

BEFORE THE SECRETARY OF HUMAN RESOURCES
STATE OF KANSAS

NATIONAL EDUCATION ASSOCIATION -)
SHAWNEE MISSION,)
)
Petitioner,)
)
vs.) Case No. 72-UCA-2-1994
)
UNIFIED SCHOOL DISTRICT NO. 512,)
SHAWNEE MISSION, KANSAS)
)
Respondent.)
_____)

INITIAL ORDER

ON the 25th day of August, 1994, the above-captioned matter came on for hearing pursuant to K.S.A. 72-5420 and K.S.A. 77-523 before presiding officer Monty R. Bertelli.

APPEARANCES

PETITIONER: Appeared by Marjorie Blaufuss, attorney
Kansas National Education Association
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Topeka, Kansas 66612

RESPONDENT: Appeared by P. Steven Martin, Attorney
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ISSUES PRESENTED FOR REVIEW

The parties have stipulated that the following issues be submitted to the presiding officer for determination:

1. WHETHER THE SECRETARY OF HUMAN RESOURCES HAS THE STATUTORY AUTHORITY TO AMEND AN EXISTING BARGAINING UNIT TO ADD NEW EMPLOYEE CLASSIFICATIONS.

72-UCA-2-1994

2. WHETHER THE EMPLOYEES OF U.S.D. 512, SHAWNEE MISSION, IN THE POSITION OF PARENTS AS TEACHERS EDUCATORS ARE "PROFESSIONAL EMPLOYEES" AS DEFINED IN K.S.A. 72-5413 et seq.
3. WHETHER THE EXISTING BARGAINING UNIT OF PROFESSIONAL EMPLOYEES IS THE APPROPRIATE UNIT FOR INCLUSION OF THE POSITION "PARENTS AS TEACHERS EDUCATORS."
4. WHETHER THE EMPLOYEES IN THE POSITION OF PARENTS AS TEACHERS EDUCATORS MUST BE GIVEN THE OPPORTUNITY TO VOTE ON THE QUESTION OF INCLUSION IN THE EXISTING PROFESSIONAL EMPLOYEES BARGAINING UNIT.

SYLLABUS

1. **PROFESSIONAL NEGOTIATIONS** - *Selection of Exclusive Representative - Procedure.* The procedures set forth in K.S.A. 72-5416 and -5417 are mutually exclusive alternatives available to an employees' organization to obtain recognition as the exclusive representative for the professional employee negotiating unit. An employees' organization need not first seek recognition under K.S.A. 72-5416 as a prerequisite to availing itself to the procedure set forth in K.S.A. 72-5417.
2. **PROFESSIONAL NEGOTIATIONS** - *Determination of Appropriate Negotiating Unit - Authority of Secretary.* K.S.A. 72-5420 vests the Secretary of Human Resources with broad discretionary authority in the determination of what constitutes an appropriate bargaining unit.
3. **PROFESSIONAL NEGOTIATIONS** - *Determination of Appropriate Negotiating Unit - Amending existing negotiating unit - Authority of Secretary.* Since the Professional Negotiations Act provides a specific statutory scheme for resolving questions concerning representation by an election and certification of an employees' organization, the legislature has given the Secretary of Human Resources the concomitant power to regulate such certification by clarification or amendment. The Secretary may subsequently revise the description of the appropriate bargaining unit.
4. **PROFESSIONAL NEGOTIATIONS** - *Determination of Appropriate Negotiating Unit - Amending existing negotiating unit - Authority of Secretary.* Unit clarification proceedings

under the PNA derive from the Secretary's authority to determine the appropriateness of a bargaining unit.

5. **PROFESSIONAL EMPLOYEE** - *Qualification as Professional Employee - Alternatives available.* K.S.A. 72-5413(c) sets forth two alternative means by which an individual may qualify as a "Professional employee" for purposes of the Professional Negotiations Act; first, certification by the state board of education, and second by employment in a professional, educational or instructional capacity.
6. **PROFESSIONAL EMPLOYEE** - *Definitions - Professional, educational and institutional.* "Professional," "educational," and "instructional" are not technical words and have no specially defined meaning in the Professional Negotiations Act. However, these words do have an accepted, definite, and clear meaning in the English language and should be construed according to the context and approved use of the language.
7. **PROFESSIONAL EMPLOYEE** - *Definitions - "Professional capacity".* The term "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 section, 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; or (3) attorneys-at-law or any other person who is registered by a board of registration or other public body established for such purposes under the laws of this state.
8. **PROFESSIONAL EMPLOYEE** - *Definitions - "Instructional capacity".* "Instructional capacity" means role of teacher; to furnish with Knowledge; teach. It refers to a structured form of learning in the traditional classroom setting wherein the teacher is lecturing on a specific subject, and the students are listening and responding to questions. However, it can also encompass one-on-one methods of instruction.
9. **PROFESSIONAL EMPLOYEE** - *Definitions - "Educational capacity".* "Educational" is a broad and comprehensive term embracing mental, moral and physical education. Education is not limited to knowledge acquired in the classroom, and includes bodily as well as

mental training. To educate means "to draw out" a person's talents as opposed to putting in knowledge or instruction.

10. **UNIT DETERMINATION** - *Test to be Employed - Community of Interest.* The primary concern of any bargaining unit determination is to group together only those employees who have substantial mutual interests in wages, hours and other conditions of employment. Commonly referred to as the community of interests doctrine, it stands for the proposition that in making a unit determination, the Secretary will weigh the similarities and differences with respect to wages, hours and other conditions of employment among the members of the proposed unit, rather than relying solely on traditional job classifications.

FINDINGS OF FACT¹

1. The National Education Association - Shawnee Mission ("Association") is the exclusive bargaining representative for certain professional employees of Unified School District No. 512, Shawnee Mission, Kansas ("District"). (Petition and Answer).
2. The Board of Education ("Board") of Unified School District No. 512, Shawnee Mission, Kansas is a "Board of Education" under K.S.A. 72-5413(b) and has, in the past, entered into Memorandums of Agreement with the National Education Association - Shawnee Mission.
3. The parties have agreed to the following stipulations relative to the positions of school psychologist, social worker, occupational therapist, physical therapist, art therapist, and music therapist:
 - a. Exclusion of the position of school psychologist from the definition of professional employee in the 1995-96 negotiated agreement.

