

BEFORE THE SECRETARY OF HUMAN RESOURCES
STATE OF KANSAS

Public Employee Relations Board and Labor Relations
1430 S.W. Topeka Boulevard
Topeka, Kansas 66612-1853

KCKCC FACULTY ASSOCIATION/KNEA)
)
) Petitioner)
)
 vs.) Case No. 72-UCA-1-1995
)
 KANSAS CITY KANSAS COMMUNITY COLLEGE)
)
) Respondent)
 _____)

INITIAL ORDER

On the 28th day of March, 1996, the above-captioned matter came on for hearing before Presiding Officer Gloria M. Vusich, pursuant to a petition for unit clarification or amendment of an appropriate unit filed by the Kansas City, Kansas Community College Faculty Association/KNEA pursuant to the provisions of the Professional Negotiations Act (PNA), K.S.A. 72-5413 *et seq.*

Petitioner appeared by Janet McIntyre, Ph.D., Vice President of the Association, and by Marjorie A. Blaufuss, Attorney for the Kansas National

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Education Association. Lee Quisenberry, Wyandotte United UniServ Director, also was in attendance. The respondent appeared by Delores E. Pinkard, Ph.D., Vice President for Executive Services at the Kansas City, Kansas Community College, and by Attorney David K. Duckers of Horner & Duckers, Chartered.

I. ISSUES

I. Whether the Following Disputed Positions Are "Professional Employees" As Defined by K.S.A. 72-5413(c), of the Professional Negotiations Act:

- (a) Coordinator of Academic Assistance-Learning Research Center
- (b) Instructors of the Adult Studies Advancement Program (ASAP)
- (c) Interim Director/Coordinator Physical Therapy Assistants' Program

II. If Any Disputed Position Is Found to Be a "Professional Employee", Does Such Position Possess a Community of Interest with the Present Professional Unit for Inclusion in The Unit.

II. STIPULATIONS

By letter from the attorney for the KNEA, dated January 31, 1996, the Presiding Officer has been advised that the parties have agreed to drop the part-time faculty issue from consideration at this time. A copy of said letter (designated "H.O." Ex. 1) is attached to this Recommended Order.

As reflected by the Pre-Hearing Order of January 25, 1996, the parties

likewise have agreed that the following positions are but one position: ASAP Instructor, ASAP Designated Instructor, and Adult Education Instructor.

III. FINDINGS OF FACT

A. General Findings

1. The respondent, Kansas City, Kansas Community College (hereinafter referred to as "College") is duly organized pursuant to Article 6 of the Kansas Constitution and Chapters 71 and 72 of the Kansas Statutes Annotated. The supervision and operation of said college is entrusted to its Board of Trustees.

2. The petitioner, KCKCC Faculty Association/KNEA (hereinafter referred to as the "Association") is the duly recognized, exclusive representative for professional employees of the College.

4. The Board of Trustees of the College has negotiated collectively bargained agreements with the Association.

5. K.S.A. 72-1393 prohibits the state board of education from adopting rules and regulations requiring certification of teachers, administrators, or instructors in any two-year college or in any public community junior college.

6. Teaching members of the Association are not required by the

Board of Trustees to hold a certificate issued by the State Board of Education (K.S.A. 72-1393; Tr. 15, 165).

7. John Garmon, Ph.D. is the Vice President for Academic Services at the College (Tr. 173). His duties for the college are as Chief Academic officer, responsible for all of the instruction programs, both credit and non-credit (Tr. 175).

8. Delores E. Pinkard, Ph.D. is Vice President for Executive Services at the College (Tr. 187).

9. Janice McIntyre, Ph.D., Vice President of the Association (Tr. 14) is employed as an instructor-faculty member, reading specialist, and a humanities instructor through the Humanities and Fine Arts Division of the College (Tr. 13).

10. Jean R. Walker, Ph.D., is the Dean of Continuing Education and Community Services at the College. He supervises Community Services, which include the Adult Education and Community Education Programs. As such, Dr. Walker supervises the PACE program for adult college education, the Emergency Medical Technician Program (EMT), and Business And Industry Training And Assistance Center (BITAC). He also is in charge of the Adult Studies Advancement Program (ASAP) at the College. Rosemary Lischka, Coordinator of the ASAP program, reports to Lori Trumbo,

Director, who then reports to Dean Walker (Tr. 130, 131; Respondent's Exhibit I).

11. Kelly Dodd has the lead instructor position for the Adult Studies Advancement Program at the Urban Center. She has a bachelor's degree in health and physical education and a master's degree in education (Tr. 37, 38).

12. Faculty members of the Association are required to teach a certain number of credit hours. However, this requirement does not apply to Association members who are in the academic support services. Contracts for the faculty members of the Association are based upon the credit hour. This typically averages out to 15 credit hours a semester. A credit hour usually reflects 15 to 17 hours of instructional meeting time. Except for those Association members in the academic support services, the faculty members are paid a salary. The salary schedule of Association members sets forth their monetary compensation based on years of experience and degrees in addition to an area for those kinds of situations with people who have only bachelor's degrees and experience (Tr. 17, 31-33).

13. Certified counselors (except the Career Counselor) are members of the Association. They provide academic advisement and support

services and work with students in connection with problems that students might have. The counselors are paid on the "clock hour" and their day is defined in the contract as a 35-hour work week. This includes all the counselors, disabled resource center coordinator, and three or four other counselors who deal with students. One counselor teaches classes, but most of them do not (Tr. 18, 33, 34).

14. The present members of the Association are under contract and work 182 days. Those who work 212 days also are paid a salary (Tr. 30-31; Petitioner's Exhibit 7, Master Contract, p.1). Members of the bargaining unit who work in the PACE program do not work on a regular semester basis, as PACE students come in on the weekends (Tr. 23). Under the contract, the work conditions of employment refer to in-class teaching or student contact (Tr. 18).

15. The locations at which the Association faculty members may be working is flexible; many of them teach at Leavenworth and at several other campus satellites (Tr. 23, 24).

16. Full-time staff are hired to work on a year-round basis, five days a week, and generally, an eight-hour day, with the exception of holidays and other time off as specified in the employee handbook (Tr. 192-193) The staff is governed by the employee handbook, and not by the

national contract (Tr. 193).

17. The operating procedure for a number of years, through negotiations, was that the person involved had to have a master's degree, professional training for that situation, and preferably experience in education. Most of the members of the Association have a master's degree in a particular expertise (Tr. 15,16, 31). Several who were "grandfathered" in, possess only bachelor's degrees. There are technical classes which are taught by instructors with only a bachelor's degree. Kay Young teaches business. She, among others, does not have a bachelor's degree (Tr. 16, 17).

18. Master's degrees are not required for clerical positions at the College nor is a degree in any specialized field a requisite to performing the duties of Coordinator of Academic Assistance - Learning Resource Center (Tr. 196, 203).

19. Eighty to eighty-five per cent of the students at the college have academic, scholarly problems; they are not as prepared as they should be and do not have any understanding about coming to college (Tr. 20).

20. The college has some 6000 students from the community, Currently community colleges are known for the wide diversity of students. KCKCC is just as diverse as any other community college. The

average age of its students is thirty-one to thirty-two. It includes those who are working toward a degree, those in a "holding pattern" until their grade point averages recover, and those who have lost jobs and are at the College for retraining. In addition, it has many students who, with their high risk nature, need not only academic but non-academic support as well. Anyone is considered high risk if he or she lacks academic preparation and skills (Tr. 28, 29).

21. The day of Association members typically is spent in teaching specific credit classes as determined by the contract, or they are involved in student services (Tr. 17).

22. About eight years ago, some counselor positions, the math, reading and writing specialists, and the learning resource center were moved to faculty in addition to the disabled coordinator position (Tr. 22).

B. Findings of Fact As to the Coordinator of Academic Assistance (LRC)

1. Patricia Lipsey initially worked at the College as a technical assistant (Tr.194). Her duties included the recruiting, training, hiring, and monitoring of peer tutors. For almost ten years she performed the same job responsibilities as she does today in her present capacity as Coordinator of Academic Assistance (Tr. 68, 69).

2. Ms. Lipsey has had two years' experience teaching high school English and creative writing. She has nine years' experience as a social worker dealing with child abuse and neglect and related care. She now has a B.S. in English education and a master's degree in education (Tr. 68-69).

3. Ms. Lipsey first acquired her present title of Coordinator of Academic Assistance-Learning Resource Center in April of 1994, after having received her master's degree in education in July, 1993 (Tr. 68-69). At the time Ms. Lipsey became Coordinator of Academic Assistance, the position required only a master's degree (Tr. 196). After having obtained her master's degree in education, Ms. Lipsey requested that her position be considered for classification as a coordinator position. She was allowed to write her own job description, which included a requirement that applicants possess a master's degree in education (Tr. 194, 203).

4. Ms. Lipsey did not obtain a degree in any specialized field to enable her to perform the duties which she now performs (Tr. 196).

5. A major part of Ms. Lipsey's job is to formulate individualized plans for students who require the same (Tr. 82).

6. Administering the peer tutoring program consumes "probably fifty per cent" of Ms. Lipsey's present total job responsibilities. She has no secretary (Tr. 71, 78).

7. With respect to the peer tutoring program, Ms. Lipsey recruits "A" and "B" students to assist other students. She does this through letter contact and by word-of-mouth referrals from students. Ms. Lipsey then contacts such students. She also consults with faculty members to ascertain whether in the opinion of faculty members, such students are qualified to serve as tutors (Tr. 76).

