public agency and representatives of recognized employee organizations have the 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.

¹³ KSA 75-4321. Declaration of policy and objectives; election by public employer to be bound by act; termination. (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;

Each impasse situation involves its own, unique background and set of issues – and potential resolutions. The purpose of the fact-finding is to allow an objective, impartial fact-finder to investigate and explore issues to ultimately provide recommendations to facilitate the parties to move past impasse and fully negotiate the issues to agreement. Given the uniqueness of each fact-finding case, there is purposefully no set of particular standards to apply in attempting to resolve issues in a recommendation format.

In most instances, the prevailing focus is to objectively address the issues in terms of the various (and sometimes competing) “public interests” of relevant stakeholders, such as, the higher education community, the State, faculty, administration, students, and employees of the University. The various public interests are the central focus in this case.

There are also inherent, and sometimes legal limits on the scope of the fact-finding process. For example, the fact-finder does not sit to substitute their own judgement for that of the KU or the GTAC and the issues are limited to those at impasse within the parameters of the agreement at issue. These limits of discretion are particularly true when relying on prospective budgets and unknown factors regarding legislative funding allocations. These limits promote the

(2) the denial by some public employers of the right of public employees to organize and the refusal by some to accept the principle and procedure of full communication between public employers and public employee organizations can lead to various forms of strife and unrest;

(3) the state has a basic obligation to protect the public by assuring, at all times, the orderly and uninterrupted operations and functions of government; *[subsection (4), fn. cont'd, page 15]*

(4) there neither is, nor can be, an analogy of statuses between public employees and private employees, in fact or law, because of inherent differences in the employment relationship arising out of the unique fact that the public employer was established by and is run for the benefit of all the people and its authority derives not from contract nor the profit motive inherent in the principle of free private enterprise, but from the constitution, statutes, civil service rules, regulations and resolutions;

value of objective focus on the *public interests* involved, including an understanding that there is a public interest in finding agreement between a public entity and its represented employees.

Parties in labor negotiations should never have a goal to negotiate to impasse. However, despite 30 negotiation sessions in over 18 months, the GTAC and KU have, in fact, reached impasse. When parties are willing to negotiate to impasse, they do so with a certain amount of risk. The negotiations stop. A fact-finder neutral, despite a certain amount of labor law expertise, is asked to review the facts. Yet, the fact-finder is never as close to the facts and inter-workings between the parties as the parties are themselves, especially with 30, prior, negotiation sessions. The fact-finder is not a participant in the ongoing details and nuances arising throughout the budget and negotiation processes for KU, the Board of Regents, or the Legislature. Thus, at least some of the benefits of *self-determination*, provided through the negotiation process, is lost in an impartial, neutral fact-finding process.

[numbered paragraphs of findings of fact continued]

18. A GTA is a rather unique type of employment that is also common within universities, especially research universities, public and private. A GTA is an *employee* of the university for a limited duration of time and the position is not a career-job. The GTA provides a valuable service to the university, both academically and financially. A GTAs salary is not a scholarship, yet the nature of a GTA appointment also benefits the GTA academically and financially. The most common terms of a GTA appointment (looking at the multitude of universities in evidence) are that the GTA is actively enrolled in a graduate program, the GTA appointment is considered a part-time position at a 0.30 to 0.50 FTE for a 9-month school year, the appointment is temporary during the person's graduate studies, and tuition is waived.

19. Despite some more common aspects, comparing GTA programs between universities

can metaphorically become an apples-to-oranges, oranges-to-bananas, bananas-to pears exercise. There are public and private universities, GTA union and non-union universities, differences in compensation rates between departments (such as STEM areas compared to music and fine arts - creating a wide salary range within a university), R1 and R2 rated universities, different university and department specific bonus stipends, differences in university funding, drastically different costs-of-living based on geographics, differences in GTA assignments from administrative/organizational to being the primary classroom instructor, and the list goes on and on.

20. Comparative data from similar workplaces for similar jobs is the most common method to look at potential wage or salary adjustments. The comparative data submitted by the parties is essential and helpful in guiding information to determine appropriate GTA salaries. Using certain averages whether it is the mean or median calculations is also necessary and helpful. The inherent problem is that there is a tremendous amount of missing data (or unaccounted for data) to truly compare the GTA salary at one university to another. By example, if the task was to compare the wage scale for the Lawrence, Kansas Police Department, it is likely that comparative data would be shown for relatively the same positions/ranks and seniority for police departments in or near Douglas County, Kansas municipalities of similar size, and other data that has more of a one-on-one, apples-to-apples, comparison.