¹ "Failure of an administrative law judge to detail completely all conflicts in evidence does not mean . . . that this conflicting evidence was not considered. Further, the absence of a statement of resolution of a conflict in specific testimony, or of an analysis of such testimony, does not mean that such did not occur." Stanley Oil Company, Inc., 213 NLRB 219, 221, 87 LRRM 1668 (1974). At the Supreme Court stated in NLRB v. Pittsburg Steamship Company, 337 U.S. 656, 659, 24 LRRM 2177 (1949), "[Total] rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact."

- b. Inclusion of the positions of social worker, occupational therapist, physical therapist, art therapist, and music therapist in the 1995-96 negotiated agreement.
 - c. The social worker, occupational therapist, art therapist and music therapist positions will be included in the bargaining unit and will be represented by the Association during the negotiation of the terms and conditions of professional service for the 1995-96 school year.
 - d. The Association agrees to demonstrate the interest of these employees in such representation by submitting a verified membership list indicating more than fifty percent of those employees holding the positions of social worker, occupational therapist, physical therapist, art therapist, and music therapist are Association members. (Tr.p. 9-10).
4. With regards to the position of Parents as Teachers Educator, the parties have agreed to the following stipulations:
- a. By application dated July 14, 1970, the Association requested recognition as the *"exclusive representative of the negotiating unit consisting of all certified personnel who are covered by the general salary schedule including all classroom teachers, counselors, and nurses of Unified school District No. 512 but excepting administrative employees."*
 - b. On August 10, 1970, the District Board of Education passed a resolution recognizing the Association as the exclusive representative of the professional employees of the district as described in the application for recognition.
 - c. At the time of the District's original recognition of the Association, the District employed no "Parents as Teachers" Educators.
 - d. The Association has never represented or negotiated with the Board on behalf of the Board's Parents as Teachers Educators.

- e. From the 1976-1977 school year to the present, the parties' negotiated agreements definition of the "professional employee" has remained essentially the same:

"Any employee of the school district who is regularly assigned, on a part-time or full-time basis, to the teaching staff of the district in a position which requires a certificate issued by the State Department of Education. Professional employee includes elementary and secondary classroom teachers; teachers of music, art, physical education, and reading; counselors; librarians; nurses (both degreed and non-degreed); special education teachers and special educations specialists, resource teachers; teachers of summer school, homebound, District school, and alternative program teachers. Professional employee shall not include administrative employees, substitute teachers, administrative specialists, or education aides. When used in the singular it shall include the plural."

(1993-94 Agreement between the Board and the Association, Article I, Section D).

- f. Pursuant to the definition of professional employee in the negotiated agreement(s), the following positions are also included as members of the professional employee's bargaining unit: speech clinicians, audiologists, adaptive physical education teachers, reading specialists, and learning specialists.
- g. On or about July 1, 1993, the District filed with the Department of Human Resources form PNA 002, as required by K.A.R. 49-23-4, which indicated that there was no agreement between the District and the Association on the scope of the appropriate unit.

- h. On July 27, 1993, the Association filed a "Petition for Clarification of Appropriate Unit" with the Department of Human Resources seeking to include the school psychologists, social workers, art therapists, music therapists, and the Parents as Teachers Educators employed by the district in the present bargaining unit of professional employees of USD No. 512.
- i. The Association filed a request for voluntary recognition in December 1993; subsequently, the Association withdrew its petition because it could not meet the membership requirement of K.S.A. 72-5416.
- j. Prior to the hearing, the parties have reached agreement on issues involving all disputed positions except the Parents as Teachers Educators.
- k. The Parents as Teachers Educators are paid hourly pursuant to the classified employees salary schedule.
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- l. The Parents as Teachers Educators do not have an employment contract with the Board of Education.
- m. The Parents as Teachers Educators work part-time with a variable schedule and without set hours.
- n. The District's personnel policies regarding the Parents as Teachers Educators are set forth in the employee manual titled Personnel Policies for Classified Employees, rather than the collective bargaining agreement.
- o. The primary location for delivery of services by the Parents as Teachers Educators is the client's home.
- p. Parents as Teachers Educators report hours worked on a time card and are paid every two weeks as opposed to professional employees who are paid monthly; however, Parents as Teachers

Educators worked on a time card but were paid monthly until the 1993-94 school year.

- q. Of the seven Parents as Teachers Educators, three are Association members.
5. The Parents as Teachers program is a preventative program wherein parents of children age zero to three are encouraged to work with various aspects of their child's development, such as language, physical growth, and emotional growth, in the parent's role as their child's first and most important teacher. That first three years are considered crucial to a child's ability to learn later on. (Tr.p. 13-14). Generally, Parents as Teachers Educators are instructing parents rather than children. (Tr.p. 45, 50).
8. The State Board of Education does not certify Parents as Teachers Educators. (Tr.p. 40-41). According to state guidelines, a person hired by a school district must be certified through the National Parents As Teachers Center before they can work with parents. To become certified a person must complete a 36 hour, week long, instruction program at the National Parents As Teachers Center Institute in Missouri, and then do additional individual reading and research. (Tr.p. 17). Additionally, although Parents as Teachers Educators are not required by the State Board of Education to have a college degree, (Tr.p. 44), a Parents as Teachers Educator must have a minimum of 60 hours of college credit in a field relating to early childhood education, and have the demonstrated ability to work with young children and parents. (Tr.p. 22, 43).
6. The Parents as Teachers program is a voluntary program, not mandated by the Kansas State Board of Education, (Tr.p. 40, 124), but the Board is responsible for overseeing the program. The State Board of Education, through matching grants, provides a participating school district 50% of the funding for a Parents as Teachers program. The Board then monitors the program administered by Lynne Owen, education consultant for early childhood issues. (Tr.p. 12-13). The Parents as Teachers program is viewed by Ms. Owen as an integral part of the educational process in the school district. (Tr.p. 51). There were 190 school districts in Kansas participating in the program at the time of the hearing. (Tr.p. 13, 15). While the Parents as Teachers program is voluntary, the District has elected to participate in it. (Tr.p. 129).