8. On a daily basis, Ms. Lipsey monitors the tutors. She monitors from 60 to 80 tutors each semester (Tr. 72). She does not watch every tutoring session. She receives progress reports in writing from the tutors (Tr. 96).

9. The tutoring is performed by way of a one-on-one assistance program, whereby the peer tutor sits with a student. Group tutoring also is available, depending on the subject area and how the tutor would like to have the assistance arranged (Tr. 73-74). Ms. Lipsey sets schedules for the tutors (Tr. 197).

10. It is Ms. Lipsey's responsibility to try to diagnose problems of students who come to her for assistance. For example, she discusses with students such matters as note taking and test taking skills and talks with them about test taking strategies. Ms. Lipsey thereupon sets up some kind of plan to assist the students (Tr. 74).

11. If a learning disability or difficulty with basic writing skills is perceived, Ms. Lipsey refers students to appropriate faculty or classes for assistance. For example, if there is a learning disability, those students are referred to Valerie Webb, supervisor of the Disability Resource Center (Tr. 75-76). If students say they don't understand anything they have read, they are sent to Doctor McIntyre. If they tell Ms. Lipsey they cannot even write a paragraph, they are referred to the writing lab or Ms. Lipsey might recommend that they enroll in a pre-composition class (Tr. 75).

12. Because she cannot rely merely upon a student's word regarding his or her problem, Ms. Lipsey confirms any problems with faculty. She also consults with faculty about students who have asked for assistance (Tr. 76).

13. Ms. Lipsey follows up to see how individual students are progressing once they have received the tutoring services (Tr. 73-76).

14. Ms. Lipsey is not qualified to make a determination that someone has a learning disability (Tr. 95).

15. The primary method of training tutors is by means of their watching a three-and-one-half-hour videotape. Ms. Lipsey also meets with individual tutors if any problems arise (Tr. 77).

16. In the past, Ms. Lipsey taught some pre-composition, tourism

spelling, and developmental English classes (Tr. 78). She currently teaches no courses at the College nor has she done so during the tenure at the College of Dr. Pinkard, which commenced in January, 1994 (Tr. 187,188).

17. Among the coordinator's duties are to advise undeveloped and under-prepared students (Tr. 80).

18. Developmental students are those taking pre-composition, basic math I and II, and elementary algebra. These are not college-level classes; rather, they are classes that prepare the student to work at the college level. If a student does not have the basic skills to pass a course, Ms. Lipsey advises him or her as to what the next option might be (Tr. 80-81).

19. The College has purchased "Skills Bank II" software so that students who are having difficulty with writing or math can come in to be "clued into" specific areas to work their way through their problems in the lab. Ms. Lipsey does this work also (Tr. 80).

20. Most of the testing of students is done through the Learning Research Center, which basically tests every first-time student. Ms. Lipsey's initial contact with some first-time students occurs when she hands out and/or assists in monitoring the taking of the ACT standardized placement test. If she gives the test, she also meets with each student to

give out test results. The students discuss the same with Ms. Lipsey or with anyone else who administers the test (Tr. 82, 84-85).

21. If Ms. Lipsey happened to supervise the placement test on a particular day, and that test revealed a problem with a particular subject such as reading, Ms. Lipsey would meet with the student and suggest enrollment in reading comprehension or developmental reading (Tr. 88-89).

22. The ACT placement test is evaluated by several different persons. Ms. Lipsey has no input into the development of the test. A computer Scan-Tron in the Learning Center grades the tests (Tr. 86-88).

23. Dr. Rhyan and others determine the range of test scores as well as what such ranges determine (Tr. 88-89). Ms. Lipsey evaluates the test results only in terms of reading the scores and then deciding whether or not such scores indicate placement in remedial or developmental courses (Tr. 197).

24. While Ms. Lipsey can determine from test scores whether or not a particular score indicates placement in remedial or developmental courses, she is not qualified to evaluate results of any tests which she administers (Tr. 197).

25. Notwithstanding anything Ms. Lipsey might recommend with regard to test scores, students still visit with their advisors about any

problems disclosed by the asset test (Tr. 88-90).

26. As Coordinator, Ms. Lipsey also maintains records of every student in the peer tutoring program. Such records consist of the name of the student who is tutored, to whom the student is assigned, how much time the student spends with a tutor, and how the sessions are proceeding. Ms. Lipsey also keeps track of the tutors' pay, their training hours and "everything" (Tr. 78).

27. Ms. Lipsey does not prepare a budget for the tutors, nor is she privy to such information. She does not know how much money is available to spend for this purpose (Tr. 97).

28. Ms. Lipsey has authority to assign, hire and fire tutors (Tr. 93, 197-198).

29. Ms. Lipsey does not work under any contract with the College. She works year-round (Tr. 96, 192). Her hours are from 7:30 a.m. to 4:00 p.m. (Tr. 96).

30. Peer tutors at the College are students; they are not members of the professional Association (Tr. 202-203).

31. Among other duties, the job description prepared by Ms. Lipsey (Respondent's Exhibit "E") specifies that the Coordinator of Academic Assistance, Learning Resource Center supervises approximately 60 to 70

tutors each semester, supervises secretarial staff assigned to academic assistance, supervises adjunct faculty, supervises other part-time staff assigned to assessment activities, and supervises placement, testing, and evaluation of new students as needed (Tr. 196).

32. With Dr. McIntyre, Dr. Pinkard investigated the matter of Ms. Lipsey's duties. Dr. Pinkard took a tour guided by Ms. Lipsey and the two spoke at length about Ms. Lipsey's work in the Learning Resource Center. From such investigation and from Ms. Lipsey's statements as to the duties performed by her, as well as the description on file with the college, Dr. Pinkard determined that Ms. Lipsey's duties were administrative and clerical (Tr. 195, 196).

**C. Findings of Fact Pertaining to Adult Studies
Advancement Program (ASAP) Instructors**

1. As Dean of Continuing Education and Community Services at the College, Dr. Walker supervises the ASAP, EMT, and BITAC programs (Tr. 130).

2. Rosemary Lischka has a bachelor's degree in secondary education and a master's degree in adult and continuing education. She is the Coordinator of the Adult Studies Advancement Program at the College. She also writes the grant and administers the program (Tr. 152, 153).

3. There are twenty-five ASAP instructors at eight different centers around the City (Tr. 152, 153). In 1995, there were eight full-time instructors and twenty part-time instructors (Petitioner's Exhibit 6A, "Self-Study" 1995, p. 150). Ms. Lischka testified that those figures still were correct (Tr. 168). The program can have anywhere from twenty to fifty students at a center (Tr. 42). The grant for the fiscal year 1996 reflects goals of increased enrollment in the ASAP program (Respondent's Exhibit "A", p. 8).

4. The ASAP instructors basically are classroom instructors (Tr. 43). ASAP instructors are engaged in "tutoring or "teaching" (Tr. 146); and when they go to the Centers, they are "teachers" (Tr. 134).

5. ASAP instructors are employed by the College (Tr. 167).

6. ASAP instructors prepare students for a general education diploma (GED) in areas of social studies, science, literature, arts, writing, and math and all subjects necessary for such a diploma. English as a second language also is taught to students -- those with little proficiency through those who possess the proficiency required for entry into college (Tr. 40, 157).

7. As above noted, in the performance of their duties, the ASAP instructors take all students through literature and arts, as well as

geometry, social studies, history, geography, and political science. In science, they learn behavioral science, plant and animal biology, physics and chemistry. In writing, students learn sentence structure. They must possess good writing skills because they are required to write an essay. Students also must learn good reading skills and be able to identify the main idea, supporting details, opinions, or facts (Tr. 42, 43).

8. In short, ASAP instructors teach anyone who needs basic skills, starting at zero literacy level through high school level work. Some of the students in the program have high school degrees (Tr. 44). In that case, instructors also teach them and/or help them in brushing up on their skills (Petitioner's Ex. 5A, 5B; Respondent's Exhibits "A" and "H"; Tr. 40, 157).

9. Instruction is accomplished by means of computer, one-to-one teaching, and classroom instruction (Tr. 42).

10. After completion of the program, the students are qualified to find a job, get on-the-job training, or they can enter a higher education program. If the latter choice is made, the students are encouraged to enroll at the College (Tr. 45).

11. Full-time ASAP instructors work 30 or more hours per week and receive 4/5ths benefits in terms of insurance, sick leave, and personal business. The ASAP staff work a four-day week rather than the five-day

week worked by the College faculty. An instructor might work from eight in the morning until twelve noon, three days a week, or on any schedule developed by the Coordinator under Dr. Walker's direction (Tr. 135, 139, 168-170).

12. While a few ASAP instructors have master's degrees, they are required to have only a bachelor's degree; a specialized degree is not required (Tr. 46, 141). It is preferred that the degree be in education; however, in hiring the instructors, the administration also looks at background and teaching experience (Tr. 141).

13. ASAP students are not considered community college students. (Tr. 149). Classes that ASAP instructors teach in the ASAP program are not for college credit (Tr. 66, 162).

14. It is typical for ASAP instructors to spend about 80% of their time teaching; the remainder is spent in evaluation (Tr. 46).

15. Instructors in the ASAP program are paid on a "clock-hour" basis, and not on a credit-hour basis. They are paid \$13 for every hour they are actually at a location where ASAP studies are taught. Those who work less than thirty hours per week have no benefits such as 4/5ths benefits, in terms of sick pay, insurance, and personal leave received by ASAP instructors who teach thirty hours. For example, instructors who

work less than a thirty-hour week are not paid if they are off due to illness or family emergencies, nor are they paid for holidays (Tr. 33, 48, 137, 160-163, 165-166).

