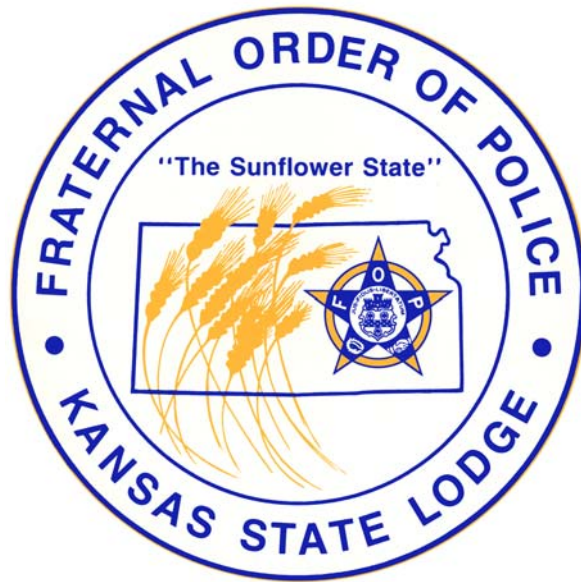


# KANSAS



## Collective Bargaining

**A PRIMER ON COLLECTIVE BARGAINING  
FOR FRATERNAL ORDER OF POLICE  
LODGES  
IN KANSAS**

**Jointly Prepared By**

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Edited by  
David Reavis  
Past State President

This document is intended to give local lodges a start on the recognition process of collective bargaining and an insight into how to negotiate a contract. This document is only a guide. Your lodge's negotiation process may or may not go as outlined in this document.

This document is the sole property of the Kansas State Lodge of the Fraternal Order of Police.

## **CONTACTS:**

You may contact any of the Negotiators from the State Lodge for assistance.

K. C. Blodgett	State President	Topeka	<a href="mailto:tractor@holtonks.net">tractor@holtonks.net</a>
Don Woolery	Past State President	Kansas City	<a href="mailto:dwfop@aol.com">dwfop@aol.com</a>
Dennis Shell	Past State President	Kansas City	<a href="mailto:Dshell@kc.rr.com">Dshell@kc.rr.com</a>
Pete Fogarty	National Trustee	Kansas City	<a href="mailto:pfogarty@kckpd.org">pfogarty@kckpd.org</a>
Steve Stowers		Hutchinson	<a href="mailto:stowers@mindspring.com">stowers@mindspring.com</a>

This team was formed so local lodges that have not had the experience of negotiating may learn from these people. The above-named people have agreed to make themselves available to your lodge and provide whatever assistance you may need.

## **THE EXPERTS:**

The following is a list of experts who have special expertise that will be of

assistance to you in gaining recognition and negotiating your contracts. The Kansas State Lodge does not advocate that you retain these persons exclusively. If you know of someone who is knowledgeable in the area of labor negotiations it is perfectly acceptable to use them.

<b>Steve A. J. Bukaty</b>	State Lodge Attorney	(913)341-1040 <a href="mailto:Laborlawyers@sbcglobal.net">Laborlawyers@sbcglobal.net</a>
<b>Ron York</b>	CPA	(405) 840-0044
<b>John Cipolla</b>	Insurance Consultant	(913) 677-1030
<b>Steve Kearney</b>	State Lobbyist	(785) 234-5859

**Steve Bukaty** is the State Lodge Attorney. Steve is one of the best and is very busy throughout the U.S. He has very capable attorneys in his office, which work with most of the F.O.P. Lodges in the State.

**Ron York** is out of Oklahoma. He is the moneymen. He will do a financial analysis and tell you if your city can afford to give you a raise or not. He charges for this but is one of the best in the United States. The Grand Lodge uses him quite extensively and comes highly recommended.

**John Cipolla** is the State Lodge Insurance Consultant. He not only handles most of the lodges in the State, but also the Grand Lodge. He has helped Kansas City, Kansas with its health insurance program. He is very knowledgeable in all areas of insurance that you may deal with when it comes to negotiations.