13. As a result of the election by the district to participate in the Parents as Teachers program, the district, through its board of education, has hired individuals to serve as Parents as Teachers Educators, (Tr.p. 129), those individuals thusly become employees of the District, (Tr.p. 130), and the District pays their salaries, and provides them with necessary office space and support staff. (Tr.p. 54).

9. Ms. Owen testified that, for the year 1992, of the 132 Parents as Teachers Educators, 37% had masters degrees, 6% had doctorates, and only 12% had the minimum requirement of 60 hours of college credit. (Tr.p. 25). A college education is preferred according to the District's job description for a Parents as Teachers Educator, and all Parents as Teachers Educators hired by the district have a college degree. (Tr.p. 130, Ex. C). There were eight Parents as Teachers Educators employed by the district at the time of the hearing; (one other Parent as Teachers Educator had resigned effective the day after the hearing). Two have masters degrees, one in early childhood development and one in special education. The remaining six have degrees in early childhood development, human development, child psychology, and home economics. Three are certified to teach. (Tr.p. 60, 61-62). According to Gene Johnson, Associate Superintendent for Educational Services, a bachelor's degree would qualify as obtaining knowledge of an advanced type in a field of science or learning. (Tr.p. 132).

7. Parents volunteer to participate in the District's Parents as Teachers program. (Tr.p. 36). There were approximately 225 families enrolled in the Parents as Teachers program, with an additional 400 on the waiting list. (Tr.p. 64). The Parents as Teachers Educators are based out of the Broadmore Center. (Tr.p. 77, 90).

10. A 20 hour Parents as Teachers Educator may serve no more than 35 families. (Tr.p. 20). A Parents as Teachers Educator must meet face-to-face with the parents at least 12 times per year through a combination of in-home and group meetings. (Tr.p. 21). For home visits, the Parents as Teachers Educators develop a lesson plan with a special emphasis relative to the child's age and development, and copy materials on that topic for the parents. At the home, the Parents as Teachers Educators go over the lesson plan, answer questions, and work with the child. The visit may then be followed up with a mailing of additional printed materials. The typical home visit lasts one hour and occurs every six to eight weeks. (Tr.p. 30-35, 46). The Parents as Teachers Educators lesson

plan is similar to the lesson plans prepared by teachers in normal classroom teaching situations. (Tr.p. 36). Group meetings include such activities as watching video tapes or listening to presentations by experts on special topics, or just discussion sessions between parents concerning mutual problems or experiences, or social or play group activities. (Tr.p. 37).

11. The interaction between the Parents as Teachers Educators is a critical part of the Parents as Teachers program. The Parents as Teachers Educators are viewed as a team with individuals from a variety of disciplines. They are then able to share that knowledge and their experience to address an individual family's special needs. (Tr.p. 81).
14. The work of the Parents as Teachers Educators is predominately intellectual and requires the use of discretion rather than being a routine, manual or mechanical undertaking. (Tr.p. 133-34).
15. Parents as Teachers Educators:
 - a. Do not have to be state certificated as do with the faculty of the District, (Tr.p. 40);
 - b. Are not full-time employees, but work part-time, approximately 23 hours per week. The program runs 42 weeks per year from the middle of August through the end of June, (Tr.p. 65, 88);
 - c. Would not qualify for the reduction in force provisions of the Master Agreement, (Tr.p. 87).
 - d. Are not required to be evaluated like the rest of the faculty in the District, (Tr.p. 88);
 - e. Are given paid holidays unlike the faculty of the District, (Tr.p. 89);
 - f. Have no central building to which they report, (Tr.p. 90-91);
 - g. Have no contact with the K-12 students of the school district, (Tr.p. 95);
 - h. Do not work regular hours each day but set their own hours to meet the needs of the families they serve. They may work evenings and Saturdays. (Tr.p. 90). Teachers on

the Secondary level are required to maintain an eight hour per day work schedule, and elementary teachers must maintain a seven hour and forty-five per day work schedule, (Tr.p. 97-98, 108);

- i. Do not work alongside the classroom teachers of the district, (Tr.p. 103);
- j. Do not attend faculty meetings in the district, (Tr.p. 95, 97);
- k. Do not attend regularly scheduled in-service meetings for teachers in the district, (Tr.p. 96);
- l. Are not required to attend four night meetings which include Back-to-school night, Open House, PTA or PTC meetings, graduation or other meetings as the administration determines necessary to the educational program, (Tr.p. 97);
- m. Do not grade papers or evaluate the performance of students and do not give the parents they serve a grade as teachers do for their students, (Tr.p. 99);
- n. Do not undergo a three-year probationary period, and are at-will employees, (Tr.p. 100, 101, 104);
- o. Are not assigned to designated areas in a school building to supervise students coming or going, before and after class begins, (Tr.p. 98);
- p. Are not on the teacher's salary schedule. They are paid a range of hourly pay from \$9.56 per hour through \$12.85 per hour, (Tr.p. 125);
- q. Should interact with teachers, librarians and counselors in their school district, but no requirement to do so is included in the Parents as Teachers Educator job description, (Tr.p. 49, 53, 58);
- r. Follow the grievance procedure set forth in the district's Personnel Policies for Classified Employees manual rather than the grievance procedure set forth in the professional agreement, (Tr.p. 99-100, Ex. A, E);
- s. Are not required to be given a duty free lunch period, (Tr.p. 98);

- t. Are not granted tenure in the district, (Tr.p. 101); and
- u. Have their terms and conditions of employment governed by the district's Personnel Policies for Classified Employees manual, (Tr.p. 83).

CONCLUSIONS OF LAW AND DISCUSSION

ISSUE 1

WHETHER THE SECRETARY OF HUMAN RESOURCES HAS THE STATUTORY AUTHORITY TO AMEND AN EXISTING BARGAINING UNIT TO ADD NEW EMPLOYEE CLASSIFICATIONS.