16. The ASAP instructors are aware that they will not be paid for holidays, when the centers are closed or if they do not show up for class. They likewise know that their positions could be eliminated if a center closes. This information is contained in an agreement which the College asks the instructors to sign. For the past three years, Ms. Dodd has received a contract for her ASAP position; however, she did not receive one for this year (Tr. 67). Pay for ASAP instructors is calculated on a 44-hour week (Tr. 163, 165-166).

17. Based upon the preceding year's enrollment, the program might move to other sites to accommodate the moving population which has need of the program (Tr. 156).

18. If a center has to be closed and an ASAP instructor cannot be placed elsewhere, no benefits are available to that instructor (Tr. 164).

19. Those ASAP instructors who are employed for only twelve hours want to work only twelve hours (Tr. 171).

20. The instructors are not required to work a certain number of hours per week in order to keep their jobs. They could work as little as

five hours or as many as thirty hours and still be considered as one of the instructors of the ASAP program (Tr. 162).

21. Each center has a designated instructor who receives an extra hour's pay per session to perform administrative duties, such as turning in reports to SRS and to the State (Tr. 165).

22. The ASAP program commences and ends at times different from the commencement and end of classes at the College campus. It starts the day after Labor Day and proceeds through the third Thursday in July. The centers are closed for holidays (Tr. 51, 165).

23. ASAP instructors are paid through the community education program. Funds for the ASAP program come from a federal grant (Tr. 31, 51; Respondent's Ex. A). The program also is funded by the state. The federal money comprises 75% of the total grant; the state's funds make up the remainder. Application for the grant must be made on a yearly basis. It is funded from July 1 through June 30 each year (Tr. 153).

24. The College supplements funds not provided by the state or federal governments. As noted in Petitioner's Exhibit 6A, "Self-Study" 1995, at page 156, the ASAP program "receives generous support from the College in the way of matching funds" (Tr. 132).

25. At the time of the hearing, the program for the ensuing school year

had not yet been funded. There is no guarantee that money will be available to fund the program in the future. Even if it is funded, a 25% reduction is anticipated because the federal act was not renewed last fall. Because of the reduction, the College will have to cut some of the program (Tr. 153,154).

26. Kelly Dodd teaches sixteen clock hours per week in the ASAP program (Tr. 38). In addition, through the Business, Industry & Technical Assessment Center at the College (BITAC), she teaches nine clock hours. This is taught off campus, at the Stone Container Company. In addition to the foregoing teaching duties, Ms. Dodd also is teaching a three-hour college credit course, every Monday from 1:30 to 4:30 p.m. (Tr. 38, 49-50, 58-60).

27. ASAP instructors are not prohibited from working at any other jobs. If the College has a need, and an instructor is qualified, the College will solicit such instructors to teach college credit courses as well as non-credit seminars, for which they would be paid outside of the ASAP program (Tr. 140, 141).

28. The subjects taught at each ASAP location depend to a great extent on the needs of the population in a certain area. For example, more focus is placed on English as a second language at the Central Avenue and

Argentine centers (Tr. 143).

**D. Findings of Fact With Respect to the Interim
Director/Coordinator, Physical Therapy Assistant Program**

1. Pursuant to K.S.A. 65-2906 *et seq.*, physical therapists and physical therapist assistants are required to be registered by the State Board of Healing Arts.

2. The proposed program for physical therapists and physical therapist assistants (the implementation of which was approved by the board of trustees of the College) required accreditation of the American Physical Therapy Association prior to proceeding to obtain approval of the State (Tr. 177).

3. In connection with the establishment of the program at the College, the respondent followed the procedures set out in Respondent's Exhibit "G" (Commission of Accreditation and Physical Therapy Education of the American Physical Therapy Association [Tr. 178]).

4. Once the program was approved by the board of trustees, the College advertised for the position of director of the program (Tr. 178). This is reflected in Respondent's Exhibit "D," which is a copy of the first notice that went out for a Coordinator/Instructor Physical Therapy Assistant Program (Tr. 178, 179).

5. After publication of the above-mentioned advertisement, it was discovered that the accreditation handbook mandated the hiring of a full-time director who could perform no teaching. Thus, the position was redesigned to provide for a full-time director's position (Tr. 179-180).

6. The "teaching" requirement was deleted from subsequent advertisements, as is reflected in Respondent's Exhibit "C" (Tr. 180-181).

7. The director's position calls for a bachelor's degree, at a minimum (Respondent's Exhibit "G," p. 28).

8. Initially, when it was believed the position included teaching duties, the College was prepared to make it an Association position. However, upon learning that no teaching duties could be connected with the position, the College no longer considered it as such (Tr. 184).

9. A full-time interim director has been hired -- having been hired approximately two and one-half months prior to the hearing date. A budget has to be developed and recommended by the director. Steps are being taken so that as soon as accreditation is received, the program can move along. However, it appears that it will be about a year before everything is done to enable the program to be accredited (Tr. 181, 182).

10. Once the program commences, among other duties, the director (who will not be teaching) will be recruiting and recommending faculty to

the board of trustees (Tr. 185).

IV. LAW

The PNA, K.S.A. 72-5413(c), defines a "professional employee" as

"... any person employed by a board of education in a position which requires a certificate issued by the state board of education or employed by a board of education in a professional, educational, or instructional capacity, but shall not mean any such person who is an administrative employee."

The statute thus provides two methods by which an individual may qualify as a professional employee for purposes of the Professional Negotiations Act; that is, (1) by means of certification by the state board of education; or (2) by employment in a "professional," "educational," or "instructional capacity."

Because K.S.A. 72-1393 prohibits the state board of education from adopting rules and regulations requiring certification of teachers, administrators, or instructors in any two-year college or in any public community junior college, the positions which are the subject of this litigation cannot not qualify as "professional" under the first alternative set forth in K.S.A. 72-5413(c). Thus, it must be determined whether or not under the latter segment of that statute, the persons occupying the positions in dispute herein qualify as "employees" for purposes of the PNA by reason of their employment in a "professional", "educational", or

"instructional capacity" or whether they are not so qualified by virtue of the provisions of K.S.A. 72-5413(d). This section reads as follows:

"Administrative employee" means, in the case of a school district, any person who is employed by a board of education in an administrative capacity ... and in the case of a community college, any person who is employed by ... the board of trustees in an administrative capacity and who is acting in that capacity and who has authority, in the interest of the ... board of trustees, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

The hearing briefs of both parties concede that pursuant to the definition of a "professional employee" under K.S.A. 72-5413(c), rights guaranteed under the PNA are not available to "administrative employees" of a community college.

It is not necessary to look beyond the statutes of Kansas to find an acceptable definition of the term, "professional" in that K.S.A. 75-4322(d) of the Kansas Public Employer- Employee Relations Act ("PEERA") clearly defines that term, as follows:

"Professional employee' includes any employee: (1) Whose work is predominantly intellectual and varied in character as opposed to routine, mental, manual, mechanical, or physical work; involves the consistent exercise of discretion and judgment; requires knowledge of an advanced type in a field

of science or learning customarily acquired by prolonged study in an institution of higher learning; or (2) who has completed courses of prolonged study as described in paragraph (1) of this subsection, and is performing related work under the supervision of a professional person in order to qualify as a professional employee as defined in paragraph (1) of this subsection; ..."

The Professional Negotiations Act, K.S.A. 72-5413(c) does not define what is meant "to be employed in an instructional or educational capacity." However, "Webster's II New Riverside University Dictionary," 1984, at page 418, defines the term, "**Educational**" as follows: "to draw out a person's talents as opposed to putting in knowledge or instruction"

In Riddel v. Dept. of Employment Security, 436 A. 2d 1086, 1088 (1981) "**Instructional capacity**" is stated to be "in the role of a teacher."

"**Instruct**" as defined in "Webster's II New Riverside University Dictionary", 1984, at page 633, means "to furnish with knowledge: **Teach**"

Clearly "to instruct," encompasses the more structured form of learning in a traditional classroom setting, wherein the teacher is lecturing on a specific subject, and the students are listening and responding to questions.

It is clear from the definition of a "professional employee" under

the PNA, that such term does not include an "administrative employee"; that while the term, "administrative employee" is used, such classification characteristically identifies "supervisors"; and that Section 2(11) of the National Labor Relations Act, KS.A. 75-4322(a) of the Kansas Public Employer Employee Relations Act, and K.S.A. 72-5413(c) of the Public Negotiations Act all exclude individuals with supervisory authority from employee status. These statutes read as follows:

K.S.A. 72-5413(d), defines "administrative employee" to mean--

"... in the case of an area vocational technical school or community junior college, any person who is employed by the board of control or the board of trustees in an administrative capacity and who is acting in that capacity and who has authority in the interest of the board of control or board of trustees, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

K.S.A. 75-4322(b) defines a "supervisory employee" as --

"... any individual who normally performs different work from his or her subordinates, having authority in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature,

but requires the use of independent judgment. ...”

The latter statute's federal counterpart, Section Sec. 2(11) of the National Labor Relations Act reads as follows:

“The term ‘supervisor’ means any individual having authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.”

The Petitioner-Association's Brief, at pp. 8-9 states that in view of the similarities of the statutes, the following federal rule was adopted by the Secretary in Butler County Community College Faculty Assoc. v. Butler County Community College, 72 UCA-1-1993: If an individual employee supervises non-Association members less than fifty (50%) per cent of the time, a rebuttable presumption is created that the individual is not an “administrative employee” under the PNA.

