BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
STATE OF KANSAS

TEAMSTERS UNION LOCAL 795, Petitioner, vs. CITY OF WICHITA, KANSAS and WICHITA AIRPORT AUTHORITY, Respondents.	)	Case No. 75-UDC-1-1992 75-UDC-2-1993

ORDER

ON the 16th day of June, 1993, the above captioned cases came on for consideration by the Public Employee Relations Board ("Board) on the City of Wichita's request for review of the presiding officer's order joining the Wichita Airport Authority as a party. Arguments were heard on the request on March 17, 1993, and the Board asked the parties to submit briefs on the following issues. Briefs were submitted by both parties.

ISSUE 1

WHETHER THE CITY OF WICHITA HAS STANDING TO OBJECT TO JOINDER OF THE WICHITA AIRPORT AUTHORITY IN 75-UDC-2-1993 AND 75-UDC-1-1992

The initial question to be answered in determining whether a K.S.A. 77-527 agency head review of the presiding officer's joinder order is available is: "*Has the review been brought by a proper party?*" This question is more commonly put in terms of standing: "*Does petitioner have standing to seek review.*" The determination to be made where standing is in dispute centers on who is entitled

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to make a legal challenge to the issue involved. Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464 (1982); Ariyoshi v. Hawaii Public Employment Relations Bd., 704 P.2d 917, 923 (Haw.App. 1985). Courts have always required that a litigant have standing to challenge the action sought to be adjudicated on review. Schwartz, Administrative Law, Standing, §8.12, p.495-97.

According to Davis, Administrative Law Treatise, Standing, §24.1, p.211-12:

> *"The most important observation that can be made about the law of standing is obvious and simple and yet is sometimes ignored: Elementary justice requires that one who is hurt by illegal action should have a remedy.*
>
> *"The central principle that grows out of that observation is also very simple: One who is adversely affected in fact by governmental action has standing to challenge its legality, and one who is not adversely affected in fact lacks standing."* (Emphasis added).

As stated in Carolina Environmental Study Group, Inc. v. U.S. Atomic Energy Commission, 431 F.Supp. 203, 218 (19).

> *"Standing" is a requirement that the plaintiffs have been injured or been threatened with injury by the governmental action complained of, and focuses on the question of whether the litigant is the proper party to fight the lawsuit, not whether the issue itself is justiciable.* (Emphasis added).

The test of standing is that of adverse effect: *"A plaintiff must allege some particularized injury that sets him apart from the man on the street."* United States v. Richardson, 418 U.S. 166, 194 (Powell, concur 1974); *See also* Watson v. City of Topeka, 194 Kan. 595 (1965). As stated by Professor Ryan, Kansas Administrative Law

1991 Edition, §19.221, p. 19-3, the test for standing is the petitioner must *"allege and prove some particularized injury that distinguishes the person in his or her own right."* The relevant inquiry then is whether the petitioning party has shown a personal injury to himself. Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 38 (1976); *See also* State ex rel. Pringle v. Heritage Baptist Temple, 236 Kan. 544 (1985). Standing exists when plaintiff alleges that he has suffered adverse effect as a result of the challenged agency action -- that it has caused him injury. In addition, plaintiff must show a *"fairly traceable"* causal connection between the injury claimed and the conduct challenged, American Legal Found. v. FCC, 808 F.2d 84, 88 (1987), so that if the relief sought is granted, the injury is likely to be redressed. Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464 (1982).

Generally, the test for standing is *"injury in fact, economic or otherwise."* Data Processing Service Organization v. Camp, 397 U.S. 150, 152 (1970). As defined in United States v. Students Challenging Regulatory Agency Procedures (SCRAP), 412 U.S. 669, 689, n. 14 (1973):

> *"'Injury in fact' reflects the statutory requirement that a person be 'adversely affected' or 'aggrieved,' and it serves to distinguish a person with a direct stake in the outcome of a litigation - even though small- from a person with a mere interest in the problem."*

The magnitude of the injury is of no consequence, as long as it is not de minimis. The line is between injury and no injury, not between a substantial and an insubstantial one. Davis, Administrative law Treatise, Standing, §24.18, p.283.

