

STATE OF KANSAS
BEFORE THE SECRETARY OF HUMAN RESOURCES

Barton County Community College-NEA
Petitioner,
vs.
Barton County Community College,
Respondent.

CASE NO: 72-URE-4-1982

O R D E R

The Secretary has reviewed the hearing examiner's recommendations and the exceptions filed by both parties to this matter. Respondent's attorney has excepted to findings of fact numbers 44, 45, 46, and 49. Examiner's findings of fact are hereby amended to reflect the following:

- Finding number 44: That part-time faculty are employed in about thirteen (13) outreach locations. (T - 155, 167)
- Finding number 45: That if a "full-time" professional employee of the College had an outreach assignment, it would likely involve a supplemental-type contract if the professional employee had a full-time load. (T - 156)
- Finding number 46: That "part-time" faculty are not required by their job description, as are "full-time" faculty, to review College policies, academically counsel students, participate in organized student activities, post and adhere to an office hours schedule, contribute ideas for new courses or programs, assist staff or supervisors in budget recommendations for textbooks and materials, assist in selection of "full-time" or "part-time" faculty candidates, serve on faculty committees, participate in staff meeting, recruitment of students, or registration of students. (T - 157, 158, 159, 160 - Petitioner's Exhibit #18) They are also not required to 1) counsel students in classes taught (T - 158, Petitioner's Exhibit #18); 2) participate in student sponsored activities and College sponsored county services activities (T - 137-138, 159, Petitioner's Exhibit #18); and 3) participate in commencement ceremonies (T - 159, Petitioner's Exhibit #18).

72-URE-4-1982

Finding number 49: That 85 to 90 percent of the "part-time" faculty members are employed elsewhere other than by the College. (T - 162)

Petitioner has not listed exceptions to the examiner's findings of fact.

Rather he has excepted to the recommended exclusion of the Director of Student Life.

Petitioner states in part:

"...It is further the belief of the Petitioner that the position of Director of Student Life had that 'community of interest.' The educational process takes place in other locations than the classroom. The whole experience of college life both in the classroom and out add to the education of any student. The individual holding the position of Director of Student Life is responsible for the student and their activities for a greater period of time than any single employee of Barton County Community College...

...Although he does not teach a class, his relationship to the students who depend on his knowledge constitutes a service of educational nature."

The Secretary does not dispute the fact that the Director of Student Life is responsible for students nor that he counsels students. However, the Secretary does not believe that the Director's relationship with the student is of the educational nature contemplated by the statute. Petitioner further states:

"The placement of the Director of Student Life position outside the bargaining unit and also placing it outside the administration relegates the holder of this position to a bargaining unit classification with a potential membership of one. This can only be viewed as fractionation and creates a very unsatisfactory situation for the Director of Student Life."

The Secretary concurs with the examiner in the exclusion of the Director of Student Life from the unit of professional employees inasmuch as the position appears to more properly fall within the definition of a public employee as defined at K.S.A. 75-4322(a). There are numerous "public employees" employed by Barton County Community College, thus the Director of Student Life would not be placed within a unit of one.

Respondent argues that the examiner failed to recognize in his conclusions that part-time faculty do not have similar working conditions as full-time faculty and that fringe benefits for part-time employees are not similar to those of full-time. As a result of this difference in terms and conditions of employment the respondent argues that part-time faculty should be excluded from the appropriate unit of full-time professional employees. It appears that respondent equates this lack of similar terms and conditions of employment with a lack of a community of interest. The Secretary points out that portion of Judge Barbara's opinion which states:

"...This definition does not exclude part-time teachers who consider teaching as their occupation, or whose connection with the school is sufficient to give them a real interest in the 'terms and conditions of professional service'. It merely excludes those who teach a single class as an avocation, or to supplement their ordinary income, with no real concern as to the conditions of their employment, other than salary, or if they even work at that job. There is no 'community of interest' as called for in K.S.A. 72-5420." (Emphasis added)

It was this concern with terms and conditions of employment to which Examiner Goodman applied his diminishing comparison test. It is certainly conceivable that a memorandum of agreement might be reached by the parties in which benefits for part-time would differ from those benefits for full-time. Nevertheless, the part-time employees teaching one-half (1/2) time or more have a right to bargain their terms and conditions of employment.