The doctrine of *stare decisis*, of course, is not applicable to decisions of administrative tribunals (Appeal of K-Mart Corp., 238 Kan. 393, 710 P. 2d 1304). Moreover, that rule is not applicable to the facts of this case for the following reasons:

The general rule of law is that presumptions do not arise where facts are known; moreover, presumptions become inoperative when any evidence on the issue appears (31A C.J.S. Evidence, Sec. 114, 119, pp. 195, 215). There is a great deal of evidence in this matter as to the services performed and/or to be performed within the positions in dispute and the amount of time spent in performing such services. Hence, there exist no grounds for indulging in presumptions in this regard.

Moreover, the title a position carries has little bearing on whether it is supervisory, since it is the function rather than the label which is of significance. In Kansas Univ. Police Officers Assn. v. Public Employee Relations Bd., 16 Kan. 438, 440, 828 P. 2d 369 (1991) the appellate court approved the District Court's order affirming the Hearing Examiner's determination that sergeants were supervisory employees. The Court of Appeals stated as follows:

"As the Hearing Examiner stated, **the nature of one's duties**, and not his or her title is determinative of that person's status as a supervisor..." (Emphasis added)

In Peasley v. Telecheck of Kansas, Inc., 6 Kan. App. 2d 990, 994, (1981), the Kansas Court of Appeals stated that while federal court decisions are illuminating and instructive, they are neither conclusive nor compulsory. Furthermore, in NEA v. Bd. of Educ. 212 Kan. 741, 749, 512

P.2d 426 (1973) the Kansas Supreme Court stated as follows:

“... we recognize the differences ... between collective negotiations by public employees and ‘collective’ as it is established in the private sector, in particular by the National Labor Relations Act. Because of such differences, federal decisions cannot be regarded as controlling precedent, although some may have value in areas where the language and philosophy of the acts are analogous. See K.S.A. 1972 Supp. 75-4333(c) expressing this policy with respect to the Public Employer-Employee Relations Act. ...”

(Former Section 75-4333[c] now is designated as K.S.A. 75-4333[e].)

In addition, a comparison of the definitions of a “supervisory employee” under the Kansas PEERA and a “supervisor” under the NLRA reveals an important distinction. The Kansas definition is more limited in that a supervisory employee is any individual who normally performs work different from his subordinates. The federal statute has no such confines.

IV. CONCLUSIONS AND DISCUSSION

The Position of Coordinator of Academic Assistance-LRC is an Administrative One

Based upon the duties performed by Ms. Lipsey, the job responsibilities of the Coordinator of Academic Assistance-LRC are such that they do not qualify the holder of the title as a “professional employee” under K.S.A. 72-5413(c) for the following reasons:

Ms. Lipsey monitors and trains tutors and sets their schedules. This training consists of the tutors' watching a training video tape of some three and one-half hours and a meeting with Ms. Lipsey if the tutors have any problems. Ms. Lipsey monitors between 60 and 70 tutors each semester. She administers tests and monitors test-taking sessions, maintains records, (including those pertaining to pay and how much time a student spends with a tutor), receives progress reports in writing in order to ascertain how a student is progressing, discusses and diagnoses problems, sets up individualized plans, makes student referrals to appropriate classes and courses, gives advice as to available options if students have difficulty even with basic skills, follows up on students to ascertain their progress, consults with faculty concerning students who ask for assistance, and clues students into specific areas so they can work their way through their problems in the lab, by use of "Skills Bank II" (the use of which she also supervises). Ms. Lipsey likewise supervises adjunct staff, secretarial staff, and part-time staff (Findings B-5, 7-13, 15, 17-21, 26).

Ms. Lipsey received her present title in April of 1994, after having received her master's degree in education in July, 1993. At the time she became coordinator, the position required only a master's degree. After

obtaining her master's degree in education, Ms. Lipsey requested that her position be considered for classification as a coordinator position. She was allowed to write her own job description, which included a requirement that applicants possess a master's degree in education (Finding B-3).

Dr. Pinkard testified that Ms. Lipsey worked under the category of a technical assistant (Finding B-1). Ms. Lipsey testified that for some ten years she performed the same job responsibilities as she now performs as Coordinator of Academic Assistance-LRC (Findings B-1, 3). Thus, without a master's degree in education, for approximately eight years prior to receiving her present title, she performed essentially the same duties which she still performs today with a master's degree in education.

While under the law above set forth, in determining Ms. Lipsey's status, a title or job description is not conclusive on the issue, the job description prepared by her does give some insight into Ms. Lipsey's own perception that the duties of her job are administrative and/or supervisory in nature. That job description reads in part, as follows: "administering" the peer tutor program, "processing" applications, "consulting" with faculty, "surveying" and "recommending" software, "recruiting" peer tutors, "administering," "referring," and "assisting",

"keeping current records," "supervising," "testing," "evaluation," "administering" orientation and "gathering" research and report data (Respondent's Exhibit "E"; Tr. 196).

Dr. Pinkard testified that upon her recent investigation into Ms. Lipsey's duties, through observation as to what Ms. Lipsey did in her job and also in discussions with Ms. Lipsey, that in Dr. Pinkard's opinion, the duties performed by Ms. Lipsey were administrative and clerical in nature (Tr. 195). Dr. Pinkard's opinion in this regard carries considerable weight, based upon her fourteen years' experience as a teacher, eleven years' experience as a building administrator and director of personnel for the Kansas City, Kansas public schools, as well as her past and current duties at the College, which duties encompass responsibility for human resources and personnel, including hiring and staffing, supervising faculty staff, and supervisory development. This also includes media services, institutional research, student academic assessment, and College relations and planning (Tr. 185).

Moreover, based upon the foregoing evidence, it cannot be said that Ms. Lipsey's duties fall within the definitions of "instructional capacity," "instruct," or "educational," as those terms heretofore have been defined. For one thing, Ms. Lipsey testified that currently she teaches

neither credit nor non-credit courses at the College (Finding B-16). While it might be said that Ms. Lipsey "furnishes knowledge" by giving "advice" to students in her discussions with them, she nonetheless does not teach them in an "instructional capacity" or in the "traditional classroom setting, wherein the teacher lectures on a specific subject and the students listen and respond to questions."

Even assuming, *arguendo*, that through Ms. Lipsey's discussions with students about their problems and difficulties with basic skills in education and/or reading or learning disabilities, she is able to "draw out particular talents" (or skills or problems such as note taking, testing skills, and test taking strategies) in the setting in which her job responsibility is performed, much of the information obtained by Ms. Lipsey is gleaned from standardized tests into which she has no input in terms of grading or development (Findings B-10, 22).

Furthermore, some of the services performed by Ms. Lipsey are performed by others as well. For example, Ms. Lipsey testified that if she happened to supervise a placement test which test revealed that a student is having problem, she would meet with the student and suggest enrollment in appropriate courses (Finding B-21). She also testified that this same procedure would be followed by anyone who gave a particular

test on a particular day (Tr. 88). In addition, Ms. Lipsey stated that notwithstanding anything which she might recommend with regard to test scores, students still visit with their advisors concerning any problems disclosed by the test (Finding B-25). Clearly, Ms. Lipsey's job responsibilities are not such that they can be performed only by an individual with a master's degree in education.

Additionally, Ms. Lipsey is not qualified to make a determination as to whether or not someone has a learning disability (Finding B-14). She is not qualified to evaluate tests. Ms. Lipsey's only function in this regard is to read the scores and then make the determination whether or not such scores suggest placement in remedial or developmental courses. The decision as to the range of scores and what the test scores should determine is made by Dr. Rhyan and some of the faculty (Finding B-23).

Moreover, and without in any way intending to demean Ms. Lipsey's qualifications, skills, talents, job requirements, or job performance (which obviously are varied, considerable, and undoubtedly of substantial value to the College), any "drawing out" by Ms. Lipsey of particular talents, skills, or problems of students constitutes an administrative task which could be performed by someone without her specialized degree.

The evidence further demonstrates that in the interests of the

board of trustees, Ms. Lipsey has the authority to assign, to hire and to fire tutors. While she testified that she did not fire any tutors nonetheless, effectively, she has done so because she testified that if a tutor did not show up for a tutoring session without a valid reason, she would not call upon that tutor again and the tutor would be dropped from the payroll (Finding B-28).

The evidence demonstrates that Ms. Lipsey responsibly directed other employees and recommended a preponderance of action, in the exercise of her independent judgment, such that her position is an administrative one, as described and contemplated by K.S.A. 72-5413(d). Thus, Ms. Lipsey's position is so allied her with the College's administration as to establish a differentiation between her and other members of the Association.

Having determined that Ms. Lipsey's position is an "administrative" one under the PNA and that such position is not encompassed within the meaning of a "professional employee," as defined by K.S.A. 72-5413(c), clearly, Ms. Lipsey's position is excluded from rights guaranteed by the PNA.

At page 12 of its Brief, the Association states that the College has not sustained its burden of establishing that the supervisory responsibilities of the Coordinator of Academic Services, relative to non-

Association employees required more than 50 per cent of Ms. Lipsey's time.

As heretofore noted in the section entitled, "LAW", the federal rule enunciated in Adelphi University, 79 LRRM 1545 (1972) is that if an employee supervises non-Association employees less than fifty per cent of the time, a rebuttable presumption is created that such individual is not an "administrative" employee. For the reasons heretofore set forth in the "LAW" section of this decision, the federal rule is not followed in this case. Moreover, Ms. Lipsey's own testimony precludes the application of that rule to her situation, for she testified that "the peer tutoring program is probably fifty per cent of my job" (Tr. 71).