May one acquire standing by asserting another's rights or interests, i.e. may A's standing rest on B's rights or interests? The answer is and should be clearly no. Davis, Administrative law Treatise, Standing, §24.14, p.260-61; Tileston v. Ullman, 318 U.S. 44 (1943). This position has been reaffirmed in dicta in Arlington Heights v. Metropolotan Housing Development Corp., 429 U.S. 252, 263 (1977)(the court stated *"In the ordinary case, a party is denied standing to assert the rights of third persons."*); Gladstone v. Village of Bellwood, 441 U.S. 91, 100 (1979)(the Court said *"In the ordinary case, a party is denied standing to assert the rights of third persons."*); Valley Forge Christian College v. Americans United for Separation of Church and State, Inc., 454 U.S. 464 (1982)(*"[T]he plaintiff generally must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties."*). To satisfy the requirement for *"standing,"* a party asserting standing must be asserting his own rights and not rights of a third party, injury must be particular to litigant and not just a generalized grievance, and injury must fall within the zone of interests that

the statute is designed to protect. Matter of Springer, 127 B.R. 702, 705 (M.D.Fla. 19).

An examination of to the City of Wichita's Petition for Review of the Initial Order Joining the Wichita Airport Authority reveals only paragraph 6 as alleging any injury. That paragraph states:

> *"6. Joinder of the Wichita Airport Authority, even if proper, appears to be highly prejudicial to the rights of the Wichita Airport Authority and therefore improper, because;*
>
> *a. The Wichita Airport Authority has not been accorded due process of law in that after over a year of proceedings conducted in Case No. 75-UDC-1-1992, the Wichita Airport Authority has never previously been given notice, nor has it been previously provided an opportunity to be heard;*
>
> *b. Joinder at such a late date, and after numerous issues have already been litigated, effectively denies the Wichita Airport Authority the ability to be heard on significant, previously litigated issues."*

The City of Wichita's petition alleges no injuries to itself as a result of the joinder action. The only injuries alleged are to the Wichita Airport Authority. The City of Wichita, through its counsel, has not appeared of record as representing the Wichita Airport Authority for purposes of adjudicating the Unit Determination and Certification petition filed by the Teamsters. Specifically, the City of Wichita has maintained the Wichita Airport Authority is a separate and distinct governmental body over which it has no control. Based upon the City of Wichita's own protestations of autonomy for the Wichita Airport Authority then, any injury suffered by the Wichita Airport Authority cannot be

imputed to the City of Wichita. This lack of adverse effect upon the petitioning party was the basis for a finding of a lack of standing in Toilet Goods Association v. Gardner, 387 U.S. 158 (1967).

No legal rights of the City of Wichita were alleged to have been invaded or threatened. For the City of Wichita to have standing to seek review it must allege an injury or threat to a particular right of its own. Perkins v. Lukens Steel Company, 310 U.S. 113, 125 (1940). Having failed to make such an allegation, the City of Wichita's petition for review of the joinder order must be denied for lack of standing. If the Wichita Airport Authority believes it has been aggrieved by the joinder order, it is the party that should file objections with the presiding officer.

ISSUE 2

WHETHER THE DECISION JOINING THE WICHITA AIRPORT AUTHORITY IS AN INITIAL ORDER PURSUANT TO K.S.A. 77-526(c) AND THEREFORE RIPE FOR REVIEW PURSUANT TO K.S.A. 75-27(a).

The City of Wichita argues that the Kansas Administrative Procedures Act provides for only two types of orders; *"initial"* and *"final."* Their argument continues, *"the Joinder Order, since it was issued by Hearing Officer Bertelli, amounts to an initial order because it was issued by the presiding officer, and not the agency head."* The City then concludes that *"any order by a hearing officer, who is not the agency head, should be reviewable by the*

agency head . . .". There is no disagreement with most of what the City states. The issue here, however, is not whether an order by a presiding officer is reviewable by the agency head, but rather the timing of that review. Stated another way, may a party interrupt the administrative process at the time any order is entered to seek its review, or must review wait until the presiding officer issues a final judgment in the case?