**Steve Kearney** is the State Lodge Lobbyist. He is the go-to guy for legislative issues. He has never failed to answer or get the answer to any question about the legislative process. He is a guiding force in the State F.O.P.

## **OUTLINE FOR RECOGNITION IN BARGAINING:**

The following is an outline of what you can expect when you seek recognition in

bargaining. You should probably contact a negotiator listed above to assist you in going through this process.

## **I. Obtaining Recognition**

- a. Once your lodge membership has decided to obtain collective bargaining, you have a few options. You may ask your employer to voluntarily recognize you; you may ask them to bring the local government under the provisions of the Kansas Public Employee/Employer Relations Act (PEERA), which will be discussed below; or you can ask them to adopt their own bargaining resolution or ordinance. Before doing this, the idea of collective bargaining should be discussed at a meeting and you should be sure that the majority of your members support the idea. Members of the State Negotiating Team and our State experts are available to assist you and attend meetings where these matters can be discussed.
  
- b. Management will more than likely try to talk you out of this. Know why you want to be recognized and be prepared to stay in this for the long haul. **IT WON'T HAPPEN OVERNIGHT.** As a lodge, know that if you have an adversarial relationship with management, a request for recognition may make it more contentious. Your lodge leaders may become a target for retaliation, such as, movement from one area to another, movement from one shift to a less desirable one, movement from being a detective to patrol, etc. It is illegal for your employer to retaliate against you because you are engaging in activity on behalf of the F.O.P., including seeking bargaining recognition. If you believe that you, or any of your members, have suffered such retaliation, you should contact the State Lodge Attorney or an attorney of your choice. Being aware this could happen will lessen some of the stress. You can prepare yourself by talking with other lodges around the State who have had similar incidents occur. Make sure that you **DOCUMENT** any changes that occur after the lodge has made management aware that recognition is a goal. Try not to have any one-on-one conversation with members of management. It can end up being your word against theirs. If it can't be helped, then document, document, document! It is a habit in which you need to become familiar. You may also experience the opposite end of the spectrum where management may refuse to acknowledge any form of the F.O.P. and/or your request for recognition.

- c. Management may also try to cause dissension among your members. This is where your members need to communicate with one another and stay tough. Don't let rumors about your leadership cause dissension. Stick together, support your elected leadership and talk openly about these problems.

## **II. Doing Your Homework**

- a. Know why your management is going to oppose your request. Most of the time it is as simple as fear. They really don't know or understand collective bargaining and are afraid you will take away some of their management rights and power. The best response to this position is to point out that numerous sheriffs and police departments throughout the State have collective bargaining, and their management has not lost control of their departments. In all of those departments, the Chief or the Sheriff still runs the department, and he and his command staff still make the majority of the decisions. You should also point out that what collective bargaining really accomplishes is to allow everyone to have an equal opportunity by leveling the playing field. If it is in writing (contract), everyone knows what is expected and what the rules are and the rules will be enforced fairly and equitably.
  
- b. Know your city council, county commissioners or elected officials of your governing body. Before you ask them to vote, you should have contact with these people and you should have an idea who will vote for you and who will vote against your position. You should make contact with your citizens and have their backing before you go in for the vote with the city. Invite them to an informal meeting. It can be as simple as a tea, a breakfast, or having a dinner in conjunction with your monthly meeting. The idea is to be able to get to know each other. Let these people see you and your families. It helps them to understand why this isn't just a "fight" against management, but a way to obtain better wages, terms and conditions of employment and benefits which will create a positive affect throughout the community.

- c. Get the backing of other unions in your town. If you have no other unions in your town, don't be afraid to go to surrounding towns. Unions are always ready to help others wanting to get started. As many of you know, F.O.P. local lodges are always willing to step in and show support.
- d. If you cannot reason with your councilmen or commissioners you should contact J. T. Tavis or Jim Marble. They are among the best resource for getting a Political Action Committee started. Your PAC can have a profound effect on elections and support. Ask F.O.P. Lodge No. 49, Dodge City, how effective a PAC can be. They fought for ten (10) years to get recognized. It was only after forming a PAC and getting politically involved that they were successful. Topeka Lodge #3 also has a very active and effective PAC.