**B. The Position of Physical Therapy Interim
Director/Coordinator Is an Administrative One**

In following the procedures set out in respondent's Exhibit "G" (Commission of Accreditation and Physical Education of the American Physical Therapy Association) the College advertised for a position of "Coordinator/Instructor" of that program. One of the requirements for the position was a bachelor's degree. When first advertised, included in the specified duties was "classroom presentation" (Findings D-3-4,7; Petitioner's Exhibit 3B; Respondents' Exhibit "D").

When it was discovered that the accreditation handbook required a full-time director rather than a coordinator and that the director could perform no teaching duties, the position was re-designed to provide for a full-time director's position rather than coordinator. Hence, in subsequent advertisements, deleted from the list of duties was any reference to "teaching" (Findings D-5, 6).

A full-time interim director was hired approximately two and one-half months prior to this hearing. At that time, a budget had yet to be developed and recommended by the director. Steps are being taken so that as soon as accreditation is received, the program can move along. Once the program commences, the director (who will not be teaching) will be recruiting and recommending faculty to the Board of Trustees. It appears that it will be about a year before everything is done to enable the program to be accredited (Findings D-9, 10).

As noted, the director can perform no teaching duties. However, the director is required to prepare and recommend a budget and to take whatever action is necessary to move the program along so that accreditation can be sought. In the job description (Respondent's Exhibit "C"), the director's job responsibilities and duties include the following:

Reviewing and revising curriculum, course description and content,

Reviewing and revising curriculum, course description and content,
program course and clinical objectives;
Conducting total program evaluation;
Supervising the selection and recruitment of students for the
program and maintaining student records;
Preparing data for reports to accreditation bodies;
Preparing contracts for clinical facilities;
Orienting and supervising faculty and staff which report to her;
Maintaining academic excellence in established programs and
disciplines;
Facilitating recruitment, development, and retention of an
outstanding and diverse faculty and staff;
Supervising students during clinical;
Advising TPA and pre-PTA students;
Compiling classroom and course schedules to be submitted to
the Dean of Nursing;
Purchasing major equipment for PTA lab or the department.

The Association argues that by the elimination from this position of any teaching duties, the remaining duties do not thereby become administrative. This is not the only conclusion that can be drawn. It is just as possible that the College originally considered the position as a bargaining unit primarily because of the classroom teaching requirement. No evidence was presented as to the nature and extent of the then-anticipated teaching duties, how much of the director's time was to have been spent in classroom instruction, and/or why the position originally was deemed by the College to be an Association position. Lacking any such evidence, speculation and presumptions cannot support the Association's argument in this regard.

Petitioner likewise argues that there was no testimony that the director has authority to hire or fire faculty. Dr. Garmon stated that the director will be recruiting and recommending faculty to the board of trustees (Finding D-10). While the final decision in that regard might not be made by the director, it is apparent that the director has the authority effectively to recommend "hiring" and "assignment" of faculty members as contemplated by the provisions of K.S.A. 72-5413(d).

The qualifications required for the position are the following: a bachelor of science degree in physical therapy (with a preference for a master's degree in physical therapy), a minimum of five years of clinical experience in physical therapy preferred, and a license to practice professional physical therapy in Kansas. Moreover, as disclosed by the job description, the director must perform myriad tasks in addition to those required to obtain and retain accreditation. Thus, it is more likely than not that due to the Director's expertise in the area, recommendations as to hiring and assigning personnel and other acts recommended by the Director in setting up the program will be followed by the Board.

Based upon the foregoing factors, it is concluded that under the PNA and PEERA, the position is administrative and supervisory in character.

**C. Full-Time ASAP Instructors Are
"Professional Employees"**

As heretofore noted, by letter from counsel for the Association, dated January 31, 1996 (designated herein as "H.O." Ex. 1) the parties advised the Presiding Officer that they had agreed to drop the part-time faculty issue from consideration. Accordingly, the part-time ASAP instructor positions have not been considered by the Presiding Officer.

With regard to the full-time ASAP instructor positions, however, based upon the following evidence, that position clearly meets the definition of "professional employee" as set forth in K.S.A. 72-5413(c). Such duties also fall within the definitions of the terms "instructional capacity," "instruct," and "educational" heretofore set forth in this decision. Such responsibilities likewise are encompassed within the definition of a "professional employee" under K.S.A. 75-4322(d) in that ASAP instructors' duties are predominantly intellectual and varied, require the consistent exercise of discretion and judgment, and require knowledge of an advanced type in a field of learning customarily acquired by prolonged study in an institution of higher learning.

ASAP instructors are required to have a bachelor's degree. While a degree in education is not required, that degree is preferred. In hiring

ASAP instructors, however, the administration also looks to background and teaching experience in that the instructors must prepare students for a general education diploma (GED). They teach in areas of social studies, history, geography, political science, literature, arts, math, and geometry. In science, students learn behavioral science, plant and animal biology, physics and chemistry. In writing, students are taught sentence structure. In reading and writing skills, they must be able to identify main ideas or themes, supporting details, opinions and facts. In short, ASAP instructors teach basic skills and all subjects necessary for such a diploma -- starting at zero literacy through high school level work. English as a second language also is taught to students with little proficiency -- through those who possess the proficiency required for entry into college (Findings C-6- 8, 12).

ASAP instructors also teach individuals who already possess a high school diploma, but who come in for help brushing up on their skills. (Finding C-8).

Instruction is accomplished in various ways; i.e., classroom instruction, computer, and "one-on-one" teaching (Findings C-8,9). Moreover, the instructors teach about 80% of their time; the rest of their time is involved in evaluation (Finding C-14). This accords with Dr.

McIntyre's opinion as to the amount of time a good instructor should spend in teaching and evaluation. Dr. McIntyre testified that a good teacher should be in constant evaluation and that formal evaluation, including tests, grades, industry assessments, and competencies, probably should take about 15 to 20 per cent of a teacher's time (Tr. 27). It is noted that Dr. McIntyre testified that she also spends about 75% to 80% of her time in her teaching duties (Tr. 24).

The conclusion that full-time ASAP instructors are professional employees is buttressed by Dean Walker, who testified that ASAP instructors were engaged in "tutoring" or "teaching"; and when they went to the Centers, they were "teachers" (Finding C-4). Moreover, Dr. Walker said that if the College has a need, and an ASAP instructor is qualified, the College will solicit ASAP instructors to teach college credit courses as well as non-credit seminars (Finding C-27).

D. There Exists a Community of Interest Between Full Time ASAP Instructors and Association Members

The criteria for determining an appropriate unit for professional negotiation are set forth in K.S.A. 72-5420 which reads as follows:

"... In each case where the question is in issue, the secretary shall decide, on the basis of the community of interest between and among the professional employees of the board of education, the wishes of the professional employees

and/or the established practices among the professional employees including, among other things, the extent to which such professional employees have joined a professional employees' organization, whether the Association appropriate for the purposes of professional negotiation shall consist of all persons employed by the board of education who are engaged in teaching or performing other duties of an educational nature, or some subdivision thereof except that an Association including classroom teachers shall not be appropriate unless it includes all such teachers employed by the board of education."

The term, "community of interest" is not susceptible to precise definition or mechanical application. Hence, in accordance with the discretionary powers granted to the Secretary by K.S.A. 72-5420, a case-by-case analysis and approach must be utilized. The following factors can be considered in determining whether a group of employees shares a community of interest:

- Common Supervision Of Employees
- Functional Integration Of Operation And Job Duties
- Similar Skills, Training, And Qualification
- Interchangeability And Contact Between Employees
- Similar Work Condition
- Common Wages And Benefits
- Payment Of Wages
- Working Hours
- Regularity Of Work
- Geographical Proximity

While the above-factors are the most frequently cited in the cases determining the issue of "community of interest", by no means are such factors exclusive. Moreover, no single factor or group of factors is

controlling and the weight assigned to each is within the sole discretion of the Secretary.

Based upon all the evidence, there exists an overwhelming community of interest between the full-time ASAP instructors and the current members of the Association when considering the following factors:

Funding: Possibility of Reduction of Force

The Coordinator of the program, Ms. Lischka, testified that ASAP instructors are employed by the College (Finding C-5). Association members, of course, also are employed by the College.

Dr. McIntyre testified that all members of the Association are paid a salary and that she believed the ASAP instructors are paid through "Community Education" (Tr. 32; Finding C-23).

The Coordinator of the program, Ms. Lischka, testified that no guarantee exists that the program will continue to be funded by the federal and state governments. Moreover, she expressed concern that due to lack of funding, she anticipates that the College will have to cut some of the program next year.

At page 156 of Petitioner's Exhibit 6A, "Self-Study" 1995, appears the following information as regards funding for the program:

"... ASAP operates on federal grant money and receives generous support from the College in the way of matching funds ..."

At page 150 of the same exhibit appears the following information:

"In 1994, ASAP received approximately \$139,342 in federal aid, \$59,033 in State aid, while the College provided \$60,000 in matching support. The program also received an additional \$17,905 in federal aid for the purpose of staff development ..."

Appearing at pages 149-150 of the same exhibit, in profiling the ASAP program, is the following information:

"In 1964, with the passage of the Economic Opportunity Act, later named the Adult Basic Education Act, additional funding became available to expand the Adult Basic Education program here at the College. ABE focused on reading, writing, and basic math skills, along with basic living skills. The program grew from one center to 10 centers throughout Wyandotte County in 1974.

"At the time of the last self study in 1985, the Adult Education/GED/ESL program was being offered in 8 centers and employed 24 instructors..."