21. The comparative data submitted by both parties shows certain unexplained comparisons. For example, Harvard 2 has a GTA salary average of \$22,080, and Harvard 1 \$19,680. The University of Massachusetts – Boston, seven miles down the road, has a GTA average salary of \$18,092. Both Harvard and UMass share the same living-wage geographic area and the GTA salaries are significantly lower than the MIT living-wage statistic for Douglas

County, Kansas. It is highly likely that the cost-of-living in Boston/Cambridge is higher than Lawrence, Kansas. The Union shows a bar graph of GTA average salaries where UC-Berkeley is at about \$44,000, Northwestern is at about \$34,000 and Rutgers is about \$29,500 – unexplained, significant anomalies. The average range of the bar graph with 31 universities is roughly between \$15,000 to \$18,000. In other comparative data, Oklahoma University is about \$14,000, Brandeis is at \$7,440, and State University of New York (SUNY) Albany is \$10,568. The conclusion is that the comparative data is extremely helpful to bring a certain perspective to variations in GTA salaries across the country; however, the data does not create some sort of objective or mathematical analysis or other standard.

22. Neither party provided direct comparative information regarding Kansas State University, which would be funded by the same Kansas General Fund through the Kansas Board of Regents.¹⁴ K-State is *the other* R1 rated university in Kansas. From public information readily available on the Internet: GTAs at K-State are not in a union; and, GTAs are generally paid based on a 0.50 FTE, approximately 18 to 20 hours per weeks, for 9-month appointments, with summer teaching and bonus options depending on the department. The math department has an average GTA salary of \$17,000 with bonus options over \$20,000 and the music department GTA salary averages about \$10,000. The Fact-Finder raises this issue based upon the reality that the Kansas Legislature and the Kansas Board of Regents will make allocation and funding decisions looking at both KU and K-State, along with the other 30 universities and colleges under the Regents' purview.

23. KU is an R1 rated university based upon the Carnegie Classification, having “very

¹⁴ It is possible a party asked for data from K-State and the request was denied. Admittedly, it appears that most universities keep GTA data, at the micro-level, close to the vest, even where open records law applies.

high research activity.” KU is a member of the Association of American Universities (AAU) where 66, R1 universities participate by invitation. The AAU shares certain data including GTA salary rates. The AAU has a subgroup of 16 Midwestern universities (AAUDE). The AAUDE compiled data on comparative GTA salaries, indicating an attempt to compare salaries using the same criteria data.¹⁵ The GTA salary range was \$23,367 to \$14,074. The average was \$17,840. KU ranked 10th using its submitted Average Cash Salary of \$18,359 or the Average Compensation of \$17,840. Using the *median* KU salary proposed by the GTAC, at \$17,500, KU remains in the 10th spot.¹⁶

24. The OSU survey, the summary of the compendium of MOA’s, and the Union’s bar graph¹⁷ of 31 universities all show the relatively same picture regarding GTA salary rates, and they all have missing data, assumptions, and intra-university diversity that cannot be determined without more information and significant analysis. Looking at all of the comparative data from numerous schools, taking into account certain assumptions in the data that might skew numbers one way or the other, the data shows that the KU GTA salary rate is well within the acceptable range for GTAs across the country.

25. The GTAC raises meaningful points, supported by summary data, regarding the fact that GTAs live at or near the economic poverty line if they are existing on their GTA salary alone, especially if the GTA has a child, (single or with a significant other). Points of

¹⁵ Again, there can be significant diversity in academic departments, duties and salary for GTAs within a university, and creating a summary of data to compare against another university with its own GTA diverse aspects is not a perfect task.

¹⁶ The Fact-Finder understands that the data does not breakdown added detail for other universities to distinguish between mean and median, or variations by department or duties. However, that remains the continuing problem in reviewing the submitted comparative data. It is also most likely that universities would not (by name) volunteer that data.

¹⁷ The Union’s bar graph did not have any supporting data, methods statement or analysis. The UC Berkeley, Northwestern salary levels appear to be anomalies without explanation.

reality gleaned from the evidence are that, right or wrong, this economic status is fairly consistent for most or all universities. The GTA job is not designed as a full-time job, even though there may be some expectation that a GTA put in the hours to satisfactorily do the job and expending more hours. Sometimes those expectations are self-imposed by a person's motivation, (or obsession), and it is likely that sometimes the expectations are imposed by the department or supervising faculty. It was not clear if this is a serious issue or merely a point of contention. Currently, the answer lies somewhere in the grievance process and the Fact-Finder addresses the potential for a better communications-management process, but that issue goes beyond the scope of this fact-finding. The bigger, albeit important, socio-economic issue about funding living-wages for college students, especially graduate students, is beyond the scope of this fact-finding case.