There is no question that the Kansas Administrative Procedures Act speaks specifically to only "*initial*" and "*final*" orders. K.S.A. 77-526 provides, in pertinent part:

> "***Orders, initial and final; exception for state corporation commission.*** *(a) If the presiding officer is the agency head, the presiding officer shall render a final order.*
>
> *"(b) If the presiding officer is not the agency head, the presiding officer shall render an initial order, which becomes a final order unless reviewed in accordance with K.S.A. 1987 Supp. 77-527 and amendments thereto.*
>
> *"(c) A final order or initial order shall include, separately stated, findings of fact, conclusions or law and policy reasons for the decision if it is an exercise of the state agency's discretion, for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness. Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant position of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings. The order shall also include a statement of the available procedures and time limits for seeking reconsideration, administrative review or other administrative relief. an initial order shall also include a statement of any circumstances under which the initial order, without further notice, may become a final order."*

As is apparent from subsection *"c"*, content-wise the orders labeled *"initial"* and *"final"* are the same, and in either instance, the order, whether initial or final, comes after conclusion of the investigation and hearing, and is determinative of the issues presented. The difference in designation comes not from the content of the order but from how the order is appealed. A final order may be appealed directly to district court in accordance with K.S.A. 77-607, while review of an initial order must first be sought from the agency head pursuant to K.S.A. 77-527.

Both the *"initial"* order and the *"final"* order are *"final"* in that they relate to the merits of the case, in contrast to the procedural or interlocutory orders issued by the presiding officer or agency heard during the course of the agency proceeding. Black's Law Dictionary, 5th ed., 1979 defines *"Final decision"* as:

> *"One which leaves nothing open to further dispute or which sets at rest cause of action between parties. Judgement or decree which terminates action in court which renders it. One which settles rights of parties respecting the subject-matter of the suit and which concludes the until it is reversed or set aside. . . ."*

"Final judgment" is defined as:

> *"One which finally deposes of rights of parties. . .. Judgment is considered 'final' only if it determines the rights of the parties and disposes of all the issues involved so that no future action by the court will be necessary in order to settle and determine the entire controversy."*

This is in contrast to an interlocutory order. *"Interlocutory"* is defined in Black's as:

> *"Provisional; interim; temporary; not final. Something intervening between the commencement and the end of a suit which decides some point or matter, but is not a final decision of the whole controversy."*

As explained by the court in Houk v. Beckley, 72 N.W.2d 664, 666 (Neb. 1955):

> *"An order is not final when the substantial rights of the parties involved in the action remain undetermined and when the cause is retained for further action. In such a case, the order is interlocutory."* .

The fact that the Kansas Administrative Procedures Act speaks to only initial and final orders does not mean all orders issued by a presiding officer or agency head must fall within those two categories. During the course of an administrative proceeding the presiding officer may also issue interlocutory rulings on questions that arise. Professor Ryan observes in Kansas Administrative Law 1991 Edition, §10.11, p. 10-1:

> *"Typically, the hearing examiner presides over an administrative adjudication, or contested case, as a judge does in a court trial, making rulings concerning the evidence, prepare findings of fact and conclusions of law, and rendering an initial or recommended decision. In addition, examiners conduct pre-trial proceedings, supervise discovery, issue subpoenas and decide preliminary motions. The hearing officer normally has broad authority to regulate the course of the hearings and dispose of procedural requests."*

These intermediate or interlocutory decisions are not considered final orders. The Kansas Administrative Procedures Act, K.S.A. 77-501 et.seq, makes no provision for the review by an agency head of interlocutory orders of a presiding officer. Since the relationship between the presiding officer and the agency head is

similar to that between the agency head and the district court, one can look to how interlocutory review from an agency order is handled by the district courts for guidance.[1]

The main factor examined by the courts in determining the availability of judicial review of agency action is the *"ripeness of the issues for review"*. Although there is no precise definition of *"ripeness"* the concept involves determining whether decisions of a particular agency are at a stage which permits judicial resolution. Generally, judicial review will be available only when agency action becomes final. Stein, Mitchell & Mezines, Administrative Law, Ripeness and Finality, §48.01, p.48-3. Since review only lies from final orders, preliminary or procedural agency orders are not immediately reviewable. State v. Main State Employees Ass'n, 482 A.2d 461, 464 (1984)[Generally, interlocutory orders are not appealable]. This judicially created rule requiring a final judgment is equally applicable to the decrees of an administrative or quasi-judicial body; Consolidated Gas Supply Corp. v. FERC, 611 F.2d 951, 958 (CA 4, 1979)[*"[N]o court, having*

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[1] Interlocutory review of a nonfinal agency action is controlled by K.S.A. 77-608 which provides:

"A person is entitled to interlocutory review of nonfinal agency action only if:
(a) It appears likely that the person will qualify under K.S.A. 77-607 for judicial review of the related agency action; and
(b) postponement of judicial review would result in an inadequate remedy or irreparable harm disproportionate to the public benefit derived from postponement."