Thus, between 1964, when the program commenced, and 1974, the number of adult education centers grew from one to ten. Moreover, from 1964 to the date of the "Self-Study" in 1995, the program was (and still is) being offered in eight centers.

While the College might not have complete control over continuation of the ASAP program, it does have some control in that it contributes

funds to the program. Moreover, this program has been in existence for some thirty-two years and it still endures. Over that entire period of time, the number of centers has been reduced by only two. Even if anticipated cuts are made in the program, it appears that the College fully expects it to continue, as evidenced by the college's goal for increased enrollment for 1996 (C-3).

Even if there exists a concern over loss of funds for the ASAP program, that concern is not unique to the ASAP faculty. It is a concern which is shared by the Association's "interim-employee" members as well as regular faculty members of the Association, as demonstrated by the following evidence:

(a) When "interim-employee" members of the Association accept a non-renewable contract, they are aware that by accepting the contract, it might not be renewed and they might lose their jobs. See Master Contract, Article I, "Definitions" (Petitioner's Exhibit 7) which describes an "interim employee" as any employee who accepts a non-renewable contract for one or two semesters.

(b) ASAP instructors are made aware of the potential loss of positions by virtue of the "agreements" which they sign with the College (Findings C-16, 25).

(c) Association faculty members likewise are subject to the same possibility as is evidenced by the language of the Master Contract, Article IX, "Reduction in Force" (Petitioner's Exhibit 7) which treats the manner in which any reduction of faculty is to be accomplished.

As above noted and as disclosed at page 150 of Petitioner's Exhibit 6A, "Self-Study" 1995, some funding for the ASAP program comes from the College's contribution of matching funds. Thus, the non-Association members and the Association members have a community of interest with regard to at least some of the funds from which their salaries are paid.

Moreover, Dr. Walker testified that the ASAP instructors (such as Ms. Dodd) who also teach credit classes at the College, are paid outside of the ASAP program (Findings C-26-27). Thus, Ms. Dodd and all other ASAP instructors similarly situated, also share the same interest as do faculty Association members with regard to possible loss of their positions as instructors teaching credit or non-credit classes at the College.

Employment Under Contract

The present members of the Association work under a "contract" (Finding A-12). ASAP instructors work under what appears to be an "administrative" agreement with the College (Finding C-16).

For three years in the past, as an ASAP instructor, Ms. Dodd received a

"contract", rather than an "agreement." Yet this year, she received an "agreement" (Finding C-16).

Of necessity, terms of an "agreement" or "contract" under which each individual performs his or her services, are different when it comes to matters such as compensation, hours taught, types of courses taught, etc. Such matters, for the most part, depend upon education and degrees, experience, additional educational hours, chairmanship of a division, and co-curricular activities among other things, as is more specifically set out in the Master Contract (Petitioner's Ex. No. 7).

Nonetheless, the members of the Association and the ASAP instructors possess a community of interest in some of the terms under which they perform their services, as hereinafter set forth. Association members and ASAP instructors are bound by certain contractual terms set forth in a "written memorial." Be that document entitled an "agreement" or a "contract", both Association and non-Association members are bound by a "written document."

**Method of Payment; Pay Scale
Hours and Days of Work**

While faculty members of the Association are paid on a salary basis, certain members of the Association who work in academic services,

such as the disabled resources center coordinator and three or four other certified counselors are paid on the "clock-hour" (Findings A-12-13). ASAP instructors likewise are paid on a "clock-hour" basis (Finding C-15). Thus there is a community of interest between ASAP instructors and some Association members as to basis of compensation.

In Petitioner's Exhibit 7, Master Contract, Articles VII, X, and XI, it is stated that the normal work load of the professional employee usually consists of between 13 and 17 hours of instruction per semester; Division Chairpersons, teach only 8 to 12 hours per semester; and Association member "Interim-employees" work only 10 semester-hour equivalents or more and their compensation is pro rated, depending on whether more or less than 13 hours are taught.

The present members of the Association work either 182 days or 212 days per school year, according to Dr. McIntyre (Finding A-14). At page 16 of the Master Contract (Petitioner's Exhibit 7) Article VII, under the heading, "Professional Work Load" it is stated that

"When the college is open five days per week, 212 day employees shall work a 35 hour week, and a 7 hour day. When the college is open four days per week, 212 day employees shall work a 28 hour week and a 7 hour day.

Counselor members of the Association who are paid by the "clock

hour" have a 35-hour work week, according to Dr. McIntyre (Finding A-13). ASAP instructors, who also are paid by the "clock hour," have a 30-hour week (Finding C-11).

There was no testimony as to the number of days or hours worked by Association members of the PACE program. However, Dr. McIntyre testified that they do not work on a regular semester basis, as that program meets on weekends (A-14).

Full-time ASAP instructors work a four-day week for 44-weeks, according to the Program's Coordinator, Ms. Lischka (Findings C-11,16). This calculates out to 176 days per year. This is only six days less than the number of days worked by the Association members who work 182 days.

While there is a distinction between the number of hours and days worked by ASAP faculty and counselor and faculty members of the Association, there also is a distinction within the Association itself, in that its members do not all work the same number of hours per day, days per week, or weeks per year. Due to this fact, any similar distinctions between Association members and non-Association ASAP faculty are of little significance and do not diminish the stronger evidence of a community of interest in this regard.

ASAP instructors are paid \$13 per hour. Ms. Dodd and other ASAP instructors who also teach college level credit courses, are paid per credit hour for their college level instruction, as are the faculty Association members. (Finding C-15; Tr. 55, 58). This is further evidence of a community of interest between Association members and non-Association ASAP instructors

As heretofore observed, salary ranges of Association members are determined by credit hours taught, nature of degrees held, hours beyond a master's degree, chairmanship of a department, co-curricular activities and assignments, and number of days worked.

Based upon the various factors to be considered when arriving at the ultimate pay of an Association member, as shown in the Master Contract, there already exists a great deal of variance among the individual member of the Association. Thus, to add ASAP full-time instructors to the Association membership would create no additional hardship on the parties in their negotiations in this regard. Moreover, a single bargaining unit can accommodate for such differences, through negotiations, while at the same time providing for the common interests of all members of the Association. In this regard, see Hotel Olds v. State Labor Mediation Board, 53 N.W. 2d 308 (Mich. 1952), which holds that a primary objective is to

constitute the largest unit which, in the circumstances, is most compatible with the effectuation of the purposes of the law, and to include in a single unit all common interests.

Stability of Force: Benefits

The only information as to stability of the Association faculty members is testimony that Janice McIntyre, Ph.D., current Vice President of the Association, and a member of the College faculty, has served the College in various capacities over the last twenty years (Tr. 13). Mr. Wilson, an Association member and faculty instructor, has worked at the College seventeen years (Tr. 123) and Ms. Lipsey, Coordinator of Academic Assistance - LRC, has worked for the College for some ten years (Tr. 68)

Based upon the following testimony of Ms. Lischka, it appears that the ASAP instructor faculty has been relatively stable over the years in that Eric Early has been with the College for about five years; Ginger Hampton, approximately four years, Adel Jendli and Lydia King, for over a year; Treva Lugar, four years (Tr. 168,169); and Kellie Dodd, almost four years (Tr. 54). As of January, 1996, Dale Krueger became a full-time ASAP instructor (Tr. 170). The program's coordinator, Rosemary Lischka has worked for the college for nine years. She had worked on a part-time basis as an ASAP instructor for three years prior to becoming the

program's coordinator (Tr. 152).

With regard to benefits, among others, Association members receive tuition reimbursement for courses taken at the College by faculty members, spouses, and dependent children, a paid health and hospitalization program, including dental and life insurance and a choice of benefits under a "Cafeteria Plan" under which the Board pays \$60 per month toward any selected benefit or any combination of available benefits. (Master Contract, Section X, Compensation, Petitioner's Exhibit 7).

Full-time ASAP instructors (those who work more than thirty hours a week) have a work-week schedule of four days a week. Consequently, they currently receive 4/5ths of some of the same benefits, such as insurance, sick leave, and personal time (Finding C-11). Hence, a community of interest already exists between Association and non-Association members as regards payment of benefits.

**Integration of Job Duties; Interchangeability
of Faculty; Similarity of Needs of All Students**

Doctor McIntyre, the Association's Vice President, and a faculty member at the College, testified that last fall she "taught a coordinating class within the curriculum of the Adult Education Program, in that "they

do a lot of student exchanges for students who have gone through one set of classes but are still very weak." (Tr. 34,35).

Dr. McIntyre also testified that last fall she taught in the ASAP curriculum, in her reading lab at the college (Tr.36).

As previously observed, Ms. Dodd, an ASAP instructor, teaches sixteen clock hours per week in that program. She also teaches for the College at the Business and Industry Technical Assessment Center (BITAC) wherein she works with business and industry, off campus. She is paid by BITAC for nine hours of teaching per week. BITAC, as is the ASAP program, is administered under the auspices of the Continuing Education Services of the College (See: Self-Study, 1995, Petitioner's Exhibit 7, at page 162). In addition to those teaching duties, Ms. Dodd currently is teaching a regular college credit course at the campus, for which she is being paid "per credit hour." The College's regular faculty of course, are paid on that basis (Findings A-12, C-1, 28).

The fact that Ms. Dodd (an ASAP instructor) is teaching a college credit class, apparently is not unusual in that Dr. Walker testified that the administration might ask a qualified ASAP instructor if he or she wants to do further work outside current ASAP duties. Dr. Walker also stated that some of the ASAP instructors have taught credit courses and some have

taught a non-credit seminar at the College. He further said that in all such instances, the instructors are paid separately and outside of the ASAP program (Finding C-27).