26. The GTAC raises significant and complex points about healthcare for GTAs, especially with families. Whether student healthcare benefits are a mandatory subject of bargaining, within the meet and confer process, however, is also an issue that is also beyond the scope of this fact-finding case. Nonetheless, the costs of living, healthcare, affordable housing, and inflationary pressures are all issues that cannot be ignored when looking at wage and salary rates in the negotiation process, even if for indirect context.

27. Public interest has a paramount role in the public employee labor process. The controlling statutes point out that there is a difference between private business collective bargaining (profit motive), and public agency meet and confer bargaining (public interest). There is a strong public interest in assuring that public employees are appropriately compensated. In this case, there is a statewide public interest in having an R1 rated research university and attracting the highest-level graduate students. The Board of Regents has a public interest in

reasonably maintaining KU at the highest possible level of academic recognition. And certainly the KU administration, faculty and staff share these public interests. These public interests include the GTA salary rates, as well as State spending, fiscal responsibility, and allocations.

28. Neither party presented any information regarding whether KU has problems or issues in recruiting high-level graduate students or in filling GTA appointments. The Fact-Finder cannot presume there is any particular difficulty in recruitment (a public interest) or that the GTA salary rate is problematic for recruitment. There was also no information presented regarding comparative rates of GTA salary increases at other universities, or trends to increase (or decrease) GTA salaries based upon nationwide impacts of a post-pandemic environment with rising inflation. Based upon the information presented, it appears that competition issues are satisfied (such as more competitive STEM curricula) where the MOA creates a *minimum* salary, and does not preclude the ability of offer higher rates. In reviewing the various universities' GTA systems, a general conclusion is that at universities with GTA bargaining units, there is less discretion to create a larger spread in GTA compensation between departments, (*e.g.*, an average or median GTA salary of \$10,000 in music or social sciences with an average or median of \$25,000 in STEM areas). It also appears, universally, that Graduate Research Assistants are compensated very distinctly from GTAs, often at a higher salary, especially in STEM areas, based upon specific research grants or special funding.

29. The 2018 MOA provided for a AY 2019 GTA salary increase of 5%, AY 2020 4.6% and AY 2021 4.4%. The COVID pandemic issues caused classes to cease or go online. Jobs and wages were subject to cuts, infrastructure and maintenance issues were placed on hold, austerity measures were implemented, and budget allocations and spending became a continuing set of unknown factors. The result for the GTAs is that their salaries were effectively frozen. KU points

out that administration, faculty and other positions were required to incur wage cuts and the GTAs did not. Additionally, many GTAs were eligible for HEERF payments not available to other employees. As discussed further, maintaining the GTA salary was a contractual right and HEERF benefits were Federally granted programs – these were not discretionary acts by KU.

30. One advantage of a labor bargaining relationship is the value to the employee group to be able to negotiate terms and conditions of work, including salary, and the university must meet and confer (negotiate) in good faith, without the ability to first act unilaterally. The GTAs have a real interest in knowing a quantifiable salary rate, and not a contingent formula that may or may not happen. Important life decisions are based upon some reasonable certainty knowing the salary rate. The University, faculty and the classroom students have an interest in assuring some stability in the GTA ranks with motivated GTAs as primary and secondary educators. The best way to accomplish this is to negotiate a quantifiable (or fixed) minimum salary rate – not a potential formula that may or may not happen.

31. In all negotiation decisions there is often a certain risk-benefit involved. In this situation, it is possible that the prospective formula proposed by KU could result in a higher salary increase if the Legislature, through the Board of Regents, allocates additional funds, especially with a goal of increasing state employee wages/salaries by 5%, but that 5% may be only a one-year adjustment (or only for active GTAs at the time of a merit pool allocation). This same risk-benefit analysis applies to KU. With a negotiated minimum salary, the budget allocations can be appropriately adjusted, and if the Legislature allocates additional funds, then the KU budget and spending will benefit.