### **III. Obtaining Coverage Under The Public Employee/Employer Relations Act.**

As noted above, there are three (3) ways for you to obtain recognition. The governing body can voluntarily recognize your F.O.P. as your bargaining representative; they can adopt a bargaining ordinance which calls for recognition, most likely after an election among your members; or they can simply vote to exercise the statutory local option and bring your local unit of government within the provisions of the Public Employee/Employer Relations Act (PEERA), K.S.A. 75-4321, et seq. The best procedure is to attempt to get the majority of the members of your governing body to come under PEERA. If this is done, then you will have all the legal protections that your brothers and sisters in most lodges in the State who have collective bargaining enjoy, such as, Kansas City, Topeka, Wichita, Edwardsville, and several others.

The best procedure is to have the governing body, adopt a resolution that voluntarily brings your local government under the provisions of PEERA. Steve Bukaty's office has prepared numerous resolutions, which have been successfully passed in various places around the State. He can assist you in drafting such a resolution.

Before you ask that such a resolution be introduced, you must do your political homework as noted above. Be sure that you have a majority of your governing body who has stated that they will vote for the resolution before it is taken up.

Once the governing body comes under PEERA, an election petition must then be filed on behalf of the F.O.P., requesting that the Public Employee Relations Board of the State of Kansas (PERB) conduct an election among your members to see if the majority of the members in the bargaining unit, who, in law enforcement, are typically sergeants and below, will vote to be represented by the F.O.P. When the petition is filed with PERB, you must have at least thirty percent (30%) of the members of the bargaining unit sign the petition, expressing their interest in being represented by the F.O.P. Again, Steve Bukaty's office has these forms and can assist you. Because these PERB proceedings are legal proceedings, it is not recommended that you file these petitions on your own. There are several technical requirements with which Steve Bukaty's office is familiar. With their assistance, the filing of the petition and obtaining an election is a simple matter. However, if you don't know the road signs, the governing body can bog you down for quite some time in opposing your petition. Once any issues about the petition have been resolved, PERB will conduct an election. You must receive fifty percent (50%) plus one vote in order to be certified. If you receive a majority of the votes, PERB will issue a certification of bargaining representative and an order to the parties (the lodge and the local unit of government) ordering you to negotiate. This is called a bargaining order.

#### **IV. Beginning the Negotiation Process**

Now that your lodge has either received voluntary recognition by your employer or has been certified as the exclusive bargaining representative of your officers by PERB, and PERB has issued a bargaining order, you are ready to proceed with the negotiation phase.

- a. Developing your proposals. What do you want to have in your first contract? Remember that you can't have it all the first time out. Your first contract will be a foundation to build on. Don't expect to get everything you ask for.
  
- b. The best place to start in determining what proposals you want is to review the F.O.P. contracts from around the State. They are readily available. The people listed on the third page of this document can obtain for you copies of these contracts. You can also obtain them by contacting the local lodge

presidents. You should study these contracts closely so you can see the types of rights and benefits that your brothers and sisters who are covered by F.O.P. contracts enjoy. This way you can determine which of them may be the best for your lodge.