A. Statutory Prerequisite Argument

The District contends that before the Association can file a petition under K.S.A. 72-5417, the Association must "first file a request under K.S.A. 72-5416." (Resp.brief p.14). The District argues:

"A look at K.S.A. 72-5415 reveals that a majority of the professional employees in an appropriate negotiating unit must designate a representative (an act that has not occurred here) and, further, such recognition comes about through K.S.A. 72-5416 which requires a filed request with the Board of Education alleging that a majority of professional employees in an appropriate unit wish to be represented for such purpose. Thus, utilization of K.S.A. 5417 (sic) is dependent upon conditions stated in 72-5415 which is dependent upon conditions stated in 72-5416." (Resp. p.13).

A review of the pertinent statutes and regulations appears advisable. K.S.A. 72-5414 provides:

"Professional employees' rights; representation of employees and school boards; negotiations. 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. In professional negotiations under this act the board of education may be represented by an agent or committee designated by it."

K.S.A. 72-5415 provides:

"Exclusive representation of negotiating units; any employee or group may present its position or proposal. (a) When a representative is designated or selected for the purposes of professional negotiation by the majority of the professional employees in an appropriate negotiating unit, such representative shall be the exclusive representative of all the professional employees in the unit for such purpose."

K.S.A. 72-5416 provides:

"Recognition of employees' organization as representative; exceptions to required recognition. (a) If professional employees of a board of education are not represented by a professional employees' organization for the purpose of professional negotiation, any professional employees' organization may file a request with the board of education alleging that a majority of the professional employees in an appropriate negotiating unit wish to be represented for such purpose by such organization and asking the board of education to recognize it as the exclusive representative under K.S.A. 72-5415. Such request shall describe the grouping of jobs or positions which constitute the unit claimed to

be appropriate and shall include a demonstration of majority support through verified membership lists. Notice of such request shall immediately be posted by the board of education on a bulletin board at each school or other facility in which members of the unit claim to be appropriate are employed.

(b) A request for recognition under subsection (a) shall be granted by the board of education unless:

(1) The board of education has a good faith doubt as to the accuracy or validity of the evidence demonstrating majority support; or

(2) another professional employee's organization files with the board of education within ten (10) calendar days after the posting of notice of the original request a competing request alleging majority support and asking the board of education to recognize it as the exclusive representative; or

(3) one or more of the professional employees included in the unit claimed to be appropriate files with the board of education within ten (10) calendar days after the posting of notice of the original request a competing request and asking the board of education to deny the request for recognition; or

(4) the board of education, within the previous twelve (12) months, has lawfully denied or withdrawn recognition of a professional employees' organization as the exclusive representative of the professional employees included in the unit claimed to be appropriate; or

(5) the secretary, within the previous twelve months, has conducted a secret ballot election under the provisions of this act, or the act to which this section is amendatory, and the election resulted in a majority vote for no representation."

K.S.A. 72-5417 provides:

"Recognition of employees' organization; determination of secretary of human resources upon petition. (a) A petition may be filed

with the secretary asking the secretary to investigate and decide the question of whether (1) professional employees in an appropriate negotiating unit have designated a professional employees' organization for recognition as an exclusive representative for purposes of K.S.A. 72-5415; (2) a professional employees' organization which is the recognized exclusive representative should be replaced by another professional employees' organization; (3) recognition of a professional employees' organization as the exclusive representative should be withdrawn.

(b) A petition under section (a) may be filed by:

(1) A board of education alleging it has received a request for exclusive recognition from a professional employees' organization and has a good faith doubt as to the accuracy or validity of the claims made in the request; or

(2) a professional employees' organization; or

(3) one or more professional employees seeking withdrawal of recognition of a professional employees' organization as the exclusive representative."

K.S.A. 72-5418 provides:

"Same; election; summary dismissal of petition, when. (a) Upon receipt of a petition under K.S.A. 72-5417 and except as provided in subsection (b), the secretary . . . may direct and conduct a secret ballot election in order to decide the questions raised by the petition.

(b) The secretary shall dismiss, without determining the questions raised therein, any petition filed under K.S.A. 72-5417, if:

(1) The petition is filed by a professional employees' organization and is not supported by credible evidence that at least thirty percent (30%) of the professional employees in the appropriate unit are members of the professional employee's organization filing the petition; or

(2) the petition is filed by one or more professional employees, asks the secretary to determine the question of whether recognition of a professional employees' organization should be withdrawn, and is not supported by credible evidence that at least thirty percent (30%) of the professional employees in the appropriate unit support the request; or

(3) the board of education, within the previous twelve (12) months, has lawfully recognized a professional employees' organization other than the petitioner as the exclusive representative of any professional employees included in the unit described in the petition; or

(4) the board of education, within the previous twelve (12) months, has lawfully denied or withdrawn the recognition of a professional employees' organization as the exclusive representative of the professional employees included in the unit described in the petition; or

(5) the secretary, within the previous twelve (12) months, has conducted and certified the result of a secret ballot election under the provisions of this act, or the act of which this section is amendatory."

K.S.A. 72-5420 provides:

"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 education, the wishes of the professional employees and/or the established practices among the professional employees including among things, the extent to which such professional employees have joined a professional employees' organization, whether the unit appropriate for the purposes of professional negotiations 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 teachers employed by the board of education."

K.A.R. 49-24-4 provides:

"Determining Appropriate Unit. Petitions for unit determination may be filed by a board of education, professional employee organization, or a professional employee(s). In the event a board of education has recognized a professional employee organization, unit determination or clarification questions shall be governed by the memorandum of agreement unless the secretary determines that the agreement is unclear or the agreement is silent with regard to the positions in question."

K.A.R. 49-25-5 provides, in pertinent part:

"Eligibility and conditions. A petition may be filed by a professional employees' organization, board of education, or professional employees requesting the secretary to investigate and rule on the questions raised by a petition. (a) the secretary shall investigate all questions but may postpone a representation election if a unit determination question is in issue."

As is clear from these statutes, professional employees have a right to participate in professional negotiations with boards of education. That right is exercised through an employees' organization selected by the employees as the exclusive representative for the negotiating unit. The prerequisites to commencing professional negotiations are 1) determination of an appropriate negotiating unit and 2) designation of an exclusive representative. It is equally clear that the manner in which these prerequisites are accomplished is within the discretion of the

employees or employees' organization depending upon the situation. The determinative factor is the membership numbers of the employees' organization.