32. Somewhat interesting in this case is that both parties spent the majority of their time

and effort in developing *big picture* issues, and very little time dealing with the details or actual calculations arising from the last proposals on the table – except to state what they were. The fact-finder does not have the benefit of all the details arising from 30 negotiation sessions and must rely on the information and context provided by the parties. As a package-deal, the GTAC proposed to freeze AY 2021-2022 at \$17,750, with a 6% increase (\$18,815) for AY 2022-2023 and a 2% increase (\$19,200) for AY 2023-2024. The GTAC contends the proposed AY 2022-2023 6% increase amounts to \$950,000. (It is presumed, not stated, that the next 2% increase would be roughly \$330,000). Over the two years of increases, this would average a 4% increase per year. The prior MOA had an average increase of 4.67% for the applicable three years. The proposed 6% increase would be the largest negotiated increase in one-year. This percentage amount may be an effort to *make-up* for a *frozen-year*, but that contention was not made. Two factors run against the grain of a 6% increase: (1) it is a large(*st*) increase in a year where the budget allocations for the State, Board of Regents and KU are very much up in the air to unravel the economic issues resulting from the COVID issues – a bit of unknown territory, and; (2) the GTAs did not receive a pay cut with the austerity measures and many GTAs had the opportunity to obtain HEERF payments, not available to other KU employees.¹⁸

33. The KU proposal is based upon *unknown contingencies*. AY 2021-2022 is frozen. For AY 2022-2023 GTAs would receive the “same across the board” increases received by faculty.¹⁹ The second bullet point does not make it clear *when* merit pay might be awarded and in *what*

¹⁸ Again, while not addressed by the parties, the fact that GTAs did not receive an austerity pay-cut, was not a benevolent decision, but rather a result of the MOA, in the last sentence of Article 6, Section 1: “During times of budgetary constraints, GTAs with active appointments will not be subject to furlough or salary reductions.” In this regard, the Fact-Finder is reluctant to somehow penalize the GTAs for the benefit of a legitimately negotiated provision.

¹⁹ “same across the board” can arguably have an ambiguous meaning. What is the method of calculation to determine what a, “same across the board,” increase is? The calculation details of the proposal were not discussed in the fact-finding session or briefing.

year it would apply. Again, the details were not discussed, yet the parties may very well have a solid understanding, (for example, Does the merit pay pool formula apply to a potential pool in AY 2022-2023 but with a payout in AY 2023-2024?). Even if the merit pool becomes a reality, the proposal contemplates that the salary increase could be less than 2% on average (as well as the “same across the board” increase). Then, the recourse is to reopen the MOA to begin negotiating the salary anew. While it may not be KU’s intent, recent negotiations have shown the process could take over 18 months (two AY cycles) where some current Union members would never benefit from a potential outcome. KU benefits from the inherent short-term nature of a GTAs employment, perhaps justifying low salary rates (as do all universities). The potential realities, however, support the need to provide a more definite salary.

34. The somewhat glaring issue that neither party addressed in their presentations, (although one or both parties may have intentionally left the issue silent, or fully discussed during negotiations), is that the *core* of KU’s proposal already exists in the MOA, Article 6, Section 1, to mandate the distribution of any merit pool funding.²⁰ There is no indication that the parties negotiated to remove these provisions on the creation and distribution of merit pool funding. In the presentation, KU stated that merit pool monies are allocated to a department for salary expenditure on an equitable basis and cannot be withheld from the GTAs at the department level. Granted, the KU proposal appears to make any merit pool allocation the *new* minimum base rate, (not a temporary or a GTA-specific wage), “across the board,” and that if the

²⁰ Article 6, Section 1: The University shall establish for the University's GTAs a merit salary pool when funds are available with at least the same percent average increase as that provided to University faculty unless the Legislature imposes specific restrictions or limitations on expenditures for GTA salaries. The merit pool is determined by taking all budgeted GTA salaries times at least the average faculty percent increase stated above. The merit increase received by any individual returning GTA will be based on the provisions of Section 2 below and on the previous evaluation of performance for that GTA. During times of budgetary constraints, GTAs with active appointments will not be subject to furlough or salary reductions.

merit pool distribution ends up less than an average of 2%, the MOA can be reopened to further negotiate the wage rate. However, a prospective negotiation is extremely speculative in nature. It becomes unclear whether the methodology in the KU proposal really proposes a wage increase (even speculatively) when the merit pool process already exists in the MOA. Further, it appears that the benefit-of-the-bargain is the merit pool monies are on top of the GTA salary, and create a new salary rate for the GTAs who received the allocation. Salary increases using a merit pool, benefit both KU and GTAs. The active GTAs, at the time of a merit pool distribution, receive a salary increase, and KU benefits because the increase only applies to the recipient GTAs (short term employment of one to perhaps three years) and not GTAs appointed in the future.