Respondent argues that the examiner has failed to consider the "established practice and the extent to which employees were organized in the past at the College". In order to substantiate his allegation respondent points out that a request for recognition filed in 1970 or 1971 did not include part-time employees. Respondent may have made a valid point if, in fact, this unit determination had taken place in 1970 and 1971. However, the request to include part-time has been made in the case currently pending. The Secretary finds no evidence to indicate membership or non-membership in the organization by part-time employees.

Finally, respondent argues that Examiner Goodman has arbitrarily selected the one-half (1/2) time cut off for inclusion within the appropriate unit without consideration for the facts in this case. Examiner Goodman has considered legislative intent as spoken to in the Pratt decision. He has logically explained the problems inherent in the Pratt "test" and he has rationally interpreted the Act. This interpretation includes those part-time employees who are laboring in "an occupation requiring a high level of training" and who are "concerned with terms and conditions of professional service". The interpretation excludes those who "work only tenuously in a field", teach a single class, or are working "to supplement their ordinary incomes with no real concern as to their conditions of employment".

In regard to respondent's contention that the examiner's standard lacks specific definition as to application, finding of fact number 50 (T - 162) defines the "full-time" faculty's teaching load as fifteen (15) credit hours. It would seem then, a simple mathematical calculation to determine how many hours one must teach in order to qualify as one-half (1/2) time or more. The examiner has stated the policy on reviewing unit determination after the parties have worked with a particular determination. Any agreement by the parties or determination by the Secretary might prove impractical in a given situation. Since it is our goal to seek the most workable situation for the parties we attempt to place everyone on notice that any unit determination is subject to negotiations by the parties or clarification by the Secretary.

It is, therefore, the order of the Secretary of Human Resources that the examiner's findings of fact as amended, conclusions of law, and unit inclusions and exclusions be adopted as the final order in 72-URE-4-1982.

IT IS SO ORDERED THIS 22nd DAY OF April, 1982.



Jerry Powell for Harvey L. Ludwick,
Secretary of Human Resources

STATE OF KANSAS
BEFORE THE SECRETARY OF HUMAN RESOURCES

Barton County Community College-NEA, *
Petitioner, *
vs. *
Barton County Community College, *
Respondent. *

file

CASE NO: 72-URE-4-1982

ORDER

Comes now on this 22nd day of March, 1982, the above captioned case for consideration by the Secretary of the Department of Human Resources.

A P P E A R A N C E S

The petitioner, Barton County Community College-NEA, appears by Mr. Allyn Kratz, NEA UniServ Director and Mr. Bert Besthorn, President of Barton County Community College-NEA (B.C.C.C.-NEA).

The respondent, Barton County Community College, appears by Mr. Stan Churchill and Mr. Robert Overman, Attorneys at Law, and Dr. Jimmie L. Downing, President of Barton County Community College.

PROCEEDINGS BEFORE THE SECRETARY

1. A petition for unit representation election was filed with the Secretary on December 1, 1981, by the B.C.C.C.-NEA.
2. The petition was forwarded to Barton County Community College for answer on December 4, 1981.
3. Barton County Community College filed their answer to the petition on December 28, 1981, wherein they question the petitioner's description of the appropriate unit and request that a determination be made of the appropriate unit.
4. A hearing to resolve the question of the determination of the appropriate unit was conducted by Mr. Steve Goodman on January 27, 1982, at the College's Administration Building.
5. Both parties agreed to file suggested findings of fact and recommended conclusions with the examiner within ten (10) days of their receipt of the transcript. These suggested findings of fact and recommendations were received:
 - a. Barton County Community College- March 8, 1982
 - b. B.C.C.C.-NEA - March 8, 1982

FINDINGS OF FACT

1. That the parties stipulate that certain individuals in positions at the College are agreed to be included in an appropriate unit of "professional employees".