"Nonfinal agency action" is defined in K.S.A. 77-607(b)(2) to mean "the whole or a part of an agency determination, investigation, proceeding, hearing, conference or other process that the agency intends or is reasonably believed to intend to be preliminary, preparatory, procedural or intermediate with regard to subsequesnt agency action of that agency or another agency."

the power of review of the actions of an administrative agency, should exercise that power to 'review mere preliminary or procedural orders or orders which do not finally determine [some substantive] rights of the parties"]; Blinder, Robinson & Co. v. SEC, 692 F.2d 102, 106 (CA 10, 1983)[*"The general rule is that an order initiating an administrative investigation is interlocutory in nature and not reviewable until a final order is entered as a result of the investigation."*]; 42 Am.Jur., Public Administrative Law, §196, p. 577; See also 9 Moore's Federal Practice, ¶110.06 et.seq (2nd ed. 1983).

Under the ripeness doctrine, an agency must have taken *"final"* action felt in an immediate, direct, and concrete way by a complaining party before judicial review is appropriate. The Supreme Court has said of the ripeness doctrine: *"[I]ts basic rationale is to . . . protect the agencies from judicial interference until an administrative decision has been formalized and its effects felt in a concrete way by the challenging parties."* Abbott Laboratories v. Gardner, 387 U.S. 136, 148 (1967). The tests of ripeness are adverse effect, concreteness, and imminence. If an agency act does have adverse effect upon the person or property of private individuals, then it should be reviewable at the instance of such persons. If, on the other hand, it is only a preliminary or procedural measure, which does not of itself have

impact upon them, review should be denied. Schwartz, Administrative Law, Ripeness for Review, §9.1, p.562-63.

Courts are averse to review interim steps in an administrative proceeding. Review of preliminary or procedural orders is generally not available, primarily on the ground that such a review would afford opportunity for constant delays in the course of administrative proceedings for the purpose of reviewing mere procedural requirements on interlocutory directions. 42 Am.Jur., Public Administrative Law, §196, p. 577; 2 Am.Jur.2d, Administrative Law, §590, p.420-22; Rochester Teleph. Corp. v. U.S., 307 U.S. 125 (1938); Houk v. Beckley, 72 N.W.2d 664 (Neb.1955); Wisconsin Tel. Co. v. Wisconsin Employment Relations Bd., 34 N.W.2d 844 (Wis.1948); Madden v. Brotherhood & Union of Transit Employees, 147 F.2d 439 (CA 4, 1945)[A federal court will not interfere with an administrative agency at an intermediate point in its procedure and before all administrative proceedings are complete]. It appears to be the universal rule that appeal to the courts will not lie from an interlocutory order unless such order affects the merits. Chastain v. Spartan Mills, 88 S.E.2d 836 (S.C.1955)[The order not being a final one or an intermediate one affecting the merits or depriving appellants of a substantial right, the court is without jurisdiction, in that stage of the proceedings, to consider the appeal].

The reasons for the final judgment rule include curtailing interruption, delay, duplication and harassment; minimizing interference with the trial process; advancing the goal of judicial economy; and saving the reviewing body from deciding issues which may ultimately be mooted, thus not only leaving a crisper, more comprehensible record for review in the end but also in many cases avoiding an appeal altogether. State v. Main State Employees Ass'n, 482 A.2d 461, 464 (1984). As explained by the court in Federal Trade Commission v. Feldman, 532 F.2d 1092, 1095 (1976).

> *"A primary purpose. . . is . . . the avoidance of premature interruption of the administrative process. . . . [I]t is generally more efficient for the administrative process to go forward without interruption than it is to permit the parties to seek aid from the courts at various intermediate stages."*

If the courts were to hold otherwise and review such interlocutory decisions, *"the agency process would be effectively disrupted."* Christensen v. Civil Rights Comm., 292 N.W.2nd 429, 431 (Ia. 1980).