1) Designation of an Exclusive Representative

If an employees' organization can produce a showing of interest by verified membership list evidencing a majority of the professional employees in an appropriate bargaining unit are members of that employees' organization, then it can petition the board of education for recognition as the exclusive representative for that unit pursuant to K.S.A. 72-4316. The board of education must grant recognition unless certain specific conditions are shown to exist.² No election is required. The logic for such a procedure is apparent. Presumably, if an election were to be held, members of the organization would vote for it as the exclusive representative. Since a majority of the bargaining unit are members of the petitioning organization, the organization can be expected to win the election. To hold the election would serve no purpose but to confirm the expected.

But what if the employees' organization wishes to represent a bargaining unit, does not have a majority of the unit employees as members, but believes a majority of the bargaining unit members

² The specific conditions are set forth in K.S.A. 72-5416(b) (1), (2), (3), (4) and (5). In addition, recognition can be delayed if there is a dispute concerning the composition of the negotiating unit. See section "2. Determination of an Appropriate Unit" below.

would select it as the exclusive representative. Must the organization wait until it has a majority membership before it can seek to be the exclusive representative? If one were to accept the District's argument, the answer would have to be "Yes." However, K.S.A. 72-5417 and -5418 specifically provide a means by which an employees' organization can be selected the exclusive representative without having a majority of the bargaining unit as members.

[1] Pursuant to K.S.A. 72-5417 and -5418, an employees' organization can petition the Secretary of Human Resources for an election to determine if the employees in the bargaining unit want the employees' organization as its exclusive representative. To do so requires only a 30% showing of interest as opposed to the majority showing of interest required by K.S.A. 72-5416. The procedures set forth in K.S.A. 72-5416 and -5417 are mutually exclusive alternatives available to an employees' organization to obtain recognition as the exclusive representative for the professional employee negotiating unit. An employees' organization need not, as the District argues, first seek recognition under K.S.A. 72-5416 as a prerequisite to availing itself to the procedure set forth in K.S.A. 72-5417. The only limitations on the employee organization's use of the K.S.A. 72-5417 are those listed in K.S.A. 72-5418. Accordingly, the Association was not required

to petition for recognition under K.S.A. 72-5416 before petitioning the Secretary under K.S.A. 72-5417.

2. Determination Of An Appropriate Unit

The determination of an appropriate negotiating unit is a critical phase in the selection of an exclusive representatives for professional employees. The composition of the negotiating unit will directly affect the number of professional employees needed on the showing of interest required by either K.S.A. 72-5416 or -5418, and ultimately in the decision as to the procedure an employees' organization will follow to attain recognition as the exclusive employee representative for that negotiating unit.

Pursuant to K.S.A. 72-5416 *"any professional employees' organization may file a request with the board of education alleging that a majority of the professional employees in an appropriate negotiating unit wish to be represented for such purpose by such organization."* It is the employees' organization that designates what it believes to be an appropriate negotiating unit at the time of filing its petition for recognition with the board of education. If the board of education and the employees' organization agree that unit is appropriate, then recognition by the board of education follows provided the employees' organization has the requisite majority showing of interest of professional employees in that negotiating unit.

If, however, the board of education and the employees' organization cannot agree upon an appropriate composition for the negotiating unit, then, in accordance with K.S.A. 72-5420 and K.A.R. 49-25-5, either party or both may file a Unit Determination Petition with the Secretary of Human Resources for a determination as to the appropriate composition of the negotiating unit. Again, once the negotiating unit is established, pursuant to K.S.A. 72-5416, recognition by the board of education follows provided the employees' organization has the requisite majority of interest.

A similar procedure is followed should the employees' organization seek recognition under K.S.A. 72-5417 rather than -5416. As part of a petition for Unit Representation Election, an employee organization sets forth the composition of the bargaining unit it believes appropriate.³ If the board of education has no objections to that composition, the Secretary of Human Resources enters a Unit Determination Order establishing the negotiating unit, and then uses that unit composition to verify the thirty percent showing of interest required by K.S.A. 72-5418 to force the question of exclusive representation to a vote of the unit members. If there is an objection, the Secretary will make the unit

³ It should be noted that an employees' organization may seek a unit determination prior to filing a petition for Unit Representation Election. In this manner the organization will be aware of the exact composition of the bargaining unit so as to insure that a thirty percent showing of interest will accompany the Unit Representation Election petition. It can also assist the employee's organization in determining whether to seek recognition pursuant to K.S.A. 72-5415 or -5417 by assessing its relative membership strength compared to the total composition of the negotiating unit.

determination following a hearing on that issue. Once established the procedure is the same as above.

B. Authority of the Secretary

[2] In seeking a source of authority for the modification of an existing bargaining unit, a review of the Professional Negotiations Act ("PNA"), K.S.A. 72-5413 et seq, reveals no specific reference to clarification or amendment of an employee unit after the initial determination. However, there can be no question that K.S.A. 72-5420 vests the Secretary of Human Resources with broad discretionary authority in the determination of what constitutes an appropriate bargaining unit:

"In each case where the question is in issue, the secretary shall decide, on the basis of 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 jointed 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).