(T - 9, 10, 12, 13 - Petitioner's Exhibit #1)

2. That the parties stipulate that certain individuals in certain positions at the College are agreed to be excluded from an appropriate unit of "professional employees". (T - 13, 14, 15 - Petitioner's Exhibit #2)

3. That at the time of hearing, there exists a dispute or lack of agreement between the parties as to the inclusion or exclusion of certain positions at the College in an appropriate unit of "professional employees". Those positions are:

- a. Director of Endowment
- b. Director of the B.C.C.C. Academy of Beauty
- c. Director of the Learning Resource Center
- d. Director of Student Life
- e. Admissions Counselor
- f. Athletic Director (T - 10, 11, 14, 15, 16)

4. That at the time of hearing, the parties do not agree as to the inclusion or exclusion of "part-time professional employees" in an appropriate unit.

(T - 11, 16, 29)

5. That the Director of Endowment's duties essentially include raising, attracting, managing and disbursing private support, gift funds and gifts in kind for the benefit of the College as received through the College Foundation. (T - 31)

6. That the College Foundation has a board of fifteen trustees with an executive committee and that the Foundation Board of Trustees establishes the Director of Endowment's salary. (T - 31)

7. That the Director of Endowment's salary is disbursed through the business office of the College, which provides bookkeeping service for the Foundation and the source for the director's salary is an administrative grant provided by the College Board of Trustees. (T - 32)

8. That the College Foundation is independently chartered through the Kansas Secretary of State and is recognized by the Internal Revenue Service as an independent organization. (T - 35-36)

9. That the Director of Endowment's only authority as an administrator to hire, fire and transfer is limited to his secretary and no College employees. (T - 38)

10. That the Director of Endowment has never been under contract with the College Board of Trustees. (T - 41)

11. That the Director of Endowment has not been assigned any teaching responsibilities during his four years of employment with the Foundation. (T - 41-42)

12. That the Director of the Cosmetology Department (Academy of Beauty) for Barton County Community College's duties are supervision and evaluation of all instructors in the department. (T - 53, 58, 66, 150)

13. That the Director of Cosmetology teaches no more than two hours per week. (T - 53, 59)

14. That the Director of Cosmetology has the authority to recommend for hiring, firing, suspending, laying off, recalling, promoting, discharging, assigning, rewarding, disciplining or adjusting grievances of the two instructors who teach at the Academy of Beauty. (T - 55, 58, 60, 62)

15. That the Director of Cosmetology recommended for hiring the two present instructors in the Academy. (T - 55, 56, 58)

16. That the Director of the Resources Learning Center's primary duty is to organize supervise, manage and promote the Learning Resources Center, GED, ABE, ESL and Telenet and one of his primary responsibilities is to evaluate all personnel in all five programs. (T - 70, 74, 80)

17. That the director of the center was given the responsibility to hire Study Skill instructors for which he interviewed and recommended individuals who were subsequently hired. (T - 72, 75)

18. That the director of the center has the authority to recommend firing, suspending and laying off of Study Skills instructors. (T - 73, 74, 75, 76)

19. That the director of the center has the authority to recommend hiring teachers and other personnel, to reprimand them, to discipline them, to adjust their grievances, to assign them and to direct them in their employment in the GED, ABE, ESL, and Telenet programs. (T - 77, 78, 79)

20. That the Athletic Director's responsibilities include evaluation of and employment of the coaching staff of the College's athletic department. (T - 84, 89, 90, 91, 92)

21. That the Athletic Director has no teaching responsibilities. (T - 84)

22. That the Athletic Director has the authority to interview, recommend for hiring, evaluate performance, recommend for non-renewal of coaches in the athletic department. (T - 91, 92, 93)

23. That the Admissions Counselor's main responsibility is the recruitment of prospective students from around the state. (T - 102)

24. That the Admissions Counselor's duties include academic counseling of students, a duty shared with the Academic Counselor. (T - 102)