- c. The most important part of your proposal will be research. Never represent something as fact that you cannot back up in black and white, just as you should not accept anything from management without the facts and figures in writing to back them up.
- d. If you make a monetary/salary proposal, you should have data to back up why you need or deserve more money. Most F.O.P.'s will use Ron York out of Oklahoma. He will be able to tell you if the governing body can afford to give you a raise and where/how it is hiding money, if it is.
- e. Your research can be done on the Internet, public library and through your own governing body. Other lodges may also have information they are willing to share with you. A lot of information is a matter of public record, so you have free access to it. Just be aware that whatever you ask for, management will know about, unless you obtain it through a source other than the governing body. This is the most time-consuming part of the process. It is also the most important. Among the things you will have to research are wage benefits and conditions in *comparable* departments. You will need to know the wage scales of departments that are similar to yours in size and location. Many times this can be done by obtaining F.O.P. contracts in Kansas and other states. You will also want to review economic data, such as the Consumer Price Index, unemployment rates, and economic projections locally, regionally and nationally.
- f. Once you have compiled your proposal, it is advisable to have the State Lodge Attorney look it over. Try to be realistic about what you ask for. If you are asking for everything, don't be too disappointed if you don't get all. Prioritize your proposal items and know what you are willing to give up through negotiation.

## V. Commencing Negotiations

- a. Pick your team carefully. You should avoid having people that have no credibility on your department. You should select negotiators who are respected as good law enforcement officers. It is important that they have credibility with the lodge members and with management. If they are going to fight for your members, the members must have confidence in these individuals. You should also attempt to select a cross-section of the membership from your department. You do not want a committee that consists of all one rank, or all one position, such as having all detectives and no patrolmen. Ideally, you want someone from patrol, someone from investigations, and if you are large enough, someone from one of the specialty units. You should also try to have all of the ranks in the bargaining unit represented.

No one on your team should have any meetings with management without the rest of the team. There will be times when the chief spokespersons from each side have conversations without the team. This is normal. Your spokesperson should not be making any “deals” without talking to the rest of the team. When answering questions from your bargaining unit members, keep things close to the vest. It becomes a mess when you have a team of five (5) and they are sharing different information with different members. People will get stirred up over the rumors that will undoubtedly be going around. The members of the lodge/bargaining unit have placed the responsibility of negotiating the contract with the team, so keep it there. By sharing too much information during the process, you can create problems if members don’t understand why you agreed to something. It is advisable to dispel the rumors, but keep your strategy with the team.

- b. Your team will have to agree to a date and time to sit down with management. They will normally meet sometime between 0800-1700, Monday – Friday. No, they won’t agree to meet at midnight or on weekends! Don’t get upset or disappointed if things take a long time to move along.

- c. Management may have requested that ground rules be set out before the first meet and confer session. Normally, these can be handled at the first meeting without too many hassles. It is really not necessary to do this in advance. It should be something taken care of at the first meeting. It normally takes little time to do this. Never agree as part of the ground rules that you will not go to the media. You may need them in the future, even if it doesn't seem that way to start with.

Ground rules are not a mandatory subject of bargaining. This means that the employer cannot condition subsequent bargaining sessions on your agreement to any particular ground rule. You should try to agree to ground rules. If you cannot agree to everything, agree to what you can, and tell the employer that you want to go forward with substantive bargaining over your proposals. If the employer refuses to do so, it commits an unfair labor practice. In that event, you should contact the State Lodge Attorney.

- d. You should choose your chief spokesperson carefully. If you are going to use the assistance of the State F.O.P., you should attempt to select one of the individuals listed on the third page. If you are going to attempt to do the negotiations on your own, you should select someone who is a good speaker; someone who has the respect of the membership; and someone who has a fair amount of experience on your department.
- e. When you are at the table, you must present a unified front. If you have a disagreement about something said at the table by your spokesperson, then send them a note and let them know you need to caucus. Take a break and resolve whatever the issue may be away from management. No one on the team should be talking with management away from the team, except the chief spokesperson. No one on the team should put his/her own agenda ahead of what is best for the lodge.
- f. You must keep detailed, accurate notes. Everyone at the table should take notes but one person should be the primary note-taker. You will use them in the future, so make sure you and the other team members can read them. You may find you have to use them in fact finding. If you have agreed in the ground rules to allow for taping the sessions, you should still take notes. Proposals will be traded back

and forth until you come to an agreement.

