

STATE OF KANSAS
PUBLIC EMPLOYEE RELATIONS BOARD
DEPARTMENT OF HUMAN RESOURCES
535 KANSAS, ROOM 1102
TOPEKA, KANSAS

KANSAS HIGHER EDUCATION ASSOCIATION)

Petitioner,)

vs.)

COFFEYVILLE COMMUNITY JUNIOR COLLEGE)

Respondent.)

CASE J-UC-1-1978

UNIT DETERMINATION ORDER

Comes now this 9th day of March 1978, the matter of the determination of the appropriate unit of professional employees at Coffeyville Community Junior College for hearing. The hearing was conducted by Jerry Powell, the duly appointed designee of the Secretary of the Department of Human Resources.

A P P E A R A N C E S

The petitioner appears by and through Mr. Victor J. Salem, Executive Secretary, Kansas Higher Education Association.

The respondent appears by and through its counsel, Mr. Roy Kirby, Attorney at Law, Coffeyville, Kansas 67337.

1. A unit certification petition was filed by Coffeyville Community Junior College - Kansas Higher Education Association with the designee of the Secretary of the Department of Human Resources on December 13, 1977, seeking investigation and determination of the appropriate unit question. A description of the appropriate unit as outlined by Coffeyville Community Junior College - Kansas Higher Education Association was attached to the petition.

2. A request for description of the appropriate unit as outlined by Coffeyville Community Junior College was mailed on December 19, 1977, answer to request received January 16, 1978.

3. A hearing was conducted on the 9th day of March 1978, beginning at 2:00 P.M.

72- ~~UC-1-1978~~

I S S U E

The instant case comes before the examiner for determination of the scope of the appropriate unit of professional employees at Coffeyville Community Junior College. Agreement was reached by the parties on a majority of the job classifications to be placed in the unit. However, there is a dispute regarding five (5) job classifications. This order will, therefore, be limited to the job classifications in dispute. The specific classifications in question are as follows:

1. Director of Library Resources
2. Director of Audio Visual
3. Director of Admissions
4. Director of Student Life
5. Six (6) Physical Education Instructors, Coaches

FINDINGS OF FACT

1. That Coffeyville Community Junior College is the appropriate public employer within the meaning of KSA 72-5413 et. seq.
2. That Coffeyville Community Junior College faculty - Kansas Higher Education Association is a professional employee organization within the meaning of KSA 72-5413 et. seq.
3. That this case is properly before Mr. Powell as the designee of the Secretary of the Department of Human Resources.
4. That Coffeyville Community Junior College - Kansas Higher Education Association did on or about December 12, 1977, request recognition from Coffeyville Community Junior College as the exclusive professional employee organization within the meaning of KSA 72-5413 et. seq. for the purpose of representing the employees as set forth in the petition.
5. That Coffeyville Community Junior College did, on or about January 16, 1978, reject the description of the appropriate unit submitted by Coffeyville Community Junior College - Kansas Higher Education Association and did submit an alternate list of the job classifications they believed to constitute the appropriate unit.
6. That Coffeyville Community Junior College did propose a stipulation to include the Director of Library Resources and the Director of Audio Visual within the appropriate unit, provided that the Director of Admissions and the Director of Student Life be similarly included. (See T-6,7,8)

7. That Coffeyville Community Junior College - Kansas Higher Education Association did reject the proposal of Coffeyville Community Junior College referred to in item six (6) of findings of fact. (See T-8,9)

8. That Coffeyville Community Junior College did amend its answer to provide for the inclusion of the Director of Admission and the Director of Student Life in the event the examiner found the Director of Library Resources and the Director of Audio Visual to be included within the appropriate unit.

9. That the amendment as outlined in item 8 (findings of fact) offered by Coffeyville Community Junior College was granted by Mr. Powell, Hearing Examiner. (See T-9)

10. That the description of the appropriate unit of professional employees presented by Coffeyville Community Junior College - Kansas Higher Education Association stands unchanged from the original description.
(See T-9,10,11,12)

11. That the description of the appropriate unit of professional employees presented by Coffeyville Community Junior College stands unchanged with the exception of the amendment spoken to in item 8 (findings of fact).
(See T-12,13,14)

12. That a local faculty organization specifically the "Faculty Forum" has existed at Coffeyville Community Junior College for a number of years and has served in the past as the negotiating body at Coffeyville Community Junior College, representing all employees of the College that were eligible for membership in the "Faculty Forum" including the teaching faculty, the Director of Library Resources, and the Director of Audio Visual. (See T-15,16)

13. That on or about July 7, 1977, three of the P.E. instructors, coaches specifically Dick Foster, Pat Henderson and Lou Serrone submitted letters to Dr. Graham and Randy Downing stating their wishes to avoid having their contracts negotiated on a group basis by the salary negotiating committee. (See T-28,29 and KHEA-Exhibit 1) (See T-30,31 and KHEA-Exhibit 2)