[3] Since there is no Kansas case law defining the extent of that authority, it is appropriate to look to other jurisdictions

for guidance.⁴ The Secretary's authority to decide a unit appropriate for the purposes of collective bargaining is similar to that of the National Labor Relations Board ("NLRB") under the National Labor Relations Act ("NLRA"). See 29 U.S.C. §159. Under the NLRA, issuance of an NLRB certification does not forever establish the precise parameters of the parties' bargaining relationship. Norris and Shershin, How to Take a Case Before the NLRB, §10.15, p. 273 (1992). It has been reasoned that since the NLRA provides a specific statutory scheme for resolving questions concerning representation by an election and certification of a labor organization, Congress has given the NLRB the concomitant power to regulate such certification by clarification or amendment. Century Electric Co., 146 NLRB No. 139 n. 4 (Feb. 4, 1964). The NLRB, therefore, may subsequently revise the description of the appropriate bargaining unit. NLRB Rules and Regulations, §§102.60(b), 102.61(d), 102.63(b); NLRB Casehandling Manual ¶¶11480, 11490-98. Based on this authority, the NLRB repeatedly has held that its certifications are subject to reconsideration, Worthington Pump and Mach. Corp., 30 LRRM 1052 (1952), and that it may police its certifications by clarification and amendment. NLRB

⁴ Where there is no Kansas case law interpreting or applying a specific section of the Kansas Professional Negotiations Act, the decisions of the National Labor Relations Board ("NLRB") and of Federal courts interpreting similar provisions under the National Labor Relations Act ("NLRA"), 29 U.S.C. §151 *et seq.* (1982), and the decisions of appellate courts of other states interpreting or applying similar provisions under their state's public employee relations act, while not controlling precedent, are persuasive authority and provide guidance in interpreting the Kansas PNA, Oakley Education Association v. USD 274, 72-CAE-6-1992, p. 17 (December 16, 1992); See also Kansas Association of Public Employees v. State of Kansas, Department of Administration, Case No. 75-CAE-12/13-1991 wherein the same conclusion has been reached under the Kansas Public Employer-Employee Relations Act.

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Casehandling Manual, ¶11478.3; Independent Metal Workers Local No. 1, 56 LRRM 1289 (1964).

[4] Similarly, unit clarification proceedings under the PNA derive from the Secretary's authority to determine the appropriateness of a bargaining unit. Butler County Community College Education Ass'n v. Butler County Community College, Case No. 72-UCA-1-1993 (1994). The clarification of an existing employee unit by adding or removing positions is similar to the Secretary's function of initially defining an appropriate unit. In both situations, the expertise of the Secretary is employed to determine the most appropriate employee composition for a particular bargaining unit. See Consolidated Papers, Inc. v. NLRB, 109 LRRM 2815, 2817 (CA7, 1982).

The need to be able to modify an existing bargaining unit has clearly been recognized by the Secretary. K.S.A. 72-5432(a) provides that:

"The secretary of human resources may adopt such rules and regulations as are necessary to implement and administer the provisions of K.S.A. 72-5413 through 72-5431, and amendments to such sections, which place specific duties and responsibilities upon the secretary."

Pursuant to that authority the Secretary adopted K.A.R. 49-24-4⁵ which provides for the filing of petitions to resolve unit determination or "**clarification**" questions.⁶

Relying upon the above rationale, the Secretary of Human Resources in Butler County Community College Education Ass'n v. Butler County Community College, Case No. 72-UCA-1-1993 (1994), ruled that he had authority to amend a bargaining unit after it had been established. The District has offered no persuasive new authority nor evidence of any material change in circumstances that would warrant the Secretary overruling that decision. Accordingly, since there is a question as to the appropriateness of the bargaining unit under consideration here, the District's motion to dismiss for lack of statutory authority must be denied.

ISSUE 2

WHETHER THE EMPLOYEES OF U.S.D. 512, SHAWNEE MISSION, IN THE POSITIONS OF PARENTS AS TEACHERS EDUCATORS ARE "PROFESSIONAL EMPLOYEES" AS DEFINED IN K.S.A. 72-5413 et seq.

⁵ K.A.R. 49-24-4 states:

"Determining appropriate units. Petitions for unit determination may be filed by a board of education, professional employee association, or a professional employee(s). In the event a board of education has recognized a professional employee organization, unit determination or clarification questions shall be governed by the memorandum of agreement unless the secretary determines that the agreement is unclear or that the agreement is silent with regard to the positions in question."

⁶ It should be noted, however, that a petition for unit clarification may only be filed by an employee organization currently recognized or certified as bargaining agent for the employees in the bargaining unit or by the employer involved. Neither a rival union nor individual employees are authorized to file such a petition. See Norris and Shershin, How to Take a Case Before the NLRB, §10.15, p. 273 (1992).

Definition of "Professional Employee"

First it must be determined whether the employees in the position of Parents as Teachers Educators are "*Professional employees*" as defined in K.S.A. 72-5413(c). If not, the inquiry need go no further. If they are found to be "*Professional employees*" then it must be determined whether each of the positions has a sufficient community of interest with the other positions in the existing unit to warrant inclusion.

K.S.A. 72-5413(c) defines "*Professional Employee*" to mean:

"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."

[5] As is apparent, K.S.A. 72-5413(c) sets forth two alternative means by which an individual may qualify as a "*Professional employee*" for purposes of the Professional Negotiations Act; first, certification by the state board of education, and second by employment in a professional, educational or instructional capacity.⁷ The first alternative is not applicable in this case. It refers to those individuals typically identified as primary and secondary education "*teachers*" in public and private school systems.

Of concern here is the second alternative; employment in a professional, educational, or instructional capacity. Since this

⁷ There is no question in this case that the individuals in question have met the requirement of being employed by a board of education.

portion of the statute is written in the disjunctive, it must be construed that the legislature viewed each "capacity" as having a separate and distinct meaning, with performance within any one being sufficient to confer the status of "Professional employee." Butler County Community College Education Ass'n v. Butler County Community College, Case No. 72-UCA-1-1993, p. 35 (June, 1994); Colby Community College Faculty Alliance v. Colby Community College, Case No. 72-UCA-4-1992, p. 20 (November, 1993). Unfortunately, the legislature failed to define "professional," "educational," or "instructional" to provide guidance as to what activities might fall within each term.

[6] Under K.S.A. 77-201, *Second*, the following rule is provided for statutory interpretation:

"Words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases, and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such peculiar and appropriate meaning."

"Professional," "educational," and "instructional" are not technical words and have no specially defined meaning in the Professional Negotiations Act. However, these words do have an accepted, definite, and clear meaning in the English language and should be construed according to the context and approved use of the language. State ex rel., v. Minneola Hospital District, 177 Kan. 238, 244 (1954). As explained by the court in State v. Personnet, 114 Kan. 680, 688 (1923) that would indicate "one ought

to be able to turn to his dictionary, encyclopedia or to reported cases defining the term."