25. That the Admissions Counselor does not consider himself an administrator. (T - 104)

26. That the Admissions Counselor evaluates and assigns work to a secretary in the admissions office. (T - 104, 105)
27. That the Admissions Counselor has no teaching assignments. (T - 105)
28. That the Director of Student Life is responsible for the development, implementation and management of a comprehensive on-campus student housing program. (T - 110, 117, 118, 119, 120)
29. That the Director of Student Life develops job descriptions and job application processes, interviews, evaluates, hires, and sometime terminates student employees. (T - 111, 114, 115, 116)
30. That the Director of Student Life deals with and may discipline a student who violates a housing policy or regulations. (T - 111)
31. That the Director of Student Life serves as one of three assigned advisors to the student senate for the purpose of advising the senate as to College rules and regulations. (T - 113)
32. That the Director of Student Life serves in an advisory capacity to the student senate in addition to two other College employees, those other two being the Academic Counselor and the Coordinator of Student Activities and Intramurals. (T - 113)
33. That the Director of Student Life has no teaching responsibilities. (T - 120)
34. That at least one "part-time" instructor in the Science and Math department teaches eight hours per semester. (T - 135, 136)
35. That at least one "part-time" instructor in Science and Math teaches and organizes the classes for which she is responsible, keeps office hours (although not required to), maintains enrollment records of her students and is somewhat involved in the academic counseling of students. (T - 136)
36. That the "part-time" instructor referred to the Findings #34 and #35 feels that it is not part of her job to recommend budget changes, although the instructor might confer with other instructors regarding recommendation of a new textbook for Math and Science classes. (T - 137)
37. That the "part-time" instructor has not, as of the date of hearing, participated in community or campus activities sponsored by the College. (T - 138)
38. That in the opinion of the "part-time" instructor (Science and Math), "part-time" instructors differ from "full-time" instructors in that the "part-time" instructor is not required to post office hours, is not required to serve on committees but is required to teach classes. (T - 139)
39. That at least one "part-time" instructor in Occupational Therapy teaches six to seven credit hours, teaches and organizes classes, posts an office hours schedule, is involved in academic counseling, maintains scholastic records, and participates in student - or College - sponsored community activities. (T - 141, 142)
40. That the "part-time" instructor does not serve on any committees and that the

difference, in her opinion, between her "part-time" position and a "full-time" position is that she is not required to serve on any faculty committees. (T - 143)

41. That the source of income for the "part-time" instructor in Occupational Therapy is her "part-time" teaching job and her husband's job. (T - 144)

42. That the difference between employment contracts for the "part-time" instructor in Math and Science and for the "part-time" instructor in Occupational Therapy is that one instructor (in Occupational Therapy) was going to be needed for an entire year, and one instructor (Science and Math) may or may not be needed for the second semester. (T - 150, 151 - Petitioner's Exhibits #16 and #17)

43. All other "part-time" instructors have been issued a contract similar to the form of that issued to the "part-time" instructor in Math and Science. (T - 153 - Petitioner's Exhibit #16)

44. That the College employees "about thirteen" part-time instructors in the College's outreach program and that the outreach locations are throughout the central part of the state. (T - 155, 167)

45. That if a "full-time" professional employee of the College had an outreach assignment, it would likely involve a supplemental-type contract. (T - 156)

46. That "part-time" faculty are not required by their job description, as are "full-time" faculty, to review College policies, academically counsel students, participate in organized student activities, post and adhere to an office hours schedule, contribute ideas for new courses or programs, assist staff or supervisors in budget recommendations for textbooks and materials, assist in selection of "full-time" or part-time" faculty candidates, serve on faculty committees, participate in staff meetings, recruitment of students, or registration of students. (T - 157, 158, 159, 160 - Petitioner's Exhibit #18)

47. That "part-time" faculty are required, as are "full-time" faculty, to teach organized classes, maintain accurate scholastic records of enrolled students, prepare necessary syllabi, acquaint oneself with, and adhere to, the policies of the College Board of Trustees, maintain professional growth in his or her academic discipline, fulfill end-of-year functions and obligations, and be able to function within an open and democratic management system. (T - 163, 164, 165)

48. That "full-time" faculty members receive difference benefits than "part-time" faculty members. (T - 160, 161, 162)

49. That a high percentage of "part-time" faculty members are employed elsewhere other than by the College. (T - 162)

50. That the teaching load for "full-time" faculty is fifteen credit hours and that "part-time" faculty teaching load is not specifically defined. (T - 162)

CONCLUSIONS OF LAW - DISCUSSION

In this case, the Secretary has been asked to determine an appropriate unit for "professional employees" as defined at K.S.A. 72-5413(c), employed at Barton County Community College. A pre-hearing conference was conducted at which the

parties, in an informal and non-binding setting, agreed that certain positions at the College are "professional" or "administrative" as defined by the Professional Negotiations Act.