14. That there is currently an agreed upon salary proposal which has been accepted and formally adopted at Coffeyville Community Junior College, allowing an average salary increase of approximately 5.5 or 6 percent.
(See T-33)

15. That salary information was secured from Dr. Graham which shows salary increases for members of the coaching staff in amounts ranging from 7 percent to 22 percent. (See T-38,39)

16. That a document of Coffeyville Community Junior College was submitted into evidence (Respondents Exhibit #1) which lists the Director of Library Resources, the Director of Audio Visual, the Director of Admissions, the Director of Student Life and the six P.E. instructors, coaches as members of the faculty. (See T-54,55,56)

17. That Mr. Stanley Gene Duke testified the information regarding his salary as reported on Petitioners Exhibit #7 is approximately \$2,000.00 overstated. (See T-63)

18. That the coaches in question all have regular classroom teaching responsibilities. (See T 64 and T 68)

19. That the contracts for school year 1977-1978 were identical for all members of the "Faculty Forum" and apparent discrepancies in salary increase percentages are due to promotions and length of contract year. (See T-70,71)

20. That the Director of Library Resources, the Director of Audio Visual, the Director of Admissions and the Director of Student Life have similar responsibilities in their authority to perform administrative duties. (See T-78, 79)

21. That the Director of Library Resources, the Director of Audio Visual, the Director of Admissions and the Director of Student Life supervise only non-professional employees. (See T-78,79 and T-89)

22. That the Director of Library Resources and the Director of Audio Visual serve in a professional, educational or instructional capacity. (See T-78,79)

23. That the Director of Library Resources and the Director of Audio Visual have in the past participated with and been members in a professional employees organization, specifically the "Faculty Forum". (See T-16,17 and T-88)

CONCLUSIONS OF LAW - ORDER

One of the questions in this case revolves around definitions set forth in the Professional Negotiations Act. It is important to note that employees may be divided into three groups. Administrators, professional employees, and non-professional employees.

Non-professional employees are addressed at KSA 75-4322 (a) regarding their rights to organize and enter into negotiations with their employers. KSA 75-4322 (a) states:

"Definitions. As used in this act: (a) "Public employee" means any person employed by any public agency, except those persons classed as supervisory employees, professional employees of school districts, as defined by

subsection (c) of K.S.A. 72-5413, elected and management officials, and confidential employees."

It must be remembered that any employee of the junior college who is not determined to be a "professional employee" or "administrative employee" would be eligible to organize and meet and confer within the guidelines of the Public Employer-Employee Relations Act.

KSA 72-5413 defines the classifications of administrative employee and professional employees. The definition of professional employee is set out at KSA 72-5413 (c) which states:

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

The definition of administrative employee at KSA 72-5413 (d) states:

"(d) 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 is fulfilling duties for which an administrator's certificate is required pursuant to K.S.A. 1977 Supp. 72-7513; and, 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."

Special attention must be paid to the definition of administrative employee. It would be difficult to imagine any faculty member of any institution that was completely devoid of any administrative responsibilities. If no other instance were available, one might cite the fact that as a faculty member one could "effectively recommend" rewards or discipline through peer evaluation. If, however, one were to be afflicted with such "tunnel vision", the law would

then define no one as a professional employee. The intent of the law, bilateral exchange, would then be defeated. There are in fact and practice, differences between administrative and faculty personnel, and it is in an effort to clarify those distinctions that this order is written. It is the conclusion of this examiner that the legislative intent for excluding administrative personnel was to maintain the efficient operation of the institutions spoken to within this statute. Assume for a moment that an employee with administrative responsibilities in the areas of hiring, transferals suspensions, layoffs, recalls, promotions, discharges, assignments, rewards, and discipline were included within the scope of the bargaining unit. This individual would then be required to wear two hats. On one hand he would be in consultation with the other faculty members in an effort to promote their wishes as employees. On the other hand he would be in consultation with the administration in an effort to promote their wishes as managers of the institution. The dilemma faced by this individual, and the difficulty experienced by him in the exercise of his duties to both are self-evident. It is obvious that the most efficient operation of the institution would be hampered. It is, therefore, the conclusion of this examiner that although an individual does possess and exercise any or all of the administrative authority as set forth in the law, he may not be defined as an administrative employee unless that authority is exercised over other members of the appropriate unit.

Four specific job classifications were addressed during the hearing at Coffeyville Community Junior College. Although only two of these classifications were mentioned originally, all four classifications are directed to perform duties of a similar nature in a professional capacity outside the classroom. The classifications in question are the Director of Library Resources, Director of Media Services, Director of Admissions and Director of Student Life. Testimony has shown that the individuals employed in these classifications do in fact exercise some degree of administrative authority. This authority, however, is not exercised over other professionals within the appropriate unit, but rather over clerical and other non-professional employees. It has also been found that these individuals are in fact employed by Coffeyville Community Junior College in a professional educational or instructional capacity as spoken to at KSA 72-5413 (c).