Among the orders or determinations of administrative agencies which the courts have denied judicial review on the grounds that they are merely procedural, preliminary, or interlocutory, are orders directing an investigation and inquiry; appointing a conservator or conciliator, providing for a hearing and requiring corporations under investigation to appear and present certain data, denial of a petition for appointment of a hearing officer, denial of a motion to change the place of hearing, denial of an application for stay, denial of a motion to dismiss the proceedings

for lack of jurisdiction, approval or disapproval of a compromise agreement, denial of an application for rehearing, and an issuance of an order remanding a case for further testimony. 2 Am.Jur.2d, Administrative Law, §592, p.422-24.

Any adverse interlocutory order will stand until a final order has been reached and at that time both the final order and any contested intermediate order are capable of judicial review. Koch, Administrative Law and Practice, §8.20, Interlocutory Judicial Appeals, p.38; 2 Am.Jur.2d, Administrative Law, §590, p.420-22.

According to Koch, Administrative Law and Practice, §8.20, Interlocutory Judicial Appeals, p.38, in order for an interlocutory order to be immediately reviewable the request for immediate review must have the following characteristics:

> *"First, the order must be a final determination of a claim of right 'separable from, and collateral to,' the rights asserted in the main action. Second, the order must present 'a serious and unsettled question,' rendering it 'too important to be denied review.' Finally, an intermediate appeal must be necessary to preserve rights that would otherwise be lost on review from final judgment."* Community Broadcasting of Boston, Inc. v. FCC, 546 F.2d 1022, 1025 (CA DC, 1976).

In addition, three exceptions to the final judgment rule have developed. They are the *"death knell"* exception, the *"collateral order"* exception, and the *"judicial economy"* exception. State v. Main State Employees Ass'n, 482 A.2d 461, 464 (1984). The *"death knell"* exception permits judicial review when failure to do so would preclude any effective review or would result in irreparable injury. Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 441 (1956).

Under the *"collateral order"* exception to the final judgment rule, an order is deemed within the exception if (1) it is a final determination of a claim separable from the gravamen of the litigation; (2) it presents a major unsettled question of law; and (3) it would result in irreparable loss of the rights claimed, absent immediate review. Hanley v. Evans, 443 A.2d 65 (Me. 1982). On occasion the interests of *"judicial economy"* may constitute a third exception to the final judgment rule. This exception is reserved for those rare cases in which appellate review of a non-final order can establish a final, or practically final disposition of the entire litigation.

To determine whether the presiding officer's order joining the Wichita Airport Authority is final for purposes of review by the Public Employee Relations Board, one must first place it in its proper context within the administrative process. The quintessential reviewable order under the Kansas Administrative Procedures Act is a final determination by the presiding officer. Such a determination, generally made after a lengthy hearing during which all relevant legal and factual questions are aired, disposes of all significant disputed issues in the case on their merits and fixes the obligations of the parties. The joinder order is undeniably interlocutory. It decides nothing concerning the merits of the case, but merely allows the Airport Authority the opportunity to participate in the unit determination phase of the

administrative process leading to certification of an employee representative organization for the unit of public employees. For the joinder order to be an initial order it must have some determinative consequences. No such finality exists here. Standing alone, the joinder order *"is lifeless and can fix no obligation nor impose liability . . . but is merely preparatory to further proceedings."* Georator Corp. v. Equal Employment Opportunity Comm., 592 F.2d 765 (CA4, 1979).

Applying the three prong test set forth above for when an interlocutory order is immediately reviewable, the City's petition for review certainly does not present *"a serious and unsettled question,"* rendering it *"too important to be denied review,"* nor is an intermediate appeal necessary *"to preserve rights that would otherwise be lost on review from final judgment."* Having failed two prongs of the three prong test it is not necessary to decide whether the joinder order was a final determination of a claim of right *"separable from, and collateral to," the rights asserted in the main action."*

Neither does the City's petition fall within any of the three exceptions to the final judgment rule. The City does not allege that the Joinder order in any way threatens it with irreparable loss of a claimed right, nor does it constitute a final determination of an issue in dispute, so as to satisfy the *"collateral order"* test. The City has offered no evidence of any

irreparable injury that would befall it if review of the presiding officer's order were denied at this time. Moreover, the City will not have lost the opportunity to challenge the order on appeal once the presiding officer has made a final disposition of the case. Accordingly, no *"death knell"* will sound if the City fails to obtain immediate appellate review. Finally, it is most unlikely that Board review of the joinder order at this juncture of the administrative proceedings would settle the matters in dispute with any finality under the *"judicial economy"* exception.