Six positions remain in dispute as to their proper inclusion in or exclusion from an appropriate unit of "professional employees". In addition, an issue in the case is whether or not "part-time professional employees" should be included in or excluded from the unit of "professional employees". The positions in dispute are:

1. Director of Endowment
2. Director of the College's Academy of Beauty
3. Director of the Learning Resource Center
4. Director of Student Life
5. Admissions Counselor
6. Athletic Director

The examiner will deal with the positions as listed above and then address the question of the "part-time professional employee". By way of introduction, the examiner has weighed and evaluated the hearing testimony and evidence and refers to the statutory definitions of "professional employee" and "administrative employee" for the guidance in recommending to the Secretary conclusions regarding each position.

K.S.A. 72-5413 (c) defines "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."

K.S.A. 72-5413 (d) defines "administrative employee" in part as:

"...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 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."

Any person employed by a board of education or, in this case a college board of trustees, generally falls into one of three groups of employees: "professional employees", "administrative employees" or "public employees". The first two groups are defined as above in the Professional Negotiations Act and "public employee" is defined in the Public Employer-Employee Relations Act.

Neither petitioner nor respondent alleges that any of the six positions in dispute are "public employees". Rather, petitioner alleges that the positions

are "professional" and respondent alleges that the positions are "administrative". The examiner will discuss each position and recommend its proper inclusion in or exclusion from the appropriate unit of "professional employees".

1. Director of Endowment - as the record shows at Findings of Fact #7, #8, and #10, the director appears to be employed not by the College Board of Trustees but by an independently chartered organization known as the College Foundation. The Foundation is likely allied to, and shares a symbiotic relationship with, the College. However, the Foundation appears to be a separate entity. While the Director of Endowment's endeavors ultimately benefit the College through the receipt of funds, the director does not appear to have ever been assigned a teaching responsibility, nor do his duties relate to those of a "professional, educational or instructional capacity". The examiner does not mean to state that the director is not a "professional" person as defined by a dictionary, but the statutory language indicates that a "professional employee" must be performing in "professional, educational" or "professional, instructional" capacities. The examiner recommends that by virtue of his employment by a separate entity controlled by its own board, the Director of Endowment is not an employee of the College and should, therefore, be excluded from a unit of "professional employees".

2. Director of the Academy of Beauty - testimony and evidence indicate that the Director of the Academy of Beauty is responsible for the evaluation and supervision of the Academy's instructors (Finding #12). Further, the testimony at Findings #14 and #15 indicates that the director has the authority, in the interest of the employer, to recommend the hiring, firing, suspension, laying off, recalling, promoting, discharging, rewarding, disciplining, and adjusting grievances of the Academy's instructors. The director recommended the hiring of the Academy's present instructors and they were, in fact, hired. The director instructs students, on occasion, but spends the vast majority of her time in the administration of the Academy and the supervision of the instructors. The examiner recommends that by virtue of the director's administrative function and apparent authority to effectively recommend or carry out personnel actions, the Director of the Academy of Beauty should be considered an "administrative employee" and should be excluded from a unit of "professional employees".

3. Director of the Learning Resource Center - Findings #16, #17, #18 and #19 indicate that the director is responsible for the supervision of all personnel in all of the Center's programs. As part of his duties as manager of the Center, the director has exercised his authority to recommend the hiring of Study Skills instructors and has evaluated their performance and made recommendations to the

instructors regarding their instruction duties. The director has the authority to recommend the firing, suspending and laying off of the instructors. The director also has the authority to reprimand, discipline, assign, direct, and adjust grievances for the Study Skills instructors. By virtue of the director's authority to effectively recommend such actions for instructors in the Learning Center, the examiner recommends that the Director of the Learning Resource Center be considered an "administrative employee" and should be excluded from a unit of "professional employees".