35. There are several realities in this case. Right or wrong, it is endemic in the academic world that GTAs are paid a type of *survival salary* – hopefully enough to get by while benefiting from a graduate degree for a more lucrative future career. The current historically high inflation rates have already impacted most people, but most certainly those in lower income brackets (*e.g.* a GTA). There is no reliable indication that the current inflation trend will meaningfully subside in the near future. State funding will not likely be able to match the rate of inflation in the near future. The Union’s proposed 6% increase does not capture the inflation increase for the past year or the economic predictions for this year. At the same time the proposed 6% is not reasonable given the overall budget/funding issues for the State, the Board of Regents and KU.

36. If it is a serious issue, the Fact-Finder believes it is also important to address the “grievance” process issue as it relates to working in excess of 20-hours per week. Even though this issue is not formally raised in the Impasse Petition, both parties raised the issue. KU contends that the grievance process is in place to deal with the 20-hour issue and it was subject to some amendment, modification, or mutual understanding in the negotiation process. GTAC

contends there was no amendment, modification or mutual understanding in the negotiation process. The Fact-Finder does not believe the after-the-fact grievance process is the exclusive recourse for dealing with this issue. Rather, preserving KU's management rights, the parties should attempt to agree upon a more effective communications and accountability process between the academic department, supervising faculty, GTAs, the Union, and the Human Resources Department – a “proactive” process, not a “reactive” process. This is not an issue controlled by wage/hour overtime laws, however, it is not an unusual issue for employers dealing with groups of wage/hour, exempt employees. A proactive process typically involves clear, written communications to the employee on work-hour expectations and similar communications to supervisors/management on the responsibility to adhere to the guidelines and appropriately monitor and manage the expectations, likely with the faculty member signing a document acknowledging an understanding of the guidelines and expectations. The flexible nature of a 20-hour expectation can also be explained, such as circumstances where a GTA might need to work more than 20-hours in a week to review materials and create a syllabus, or for grading papers or tests. It appears that this issue is addressed with GTAs in their orientation, but it is not clear how well it is addressed with supervising faculty.

37. The nature of the GTA/ Supervising Faculty relationship is not a typical employment relationship where only a job performance evaluation is at issue. The supervising faculty member may be in a student-faculty grading process for assignments or testing in the GTA's graduate studies, or the supervising faculty member may directly or indirectly have influence on a GTAs dissertation board of review. A GTA might be reluctant to raise an issue based upon real or perceived repercussions. There are also situations where a highly motivated GTA assumes a greater sense of responsibility (or even obsession) and wants to put in the extra hours, regardless

of the expectations. The process could have a mutual reporting/accountability element, to allow a GTA to raise a 20-hour issue or a faculty member to raise concerns about a GTA working too many hours. The reporting process would lead to a *conciliation*, workout intervention through Human Resources or Graduate Studies faculty, as opposed to an adversarial, *grievance* process. The GTA would also be allowed to have a fellow GTAC member present. KU may already have such a process in place. If it does, it may be a communications issue since it was a focal point in the fact-finding presentation.

38. Again, the 20-hour issue, and any resolution process, is **not** a defined part of this impasse case. The suggest resolution would fall within the reserved management rights. If the parties attempt to mutually work on a process and fail to reach agreement, it is not another impasse. The issue is raised by the Fact-Finder only if it is an avenue that assists in negotiating a mutually agreed salary provision.

39. It is not clear from the KU proposal that if the faculty receives a 5% increase as a 1.0 FTE whether the GTA would receive 5% of the GTA salary rate, or a pro-rata 2.5% based upon a 0.50 FTE. Given the number of potential issues regarding contingency formulas and interpretation, keeping in mind the budgetary constraints KU will face climbing out of the pandemic cycle, the Fact-Finder concludes that providing a known salary amount for GTAs to plan around, with a fixed salary increase of 2.5% for both AY 2022-2023 and AY 2023-2024, will more reasonably and quickly move the negotiations forward.

Recommendations

Based upon the evidence, statements and contentions made by the parties, the Fact-Finder makes the following recommendations:

(1) Provide a 2.5% increase for each of the second and third years in the 3-year salary agreement, *[rounding up the last dollar]*.

AY 2021-2022 – Frozen at \$17,750

AY 2022-2023 – 2.5% increase (+\$444.00) \$18,195

AY 2023-2024 – 2.5% increase (+\$455.00) \$18,650

(2) Article 6, Section 1, and Section 2, remain in effect for potential merit pool distributions. This recommendation for an increase in the base salary rate does not substitute or eliminate the potential benefit of the existing merit pool provisions.

/s/ Henry R. Cox
Henry R. Cox, KDOL Fact-Finder

Dated: March 17, 2022