There likewise is a community of interests between Association and non-Association ASAP faculty insofar as similarities of the two student bodies are concerned. For example, Michael Wilson, a member of the KCKCC/KNEA, and the Coordinator-Instructor of the Fire Science, HAZMAT, and Environmental Technology Programs, testified that students in those technology programs take the same academic classes as other college students; that is, English composition, speech, and psychology (Tr. 121). These subjects, of course, also are taught by the ASAP instructors.

Mr. Wilson also said that he is aware that some of the firemen whom he teaches in the Fire Science program have no high school diplomas and he knows that some are on probation (Tr. 121,122). ASAP instructors, of course, primarily teach individuals who have no college diplomas (Finding C-6).

Furthermore, according to Dr. McIntyre, 80% to 85% of the students who enroll at the College are unprepared for college (Tr. 20). Dr. McIntyre also stated that the College has students who are high risk and who need academic as well as non-academic support in that they lack academic

preparation and skills (Finding A-20). Ms. Dodd likewise testified that the students of the ASAP program are not ready for college (Findings C-6, 8).

In this latter regard, Dr. McIntyre testified that some of the College students are in a "holding pattern" until their grades can improve" (Finding A-20). Similarly, Mr. Wilson stated that some of the students in the Fire Science program are "on probation" (Tr. 121, 122).

Moreover, it is noted that Dr. McIntyre, an Association member and its current Vice President, teaches developmental reading skills and study strategies as well as college courses. She also staffs an academic reading study lab for people with any kind of academic problem at the College (Tr. 19, 20). According to Ms. Lipsey, developmental courses are not college-level classes but are classes that prepare the student to work at the college level (Finding B-18). That being the case, as heretofore noted, Association faculty members do not merely teach college level classes and ASAP faculty of course, do not teach only non-college level classes.

Likewise supporting a community of interest is the fact that both student bodies require, and are taught, some of the same courses by Association and non-Association faculty alike.

The actual interchange of faculty noted above as well as Dr.

Walker's testimony that the College utilizes ASAP faculty to teach college-level, credit and non-credit courses (Tr. 141) substantiates these communities of interests.

Geographical Proximity

As of this date, there are centers throughout Wyandotte County, at Armourdale, Argentine, Rosedale (KU Medical Center) and Bonner Springs, as well as at Central Avenue, the Urban Center, and the Wyandotte County Detention Center, the latter three centers being in downtown Kansas City, Kansas (Finding C-28; Tr. 143).

The College, of course, is located at 72nd and State in Kansas City, Kansas. The distances between the college campus and each of the ASAP Centers is a matter of such undisputed and common knowledge within the community, that administrative notice can be taken of the fact that with the existing highway and interstate systems, at the outermost, and even during heavily traveled hours, it would take only approximately thirty minutes by car to travel to or from the main campus and any ASAP Center. The same holds true for the Association members who teach at Leavenworth, which likewise is within the same approximate distance from the main college campus.

Dr. McIntyre testified that the locations at which the Association-

faculty members may be working is flexible in that many Association members teach at Leavenworth and others teach at several of the campus satellites (Tr. 23, 24). The locations of the ASAP classes are dictated by the preceding year's enrollment and attempts are made to accommodate the moving population (Finding C-28). Thus, flexibility of locations at which both faculties teach is another interest which both faculties share.

Common Supervision

As heretofore observed, in addition to her duties as an ASAP instructor, Ms. Dodd currently is teaching a regular college credit class--teaching nine hours per week, off campus. For such services, she is paid on a credit hour basis (Tr. 58) as are the members of the college faculty (Finding A-1).

As also above noted, Michael R. Wilson, a member of the KCKCC/KNEA, and the Coordinator-Instructor of the Fire Science, HAZMAT, and Environmental Technology Programs, stated that in addition to specialized courses, his students, as well as those in the EMT program, take the same academic program as does any other student (Tr. 105, 111). In addition, he testified that not all the firemen whom he teaches carry high school diplomas but that nonetheless, they still can get into the College. Moreover, he testified that some are on probation (Tr. 121-123).

The ASAP students are not considered Community College students. As Dean of Continuing Education and Community Services, Dr. Walker supervises and is in charge of the ASAP program (Finding A-1). The coordinator of the ASAP, Ms. Lischka, reports to Lori Trumbo, Director of Community Services. Ms. Trumbo then reports to Dr. Walker (Tr. 131).

Dr. Walker also is in charge of Distance Education, the Leavenworth Center, PACE (a program for adult college education) the EMT program, and the Business and Industry Training and Assistance Center (Tr. 130). The diagram appearing between pages 133 and 134 of Respondent's Exhibit 6A, Self-Study 1995, discloses this same chain of supervision.

As regards the BITAC program, Petitioner's Exhibit 6A, "Self-Study" 1995, at page 162 appears the following language:

"BITAC has always come under the auspices of the continuing education and community services division of the College. It is under the direct supervision of the dean of continuing education and community services, who reports to the vice president for academic services.

From the foregoing testimony it is clear that in his capacity as Dean of Continuing Education and Community Services (of which ASAP, BITAC, and EMT are a part), Dr. Walker --

- (1) Supervises all ASAP instructors;
- (2) Supervises Ms. Dodd, an ASAP and BITAC instructor who

simultaneously teaches a regular credit class at the College; and

(3) Supervises other instructors of the ASAP program who are asked to teach credit or non-credit college level classes at the College.

Moreover, Mr. Wilson said that students in the EMT, HAZMAT, and Fire Science programs take the same academic classes as any other college student. These include English composition, speech, and psychology (Tr. 111). Since Dr. Walker also has ultimate responsibility for the EMT program, it appears that in addition to supervising ASAP instructors, he likewise supervises some Association faculty members who teach such regular college academic courses.

Dr. Garmon, Vice President for Academic Services at the College, is the chief academic officer. As such, he is responsible for all of the instruction programs, both credit and non-credit (Tr. 174-175).

In view of the foregoing facts, there exist common responsibility and supervision of the ASAP non-academic, non-credit programs as well as the College academic, credit programs.

Contact Between the Two Faculties

As heretofore observed, by virtue of the fact that there has been some ongoing integration and interchangeability of the two faculties, there obviously has been and still is, some contact between them.

In addition, Petitioner's Exhibit 6A, "Self Study", 1995 at pp. 288, 289) makes reference to the college computerized "Articulation and College Information System," which was designed to make valuable information readily accessible to students, faculty, and staff alike. Among other things, at page 289 of the exhibit, it is stated that Module C of the system contains information on upcoming college or university visits or campus events.

Moreover, Dr. Walker, as Dean of Continuing Education and Community Services at the College, was chairman of one of the eight committees appointed to study and make recommendations as regards the Self-Study 1995 process and report. He chaired the committee on Continuing Education and Community Services Program, of which ASAP and BITAC are a part (Respondent's Exhibit 6A, "Self-Study" 1995, p.1).

At page 156 of the exhibit appears the following recommendation insofar as the CECS program is concerned:

"More frequent staff meetings are recommended so that instructors can be made aware of campus events, and for the purpose of exchanging ideas, and opening the lines of communication between the instructors at each of the centers."

As regards the college faculty, at pp. 61-62 of Petitioner's Exhibit 6A, "Self-Study" 1995 appears similar language concerning communication

among all instructors as follows:

"... Although the College is functioning reasonably well... improvements still need to be made in campus communications, interdepartmental cooperation, faculty and staff interactions..."

Under the heading "Concerns," at paragraph 2, page 62 of the same exhibit, it is stated that --

"There is a need for clear lines of communication between and among the various groups at KCKCC (BITAC, PACE, continuing education and community services, with other instructional divisions...)."

Moreover, at page 1 of Petitioner's Exhibit 6A, "Self-Study" 1995, one of the stated purposes of the study is "to involve the broadest possible spectrum of the College Community."

Language in the above documents constitutes recognition of both a need and a desire for more contact and interaction not merely among the College faculty members or among the faculties of the various programs of CECS, but also between the College faculty and the staffs of Continuing Education and Community Services, of which, of course, ASAP is a part.

**Similar Skills and Qualifications;
Common Problems in Instruction**

A specialized degree is not required of an ASAP instructor, the requirement being only a bachelor's degree (Finding No. C-12). However, Dr. McIntyre testified that the present Association contains some

members with only bachelor's degree, and some members of the Association who teach technical classes, do not possess even a bachelor's degree. One such position is that of Kay Young who teaches business (Tr. 16, 17).

ASAP instructor Dodd (who also teaches college credit classes) has a master's degree in education (Tr. 38).

Mr. Wilson, who teaches college credit classes, possesses a bachelor's degree in industrial business, master's degrees in business administration and in arts and education, and education specialists' degrees in higher education.

By virtue of the level of instruction and requisite minimum qualifications of the teachers presently in the Association as compared with those of the ASAP instructors, there are some distinctions between the two faculties insofar as educational background is concerned. Such contrasts, however, do not destroy the community of interest in this regard, because as above noted, similar distinctions also exist among the Association members as well as between the two groups.

Moreover, while ASAP instructors are not required to have a specialized degree, in view of Dr. McIntyre's testimony that 80% to 85% of the incoming College students have academic problems (Finding A-19), it

would appear that the level-of-instruction capability of ASAP instructors is on a par with Association members teaching college credit subjects (such as freshman English and/or composition) to that 80% to 85% of incoming college students. Thus, it seems, both ASAP instructors and Association faculty must be capable of teaching students with and without high school diplomas and with and without academic problems.