4. Director of Student Life - the record shows that the director is responsible for the development and management of the student housing program (Finding #28). His duties involve the delivery of operational services (Petitioner's Exhibits #12 and #13) for the purpose of coordinating and planning for student housing needs. Inasmuch as the director hires, fires, disciplines and develops job descriptions for students employed by his department, the examiner does not view the director as a "supervisor" in the sense of supervising "professional employees". Therefore, his supervisory function exerts control only over "non-professional employees" and by itself, such supervision or evaluation does not mandate the director's exclusion as an "administrative employee". The director teaches no classes (Finding #33), but rather provides services of an operational nature including such things as the development of a student housing program, a student employment program, student housing resident discipline, and, as a supplementary duty, serves as the College's purchasing agent. The examiner believes, therefore, that by virtue of the operational nature of his duties, coupled with the absence of educational or instructional duties, the Director of Student Life would most appropriately be considered a "public" rather than a "professional employee" and should, therefore, be excluded from the unit of "professional employees".

5. Admissions Counselor - the testimony shows that the Admissions Counselor primarily recruits prospective students from around the state (Finding #23). He also counsels students on academics and his counseling increases in the summer when many faculty members are not on campus. He is required to serve on the Promotion and Recruitment Committee, ostensibly to review the recruitment of prospective students. The counselor's contract calls for the delivery of "operational services" in the recruitment process. Although he does not teach a class, his relationship to the students who depend on his knowledge constitutes a service of educational nature, especially in the area of curriculum counseling. The

counselor insures that contacts for recruitment are made and pursued. These contacts accrue to the benefit of the prospective student, as well as to the benefit of the College. The counselor does not supervise other "professional employees" in the recruitment process but does direct at least one "non-professional employee". The examiner believes that the evidence and testimony indicate the "professional, educational" services to students, which are coordinated with the Academic Counselor, dictates inclusion of this position in the unit of "professional employees".

6. Athletic Director - the record shows at Findings #20 and #22 that the Athletic Director is responsible for the evaluation and employment of the coaches in the athletic department. The director evaluates each coach on his or her performance and recommends hiring, firing, suspending, and discipline strictly on the basis of coaching duties and not on an academic basis. Those coaches employed as instructors in a separate department, the physical education department, are evaluated academically by someone else. However, the director exerts influence over "professional employees" who are supplementally employed as athletic coaches. Pay for duties under supplemental contracts is a mandatory subject of negotiations. Thus, anyone who can effectively recommend persons to be employed on supplemental contracts must be viewed as an "administrative employee". Since basketball, football, gymnastics and other sports are not generally considered educational courses leading to a degree in the sport, the examiner believes that the director's supervision and evaluation of supplementally-employed coaches qualifies as supervision or influence over coaches as "professional employees". Logic would dictate that if the women's basketball coach resigned, the individual would not necessarily be resigning his or her professional, instructional position in the physical education department. It is the examiner's recommendation that the Athletic Director be considered an "administrative employee" and should therefore be excluded from the unit of "professional employees."

In addressing the question of whether or not "part-time" professional employees should be included in the unit of professional employees at Barton County Community College, the examiner refers to K.S.A. 72-5420, the criteria for determining the appropriateness of a unit of professional employees. That section states:

"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 unit 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 a unit including classroom teachers shall not be appropriate unless it includes all such teachers employed by the board of education."

The Secretary's policy is to encourage the parties in each unit determination case to attempt to determine the scope of a proposed unit by agreement. However, when such agreements are not made, the Secretary is obligated to answer the question.

K.S.A. 72-5420 permits persons employed by the same employer who engage in teaching or performing other duties of an educational nature to be placed in the same unit or to be placed in separate units, i.e., "non-teaching professional employees" in a unit and "classroom teachers" in another. An important exception is that "classroom teachers" must, by statute, all be in the same unit.