[7] As the Secretary concluded in Colby Community College Faculty Alliance v. Colby Community College, Case No. 72-UCA-4-1992, p. 20 (November, 1993) one need not look beyond the statutes of the State of Kansas to find an acceptable definition for the term "professional." K.S.A. 75-4322(d) defines "Professional employee" to include 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 section, 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; or (3) attorneys-at-law or any other person who is registered by a board of registration or other public body established for such purposes under the laws of this state."

This definition from the Kansas Public Employer-Employee Relations Act provides a comprehensive test to determine whether one is employed in a "Professional" capacity, and has been adopted for use under the Professional Negotiations Act. Butler County Community College Education Ass'n v. Butler County Community College, Case No. 72-UCA-1-1993, p. 35 (June, 1994); Colby Community College Faculty Alliance v. Colby Community College, Case No. 72-UCA-4-1992, p. 20 (November, 1993).

[8] "Instructional capacity" means role of teacher. Riddel v. Department of Employment Sec., 436 A.2d 1086, 1088 (1981).

"Instruct" means "To furnish with Knowledge: Teach." Webster's II New Riverside University Dictionary, 1984, p. 633. Clearly this refers to a more structured form of learning in the traditional classroom setting, wherein the teacher is lecturing on a specific subject, and the students are listening and responding to questions. However, it can also encompass one-on-one methods of instruction. As noted in Claim of Dailey, 454 N.Y.S.2d 348, 349 (1982), a school social worker whose services consisted of counseling students regarding school-related problems which interfered with the learning process, generally pursuant to referrals by school personnel, was rendering services which were "instructional." Butler County Community College Education Ass'n v. Butler County Community College, Case No. 72-UCA-1-1993, p. 35 (June, 1994); Colby Community College Faculty Alliance v. Colby Community College, Case No. 72-UCA-4-1992, p. 20 (November, 1993).

[9] By contrast, "educational" is a broad and comprehensive term embracing mental, moral and physical education. Board of Trustees of Leland Stanford Jr. University v. Santa Clara County, 150 Cal.Rptr 109, 112 (1978); Zorach v. Clauson, 99 N.Y.S.2d 339, 343 (1950); Harbor Schools, Inc. v. Board of Appeals of Haverhill, 366 N.E.2d 764, 767 (1977); First Nat. Bank & Trust Co. v. Falligant, 67 S.E.2d 473, 475 (19). Education is not limited to knowledge acquired in the classroom, Wilhoit v. Fite, 341 S.W.2d 806, 816 (1960), and includes bodily as well as mental training.

McNair v. School Dist. No. 1 of Cascade County, 288 P. 188, 190 (1930). It has often been said that to educate means "to draw out" a person's talents as opposed to putting in knowledge or instruction. Webster's II New Riverside University Dictionary, 1984, p. 418. Against these definitions of "professional," "educational," and "instructional" the activities of the Parent as Teacher Educators must be compared to determine if the individual is a "professional employee."

The record shows that the work of the Parents as Teachers Educators is predominately intellectual and requires the use of discretion rather than being a routine, manual or mechanical undertaking. To become certified as a Parents as Teachers Educator, a person must complete a 36 hour, week long, instruction program at the National Parents As Teachers Center Institute in Missouri, and then do additional individual reading and research. Additionally, although Parents as Teachers Educators are not required by the State Board of Education to have a college degree, (Tr.p. 44), a Parents as Teachers Educator must have a minimum of 60 hours of college credit in a field relating to early childhood education, and have the demonstrated ability to work with young children and parents. A college degree is preferred according to the District's job description for a Parents as Teachers Educator. The fact that all eight of the Parents as Teachers Educators hired by the district had a college degree indicates the importance of

that training in obtaining the position.⁸ The District, through Gene Johnson, Associate Superintendent for Educational Services, admitted that a bachelor's degree would qualify as obtaining knowledge of an advanced type in a field of science or learning. Accordingly, the Parents as Teachers Educators appear to satisfy the "*professional capacity*" criteria of K.S.A. 72-5413(c).

The Parents as Teachers Educators additionally meet the "*instructional capacity*" criteria of K.S.A. 72-5413(c). While not undertaken in the classical structured form of learning in the traditional classroom setting, Parents as Teachers Educators do engage in one-on-one methods of instruction with the parents of children age zero to three on various aspects of their child's development, such as language, physical growth, and emotional growth. The Parents as Teachers Educators develop a lesson plan for instructing the parents with a special emphasis relative to the child's age and development, and copy materials on that topic for the parents. At the home, the Parents as Teachers Educators go over a lesson plan, similar to the lesson plans prepared by teachers in normal classroom teaching situations, with the parents, answer questions, and work with the child. The visit may then be followed up with a mailing of additional printed materials. The Parents as Teachers Educator program is viewed by Ms. Owen,

⁸ Two of the Parents as Teachers Educators had masters degrees - one in early childhood development and one in special education. The remaining six had degrees in early childhood development, human development, child psychology, and home economics. Three are certified to teach.

education consultant for early childhood issues for the Kansas State Board of Education, as an integral part of the educational process in the school district.

The evidence in the record supports a conclusion that Parents as Teacher Educators are employed by the District in a "professional or instructional capacity" and are therefore "professional employees" pursuant to K.S.A. 72-5413(c). As such, they are covered by the Professional Negotiations Act and entitled to membership in a negotiating unit.

ISSUE 3

WHETHER THE EXISTING BARGAINING UNIT OF PROFESSIONAL EMPLOYEES IS THE APPROPRIATE UNIT FOR INCLUSION OF THE POSITION "PARENTS AS TEACHERS EDUCATORS."

Community of Interest

A bargaining unit is a group of employees who may properly be grouped together for the purposes of participating in a Professional Negotiation Act ("PNA") election and for meeting and conferring relative to terms and conditions of employment. The Secretary's role in determining the appropriateness of a unit arises only when there is an unresolved disagreement over the proposed unit or when such a unit is contrary to the policies of the PNA. It is the Secretary's duty to determine whether the unit set out in a petition for unit determination or clarification and

amendment is "appropriate." It has been a long-standing rule that there is nothing which requires the bargaining unit approved by the Secretary be the only appropriate unit, or even the most appropriate unit; it is only required that the unit be an appropriate unit. Cf. Friendly Ice Cream Corp., 110 LRRM 1401 (1982), enforced, 705 F.2d 570 (1st Cir. 1983).