Furthermore, KSA 72-5420 states:

"Criteria for determining appropriate unit of employees' organization. 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." (Emphasis added)

Testimony in the record by the college president states that the four classifications in question do perform duties of an educational nature as spoken to in both sections. These individuals then, must be defined as professional employees, therefore, they may organize in some unit. This organization could occur within the unit containing teaching faculty members or within a separate professional employees unit. There are certain heuristics which have traditionally been followed in an effort to make the proper determinations regarding the establishment of appropriate units both in size and composition. Those guidelines include the effects of overfragmentation and the splintering of a work organization. In light of this criteria it is the finding of the examiner that a separate unit of only four individuals would be inappropriate, therefore, the Director of Library Resources, the Director of Media Services, the Director of Admissions and the Director of Student Life must be included within the unit containing teaching faculty.

The second question facing the examiner concerns the inclusion of six physical education instructors; coaches, within the scope of the appropriate unit. It is important to note at this point the difference between scope and membership. In the determination of scope of a unit, the question centers on appropriateness. The law clearly sets forth at KSA 72-5420, the criteria for determining the scope of a unit. Membership within an organization representing a unit is an entirely different matter and is addressed at KSA 72-5414 which states in part:

"Professional employees shall have the right to form, join or assist

professional employees' organizations, to participate in professional negotiation with boards of education through representatives of their own choosing for the purpose of establishing, maintaining, protecting or improving terms and conditions of professional service. Professional employees shall also have the right to refrain from any or all of the foregoing activities."

These rights of the employee cannot be abridged. Testimony was given at the hearing in an effort to demonstrate that three P.E. instructors have let it be known that they have no wish to join any organization or association which would then represent them in their contract negotiations. This is clearly their right pursuant to KSA 72-5414. It is furthermore their right to present their own position or proposal to the board of education as set out at KSA 72-5415 (b) which states:

"(b) Nothing in this act or in the act of which this section is amendatory shall be construed to prevent professional employees, individually or in concert or through such representatives as they may choose collectively or individually, from presenting or making known their positions and/or proposals to a board of education, a superintendent of schools or other chief executive officer employed by a board of education."

The inclusion of the P.E. instructors; coaches, within the appropriate unit does not abridge the rights of the three coaches to refrain from joining an organization or preclude them from negotiating their own contracts. If, however, the desires of the three coaches dictate exclusion of all six coaches from the unit, then the rights of other coaches who might desire to form, join or participate in the activities of a professional organization would be abridged.

The law does state at KSA 72-5420 that one of the criteria for determining an appropriate unit shall be, "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." However, the statute subsequently states, "except that a unit including classroom teachers shall not be appropriate unless it includes all such teachers employed by the board of education." It is the conclusion of this examiner that the exception stated above supersedes all other criteria set out at KSA 72-5420. The P.E. instructors; coaches, at Coffeyville Community Junior College clearly do have teaching responsibilities as evidenced through testimony presented during the hearing. Therefore, the P.E. instructors must be included within the

scope of the appropriate unit with all other classroom teachers. This determination, however, should not be confused, and nothing within would abridge their rights as mentioned above since nothing herein would require them to become members or participate in the activities of any employee organization.

Therefore, it is the order of the examiner that the appropriate unit of professional employees at Coffeyville Community Junior College be comprised of the following positions:

Include: A. Student Personnel Services

1. Director of Admissions
2. Director of Student Life

B. Instructional Resource Center

1. Director of Library Resources
2. Director of Audio Visual

C. Health & Physical Education

1. P.E. Instructor, Coach & Division Chairperson
- *2. P.E. Instructor and Coach

D. Humanities Division

1. English Instructor & Division Chairperson
- *2. Music Instructor
- *3. Speech Instructor
- *4. Art Instructor
- *5. English Instructor
- *6. Foreign Language Instructor
- *7. Reading Instructor
- *8. Journalism Instructor

E. Occupational Division

1. Business Instructor & Division Chairperson
- *2. Medical Technology Instructor
- *3. Business Instructor

F. Science & Math Division

1. Physical Science Instructor & Division Chairperson
- *2. Chemistry Instructor
- *3. Math Instructor
- *4. Biology/Agriculture Instructor
- *5. Home Economics Instructor

- *6. Biology Instructor
- *7. Home Economics Instructor

G. Social Science Division

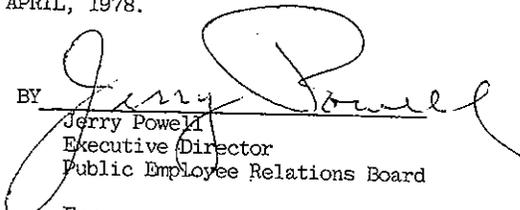
- 1. Sociology Instructor & Division Chairperson
- *2. Economics Instructor
- *3. Psychology Instructor
- *4. History Instructor

(*All employees in such job classifications)

Excluded all other employees of Coffeyville Community Junior College.

IT IS SO ORDERED THIS 19 DAY OF APRIL, 1978.

BY


Jerry Powell
Executive Director
Public Employee Relations Board

For

Dr. James A. McCain
Secretary of Human Resources