In considering the definition section of the Act and the section in discussion now, at least two interpretations are possible. One such interpretation is that the Legislature must have intended "part-time" professional employees to be exempt from the rights granted in the Act since the statute does not specifically mention the status of "part-time professional employees". Another interpretation might be that the last portion of K.S.A. 72-5420 requires that the unit including "classroom teachers" shall consist of all "classroom teachers", be they "part-time" or "full-time".

In addition to these possible parameters of interpretation, there is a district court decision issued in the case of Pratt County Community College wherein the court states, in part:

"The purpose of the act standing alone would seem to indicate that part-time teachers were not intended to be included within the ambit of the act, especially part-time teachers with as tenuous a connection with a school as in the instant case. There is no compelling need for the state to protect them. They are not obligated to teach, nor is the school obligated to keep them employed. In fact, if there is insufficient interest in the particular class, they do not have to teach, and the school can either pay them less or cancel the class altogether with no obligation to assign them to a different class. It is illogical to assume that such an arrangement was intended to be governed by this act.

The controversy revolves around the meaning of 'professional'. It is true that 'professional' is interpreted to be to-wit: 'one that engages in a particular pursuit, study, or science for gain...'. Webster's New Third International Dictionary, unabridged, p. 1811 (1971). If that is accepted as the correct definition of 'professional', its use in the statute becomes superfluous. The statute would have the same meaning if 'professional' were deleted everywhere in the statute. The repeated use of the term, however, indicates that a particular meaning is intended. Webster's second definition appears to be more appropriate: a 'professional' is one who is, '...in an occupation requiring a high level of training and proficiency.' This definition is more in accord with the purpose and intent of the act, by limiting the scope of 'professional' to those who are in an occupation. Those people are the ones concerned with 'terms and conditions of professional service'. Part-time people, working only tenuously in a field, are not so concerned.

It is logical to conclude that the legislature had a meaning akin to the second definition in mind when it used the term in the act. Part-time teachers of the type in the instant case can not be said to fit within the meaning, and thus are not professional employees, as defined in KSA 72-5413(c). This definition does not exclude part-time teachers who consider teaching as their occupation, or whose connection with the school is sufficient to give them a real interest in the 'terms and conditions of professional service'. It merely excludes

those who teach a single class as an avocation, or to supplement their ordinary income, with no real concern as to the conditions of their employment, other than salary, or if they even work at that job. There is no 'community of interest' as called for in K.S.A. 72-5420."

The examiner contends that neither of the two aforementioned interpretations are practical or feasible. The first excludes any "less than full-time" professional employee which, under certain circumstances, might exclude all of the professional employees if they are employed to teach one credit hour less than an established "full-time" load. The second includes all "classroom teachers" who, even though they may not have a "community of interest", must be included in the unit.

In considering the district court's opinion in Pratt, the examiner embraces the court's interpretation that:

"...This definition does not exclude part-time teachers who consider teaching as their occupation, or whose connection with the school is sufficient to give them a real interest in the 'terms and conditions of professional service'."

The examiner, however, sees a problem with the court's interpretation in regard to its practicality. In order to illustrate the impracticality of the Pratt decision the examiner offers the following example. Let us assume a situation in which two individuals are employed as part-time math teachers. Both teach one class per week. Utilizing the Pratt test for part-time inclusion and exclusion would require both teachers to appear before the examiner and testify whether their teaching jobs are their "occupations" or if their "connection with the school is sufficient to give them a real interest in the 'terms and conditions of professional service'". If one instructor testified affirmatively to both questions posed above and one did not, the employer and employees might be faced with an "appropriate unit" that included one part-time math teacher and excluded the other. The work force, then, is fragmentized and further complicated by the fact that each individual position must be evaluated periodically to establish its "community of interest". As a result of this fragmentation a situation might develop in which the employer would be required to negotiate terms and conditions of employment for the included part-time instructor and to deal in a different manner with the other employee of the same classification. The employer might then arrive at terms and conditions of employment which were inconsistent for the entire classification. If such a situation developed, the employee who received less benefits or salary than the other employee in the same classification might believe that he or she had been discriminated against. The union member might file a discrimination charge and the non-union employee might file charges alleging a violation of his/her constitutional rights. Therefore, while the Pratt test might be practical for a single part-time employee in a given classification, it is not practical when addressing the status

of more than one part-time employee in a given classification. Such a procedure would certainly violate the very important principle of efficient operation of government or educational services.