- g. Once a proposal is agreed to, it becomes a Tentative Agreement, "TA". Both chief spokespersons should initial all TA's and they should be kept for future reference, usually in the same notebook in which your primary notes are kept. These notes will be used to verify the final product. Sometimes there is a difference between the final product and the TA. *Attention to detail and documentation is very important.*
- h. Negotiations must continue until both sides have exhausted every opportunity they have to make and exchange proposals and legitimately consider the proposals of the other side. If you have bargained in good faith, you should be able to successfully reach agreement on a new collective bargaining agreement. However, at times, despite the parties' best efforts, they reach impasse. PEERA contains very specific and beneficial impasse resolution procedures. It is one of the many reasons you should attempt to get your governing body to elect to come under PEERA, rather than simply voluntarily recognizing you. Without PEERA you have no state law to govern your negotiations.

If you are covered by PEERA and reach impasse, you must notify PERB. PERB will appoint a federal mediator, who really has no authority. Mediators are rarely successful in helping parties break their impasse, although it happens occasionally. If you are still at impasse after mediation, the next step is fact finding. This is a very involved process that involves a presentation of substantial evidence by both sides to a neutral arbitrator who will issue a report. You should not attempt to do fact finding on your own. If you reach the impasse stage, you should contact an attorney who has knowledge in this area or the State Lodge Attorney's office. Steve Bukaty has conducted more fact-finding hearings than any other lawyer in the State has. Also, you will definitely want Ron York to testify at the fact-finding hearing.

- i. Once you have received a written decision from the fact finder, in which he recommends how the outstanding issues should be resolved, you must return to the negotiating table to see if you could reach agreement. If you cannot, the matter will ultimately be submitted to the governing body of

your unit of government who will make the final decision. The unit of government cannot unilaterally impose more than a one-year agreement.

- j. Whether you have gone to fact-finding, or were able to reach agreement without impasse, at some point the process will be through and you will have a new contract. Typically, the employer will have the contract printed and will submit a copy to you for a ratification vote by your members. While the law does not require a ratification vote by your members, it is by far the preferred practice. You do not want to adopt a new contract without having your members give their approval. The lodge should schedule a day or two (2) where it is possible for all members of the bargaining unit to get to a neutral place to cast their vote. Members of the team should be present to explain the contract or answer any questions. Once the vote is done and the ballots are counted, you will either be able to notify management that you have agreed to a contract or request to go back to the table. If you have a contract, then you can take a few weeks off and then start preparing for the next contract negotiations.

## VI. IMPORTANT THINGS TO REMEMBER:

**You must make sure you enforce the contract throughout its duration.**

You must always DOCUMENT, DOCUMENT and DOCUMENT. It cannot be emphasized enough that you must keep records (all grievances, unfair labor practices, arbitration cases, etc.). Your lodge should receive a copy of every grievance filed. Get a lockable file cabinet to keep copies of all documents. It will come in handy in the future. In three (3) or four (4) years you won't remember and neither will management!

You will always find things that need improvement. Even proposals you thought would take care of a problem may need some fine-tuning later. Try to make everything a little better the next time. Don't give anything away unless you get something in return.

As negotiators, you will never please all of your lodge members all the time. Put in a good faith effort and do what you can do to the best of your ability. Don't get defensive or angry with the naysayers, but invite them to be part of the team so they can help improve on the next contract. You will soon discover who are truly dedicated and willing to help. Give these members all the encouragement you can.

Teach your shift stewards and executive board about enforcing the contract and how to file timely grievances. You can have the strongest contract in the world, but if you don't follow it and enforce it, it becomes nothing. Members of the State Lodge are here to help you in any aspect of this process, up to and including steward training.

Any expert assistance you receive may cost you money. Be prepared to pay for assistance in obtaining reports, documents and legal advice. If your lodge is in good standing with the State Lodge you may be eligible for monetary grants and aid.

Now you have a basic idea of what is involved. Should you need any help, please feel free to contact the Kansas State Lodge. We are here to help. If you think your lodge wants to become a bargaining representative, you should start working for it now. It is never too early to start your research and documentation.

Kansas FOP, May 2004.