The job description of duties for ASAP instructors (Petitioner's Exhibit 5B) discloses that they must prepare lesson plans for all classes and/or direct self-study programs for individual students; deliver lectures on the various subject matter areas, assist students in the learning process, and evaluate and monitor students' progress. These same duties surely are required of all teachers, whether Association members or not and the two faculties logically share a community of interest as regards this aspect of their teaching responsibilities.

The typical ASAP instructor spends 80% of his or her time engaged in teaching duties and the remainder, or 20% of the time, is spent in evaluation (Finding C-14). Dr. McIntyre testified that she likewise spends from 75% to 80% of her time with students to whom she teaches developmental reading courses, study strategies and college courses. Dr. McIntyre also testified that good instructors should be in constant

evaluation, but probably 15% to 20% of the time should be spent in formal evaluation, which includes testing, grades, industry assessments, and competencies (Tr. 27). Dr. McIntyre now spends about 20% of her time on committees. (This is more than previously assigned but she stated that this is done in order to allow the college faculty to have input into some institutional changes [Tr. 25].)

From the foregoing evidence, it would appear that notwithstanding the fact that full-time ASAP teachers work only four days a week, as compared with a five-day week of some Association members, ASAP instructors spend a similar portion of their time in actual teaching, as do the College faculty members of the Association.

As further testified to by Dr. McIntyre, under the Master Contract, the work conditions of employment of Association members refer to "in-class" teaching or student contact (Finding A-14). In addition to classroom teaching, Dr. McIntyre stated that she also has "one-on-one" contact in that she has a reading study lab and is available to all students who are having problems--not just those who are enrolled in her classes (Tr. 18-20). ASAP instructors teach in the same fashion. According to Ms. Dodd, they teach by way of classroom instruction, "one-on-one", and also by way of computer (Finding C-9).

Thus, there exists a greater community of interest of the ASAP instructors with the Association members who teach than is present among Association members who teach and those who do not -- such as counselors (Tr. 18).

As heretofore observed, Dr. McIntyre testified that 80% to 85% of the students who come to the College are unprepared for college (Tr. 29). She further stated that in her specialty, she deals with students who have the highest diversity in terms of learning problems (Tr. 24). From such testimony, it is evident that the greater majority of college students have some of the same or similar scholastic deficiencies as do the ASAP students, who for the most part, have no high school diplomas. Thus, notwithstanding the fact that the actual grade levels of the student bodies are distinct, the two faculties possess a community of interest in that both are faced with common problems in teaching due to inadequate scholastic background of students.

Moreover, while the classes taught in the ASAP program are not for college credit (Finding No. C-13) and do not provide the usual type of course work associated with the traditional college setting, the basic duty of "teaching" provides a significant unifying community of interest.

Common Mission and Goals

According to Ms. Dodd, after completion of the ASAP program, some students "can go to find a job; they can get on-the-job training; or they can enter a higher education program" (Tr. 45). Moreover, she stated that she encourages those students to enroll at the College (Finding No. C-10). Thus, not only does the ASAP program aid the individual students and the community, the program provides a pool out of which arise, for enrollment at the college, GED graduates as well as those who enrolled in the ASAP program in order to "brush upon on high school diplomas." In addition, the ASAP program contributes to the fulfillment of the College's avowed and worthy educational mission to the citizens of the community, stated to be as follows:

"Continuing Education and Community Services is a vital component of the College, striving to be a significant force in the economic development of the community by supporting the College's mission and values and by providing leadership which empowers citizens to achieve educational, career, and personal goals." (Petitioner's Exhibit 7, p. 134, "Self-Study" 1995)

VI. Unit Clarification

As heretofore observed, K.S.A. 72-5420 vests the Secretary with discretionary powers in determining an appropriate bargaining unit. While there is no Kansas case law defining the extent of that authority, in

Peasley v. Telecheck of Kansas, Inc. 6 Kan. App. 2d 990, 994 (1981) and NEA v. Bd. of Educ., 212 Kan. 741, 749, 512 P.2d 426 (1973) it is said that while not controlling precedent, it is appropriate to look to other jurisdictions for guidance as to unit determination and clarification and in particular, to decisions of the Labor Relations Board under the National Labor Relations Act, Sec. 29 U.S.C. Sec. 159. Therefore, with regard to unit clarification, authority for broad discretionary powers of the Secretary in this regard can be found in the following cases:

In South Prairie Construction Co. v. Operating Engineers, 425 U.S. 800 (1976) it was stated that

“Unit clarification, like the original determination of an appropriate unit, is almost entirely a factual determination. committed to the Secretary’s sound discretion, and may not be set aside unless the reviewing court is convinced that the Secretary has acted in an arbitrary and capricious manner, Consolidated Papers, 109 LRRM at 2817, or the unit is a ‘crude gerrymander’ (S.D. Warren Co. v. NLRB, 353 F. 2d 494, 498 (CA1, 1965).

In Banco Credito v. NLRB, 390 F. 2d 110, 112 (CA 1, 1968) the Court of Appeals stated that “the party opposing the Secretary’s unit determination must show that the unit as composed is clearly not appropriate.”

The National Labor Relations Board repeatedly has held that its

certifications are subject to reconsideration (Worthington Pump and Mach. Corp., 30 LRRM 1052 [1952]) and that the Board may police its certifications by clarification and amendment (NLRB Casehandling Manual, Sec.11478.3; Independent Metal Workers Local No. 1, 56 LRRM 1289 [1964]).

Since a similar statutory scheme for resolving representation questions is found in the Kansas Professional Negotiations Act, the same reasoning and result applicable to matters brought under the federal act should apply to matters brought under the Kansas PNA.

In this regard, under the NLRA, while a self-determination election is the usual method by which unrepresented employees may be added to a bargaining unit (Capital Cities Broadcasting Corp., 194 NLRB 1063 [1972]), unit clarification procedures under the NLRA permit the NLRB to add employees to a particular bargaining unit without an election. See Westinghouse Elec. Corp. v. NLRB, 76 LRRM 2986, 2989 n. 3 (CA2, 1971). Moreover, such employees thereafter are governed by the unit's choice of bargaining representative (Consolidated Papers, Inc. v. NLRB, 109 LRRM 2815, 2817 [CA7, 1982]).

In Boston Gas Co., 221 NLRB, 628 (1975) the NLRB determined that the addition of 80 employees to 184 employees in the existing unit does

not raise the question of representation. In Scott County v. PEERB, 136 LRRM 2442, 2441 (Minn. 1990) it was held that the addition of 7 employees to a unit containing 114 members did not significantly affect the organization's majority status.

In view of the law and the facts of this matter, it is appropriate to include the position of full-time ASAP Instructor in the present bargaining unit for the following reasons:

1. The present contract between the parties long since has expired; i.e., on June 30, 1995 (Petitioner's Exhibit 7, Master Contract). Thus, the petition herein timely was filed pursuant to the provisions of K.A.R. 49-25-4.

2. The position of full-time Adult Studies Advancement Program Instructor meets the definition of a "professional employee";

3. Said position possesses an overwhelming community of interest with the other employees in the existing bargaining unit;

4. That position cannot be excluded from the unit as an "administrative employee;"

5. The position is not an "identifiable and distinct" segment from the pre-existing unit; and

6. The addition of 8 full-time ASAP instructors to the present unit

(now consisting of approximately 128 members) will not affect the majority status of the Association.

It is, therefore, the

RECOMMENDED ORDER

1. That it is appropriate to include the full-time ASAP Instructor position in the present bargaining unit.

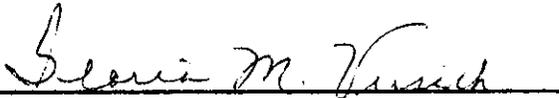
2. The parties having heretofore stipulated that part-time positions are not to be considered for inclusion within the Association's petition for clarification and amendment, the petition should be dismissed as to the part-time ASAP Instructor position and any other part-time position here involved.

3. The parties have stipulated and agreed that the ASAP Designated Instructor, Adult Education Instructor and ASAP Instructor, is but one position. Having determined that the position of full-time ASAP Instructor is appropriate for inclusion within the existing Association, any "full-time" ASAP Designated Instructor or Adult Education Instructor position likewise is appropriate for inclusion within the existing unit.

4. The Coordinator of Academic Assistance-LRC and Director/Coordinator of the Physical Therapy Assistant Program are not "professional employees." They are, rather, administrative employees

who, by law, are excluded from the rights guaranteed under the Professional Negotiations Act.

Dated August 28, 1996.


GLORIA M. VUSICH
Presiding Officer

NOTICE OF RIGHT TO REVIEW

This Initial Order is your official notice of the Presiding Officer's decision in this case. This order may be reviewed by the Secretary of Human Resources, either on his own motion, or at the request of a party, pursuant to K.S.A. 77-527. Your right to petition for a review of this order will expire eighteen days after the order is mailed to you. See K.S.A. 77-531 and K.S.A. 77-612. To be considered timely, an original petition for review must be **RECEIVED** no later than 5:00 p.m. on September 23, 1996 addressed to: Secretary of Human Resources, Labor Relations Section, 1430 S.W. Topeka Boulevard, Topeka, Kansas 66612.

CERTIFICATE OF MAILING

I, Barbara E. Rawlings, Secretary II, Public Employee Relations Board and Labor Relations of the Kansas Department of Human Resources, hereby certify that on the 5th day of September, 1966, a true and correct copy of the above and foregoing Initial Order was deposited in the U.S. Mail, first class, postage prepaid, addressed to:

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and in the building mail to:

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Barbara E. Rawlings