The examiner suggests that the primary purpose of a unit determination is to define an appropriate unit that will protect the rights of the professional employees, enhance the efficient delivery of educational services and insure the employer adequate supervision. The examiner believes that the Legislature intended the Professional Negotiations Act to establish a framework for discussion and to accomplish for school districts, vocational-technical schools, and community colleges what it intended the Public Employer-Employee Relations Act to do for public employers. In that regard, sound labor-management relations principles dictate that a bargaining unit, to be appropriate, must necessarily contain inclusions and exclusions that are practical and workable for both employers and employees.

It is logically apparent then, that some "standard" must be recognized which clearly defines those part-time employees who must be considered "professional employees" for the purposes of the Act. This standard must treat all employees of a given classification, as well as classifications occupied by one employee, equally so as to provide an orderly framework for negotiations as well as to eliminate potential problems which could serve to interrupt the orderly delivery of educational services.

The examiner considers the "community of interest" test to provide the only avenue for fair and equal treatment for both employers and employees. It is logical to assume the community of interest of part-time employees, in comparison with that of full-time employees, begins to diminish in a direct ratio with the number of hours worked by the part-time employee. Therefore, the examiner must recommend to the Secretary the point at which this diminishing effect occurs. Facts in the instant case indicate that "community of interest" as it relates to terms and conditions of employment diminish when one moves from full-time to part-time. That is, part-time employees do not enjoy many of the benefits given to full-time employees. However, in light of Pratt, "part-time" as a class can not be excluded. Logic dictates that someone employed one-half time or more of their time on a job would consider such job as their primary employment. They would, no doubt, then be greatly concerned about the continuation of their primary job and the mission of the college. Conversely, one employed less than one-half time might hold some other job or position to be their primary employment. Such individual would no doubt be concerned about continued supplementary employment and the agency mission, however, such concern would not equal the concern of the person having primary employment. The half ($\frac{1}{2}$) time or more employee has a "connection with the

school (which) is sufficient to give them a real interest in the terms and conditions of professional service".

The examiner believes that it is at this "halfway" point that the "part-time" worker realizes a major interest in the terms and conditions of employment in their professional educational service. It is the examiner's recommendation to the Secretary that this "halfway" point be established and recognized as the point at which a professional employee's "community of interest" equates with that of "full-time" professional employees. This standard will allow the parties in the instant case to accurately define an appropriate unit and proceed with a unit representation election. The examiner points out that either party, after twelve months have passed from the date of the unit determination, may petition for clarification or amendment of the unit if the recommended inclusion of "half-time or more" employees proves to be impractical or unworkable.

While the Act lacks a clear statement regarding the inclusion or exclusion of "part-time" professional employees, the examiner is led to his conclusions in consideration of legislative intent, the Pratt decision, and effective labor-management principles.

In summary, the examiner recommends:

1. That the following positions be excluded from the unit of professional employees at Barton County Community College:

- a. Director of Endowment
- b. Director of the Academy of Beauty
- c. Director of the Learning Resource Center
- d. Director of Student Life
- e. Athletic Director

2. That the following position be included in the unit of professional employees at Barton County Community College:

- a. Admissions Counselor

3. That the unit include professional employees employed by the College on a half-time or more basis.

Therefore, the unit of professional employees at Barton County Community College would consist of:

INCLUDE: All persons employed by the College on a half-time or more basis in the following positions:

Those positions stipulated to by the parties as being included in the unit (Petitioner's Exhibit #1, T - 11, 12) and the Director of Admissions.

EXCLUDE: The positions stipulated to by the parties as being excluded
from the unit (Petitioner's Exhibit #2, T - 14) in addition
to:

- a. Director of Endowment
- b. Director of the Academy of Beauty
- c. Director of the Learning Resource Center
- d. Director of Student Life
- e. Athletic Director
- f. All other employees of the College not listed as inclusions.

Respectfully submitted,



Steve Goodman, Hearing Examiner