It could be argued that through the Kansas Administrative Procedures Act definition of *"order"* the legislature intended for all orders of a presiding officer be immediately appealable. K.S.A. 77-502(d) defines *"Order"* to mean *"a state agency action of particular applicability that determines the legal rights, duties, privileges, immunities or other legal interests of one or more specific persons."* As stated in 42 Am.Jur., Public Administrative Law, §196, p. 577:

> *"Broad language of statutes providing for judicial review of orders of regulatory commissions has been construed as not extending to every order which the commission may make, and mere preliminary or procedural, as distinguished from final, orders have been held not to be within such statutes, especially where the context of the provision indicates that the orders for which review is provided are such as are of a definitive character dealing with the merits of a proceeding and resulting from a hearing upon evidence and supported by findings."*

The Supreme Court of the United States in Chicago & Southern Air Lines v. Waterman, 333 U.S. 103 (1947) reached the same conclusion:

> *"This Court long has held that statutes which employ broad terms to confer power of judicial review are not always to be read literally. Where Congress has authorized review of 'any order' or used other equally inclusive terms, courts have declined the opportunity to magnify their jurisdiction, by self-denying constructions which do not subject to judicial control orders which, from their nature, from the context of the Act, or from the relation of judicial power to the subject-matter, are inappropriate for review."*

In view of the holdings herein the City's request for review is premature and therefore must be dismissed.

ORDER

IT IS THEREFORE ORDERED that the City's request for review is denied and dismissed for the reasons that the City does not have standing to petition for review, and the request is premature.

IT IS FURTHER ORDERED that to guide future requests for review of interlocutory orders the following recommendations of the Administrative Conference of the United States, Interlocutory Appeal Procedures, Rec. No. 71-1, 1 CFR §305.71-1, are a adopted as the policy of the Board.

Interlocutory appeal procedures for agency head review of rulings by presiding officers must balance the advantages derived from intermediate correction of an erroneous ruling against interruption of the hearing process and other costs of piecemeal review. Striking an appropriate balance between these competing

concerns requires that the exercise of discretion in individual cases be carefully circumscribed.

Future interlocutory appeals will be handled according to the following procedures:

1. Presiding officers shall be authorized to rule initially on all questions raised in the proceeding. A ruling by the presiding officer, supported by a reasoned statement, shall precede interlocutory review of the question raised.

2. In general, interlocutory appeal from a ruling of the presiding officer shall be allowed only when the presiding officer certifies that: (a) The ruling involves an important question of law or policy concerning which there is substantial ground for difference of opinion; and (b) an immediate appeal from the ruling will materially advance the ultimate termination of the proceedings or subsequent review will be an inadequate remedy.

3. Allowance of an interlocutory appeal should not stay the proceeding unless the presiding officer determines that extraordinary circumstances require a postponement.

4. Unless ordered otherwise in a particular case, the Board will decide the interlocutory appeal on the record and briefs submitted to the presiding officer without further briefs or oral argument. The Board shall summarily dismiss an interlocutory appeal whenever it determines that the presiding officer's certification was improvidently granted or that consideration of the appeal is unnecessary. If the review authority does not specify otherwise within 20 days after the certification or allowance of the interlocutory appeal, leave to appeal from the presiding officer's interlocutory ruling should be deemed to be denied.

5. Interlocutory review by petition to the Board without certification by the presiding officer should be restricted to exceptional situations in which: (a) Vital public or private interests might otherwise be seriously impaired; or (b) where the

presiding officer has clearly violated a right secured by statute or agency regulation.

SO ORDERED this 16th day of June, 1993.

Merrill Werts, Chairman

Lee Ruggles

Dorothy N. Nichols

Wallace L. Downs

CERTIFICATE OF SERVICE

I, Sharon Tunstall, Office Specialist for Employment Standards and Labor Relations, of the Kansas Department of Human Resources, hereby certify that on the 16th day of June, 1993, a true and correct copy of the above and foregoing Order was deposited in the U.S. mail, first class, postage prepaid, addressed to:

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