The source of the Secretary's authority to determine the scope of the proper unit is founded in K.S.A. 72-5420. Because of the number of factual considerations that must be taken into account in deciding upon an appropriate bargaining unit, the Secretary has not found it possible to enunciate a clear test. The legislature has provided some guidance in K.S.A. 72-5420;

"In each case where the question is in issue, the secretary shall determine, on the basis of the community of interest between and among 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."

Unit determinations are made based on all relevant factors on a case-by-case basis:

"In determining whether a group of employees constitutes an appropriate bargaining unit, the NLRB is not bound to follow any rigid rule. Since each unit determination is dependent on factual variations, the Board is free to

decide each case on an ad-hoc basis." Cf. Friendly Ice Cream Corp., 110 LRRM 1401 (1982), enforced, 705 F.2d 570 (1st Cir. 1983).

While the applicable statute and regulations enumerate specific factors to be considered in making the unit determination, the list is not exclusive, and the weight to be assigned each factor is within the sole discretion of the Secretary. Cf. Kansas Association of Public Employees v. Depart. of S.R.S., Rainbow Mental Health Facility, Case No. 75-UCA-6-1990 (February 4, 1991).

[10] The primary concern of any bargaining unit determination is to group together only those employees who have substantial mutual interests in wages, hours and other conditions of employment. Commonly referred to as the community of interests doctrine, it stands for the proposition that in making a unit determination, the Secretary will weigh the similarities and differences with respect to wages, hours and other conditions of employment among the members of the proposed unit, rather than relying solely on traditional job classifications.⁹ See Speedway Petroleum, 116 LRRM 1101 (1984),

While it is not necessary that all of the following elements be present, they are the "touchstones" frequently considered in determining whether inclusion of a classification in a unit is appropriate: functional integration; common supervision; skills

⁹ Note that it is the employees' rather than the employer's community of interests that is controlling. Thus, in General Dynamics Corp., 87 LRRM 1705 (1974), the Board's determination was based on the functions of the employees rather than their project assignments or the operations as a whole.

and job functions; interchangeability and contact among employees; work situations (where members of the proposed unit work in the same physical area, the Secretary is more likely to find a community of interests); working conditions (this criteria refers to the degree of similarity in working conditions of the members of the proposed unit as where employees are paid at an hourly rate, had the same starting time, punched the same time clocks, were subject to the same rules of conduct and disciplinary procedures were considered to have substantially the same conditions of employment); wages (a great disparity in wages between different job classifications may lead to a finding of separate interests); payment of wages (the frequency and manner of payment); fringe benefits (if all the members of the proposed unit receive the same fringe benefits, such as vacations, holiday pay, life insurance, hospitalization and medical insurance, and profit sharing benefits, there is a greater likelihood of a finding of common interests); geographical proximity (closely related to the concepts of work sites and interchangeability or contact among employees is the actual distance between the work facilities); history of bargaining; and employee preferences.

The record clearly demonstrates that lack of a community of interest between the Parents as Teachers Educators and the professional employees in the existing negotiating unit. Parents as Teachers Educators:

- a. Do not have to be state certified as do the faculty of the District;
- b. Are not full-time employees, but work part-time, approximately 23 hours per week. The program runs 42 weeks per year from the middle of August through the end of June;
- c. Would not qualify for the reduction in force provisions of the Master Agreement;
- d. Are not required to be evaluated like the rest of the faculty in the District;
- e. Are given paid holidays unlike the faculty of the District;
- f. Have no central building to which they report;
- g. Generally, have no contact with the K-12 students of the school district;
- h. Do not work regular hours each day but set their own hours to meet the needs of the families they serve. They may work evenings and Saturdays. Teachers on the Secondary level are required to maintain an eight hour per day work schedule, and elementary teachers must maintain a seven hour and forty-five per day work schedule;
- i. Do not work alongside the classroom teachers of the district;
- j. Do not attend faculty meetings in the district;
- k. Do not attend regularly scheduled in-service meetings for teachers in the district;
- l. Are not required to attend four night meetings which include Back-to-school night, Open House, PTA or PTC meetings, graduation or other meetings as the administration determines necessary to the educational program;
- m. Do not grade papers or evaluate the performance of students and do not give the parents they serve a grade as teachers do for their students;

- n. Do not undergo a three-year probationary period, and are at-will employees;
- o. Are not assigned to designated areas in a school building to supervise students coming or going, before and after class begins;
- p. Are not on the teacher's salary schedule. They are paid a range of hourly pay from \$9.56 per hour through \$12.85 per hour;
- q. Should interact with teachers, librarians and counselors in their school district, but no requirement to do so is included in the Parents as Teachers Educator job description;
- r. Follow the grievance procedure set forth in the district's Personnel Policies for Classified Employees manual rather than the grievance procedure set forth in the professional agreement;
- s. Are not required to be given a duty free lunch period;
- t. Are not granted tenure in the district; and
- u. Have their terms and conditions of employment governed by the district's Personnel Policies for Classified Employees manual.

As stated above, the primary concern of any bargaining unit determination is to group together only those employees who have substantial mutual interests in wages, hours and other conditions of employment. Weighing the similarities and differences with respect to wages, hours and other conditions of employment among the members of the existing negotiating unit and the Parents as Teachers Educators it becomes readily apparent that inclusion of the classification in the existing unit would not be appropriate. It is equally clear, however, that, given the unique characteristics of the Parents as Teachers Educators program and

positions, they would constitute a separate appropriate negotiating unit for purposes of professional negotiations under the Professional Negotiations Act.

ISSUE 4

WHETHER THE EMPLOYEES IN THE POSITION OF PARENTS AS TEACHERS EDUCATORS MUST BE GIVEN THE OPPORTUNITY TO VOTE ON THE QUESTION OF INCLUSION IN THE EXISTING PROFESSIONAL EMPLOYEES BARGAINING UNIT.

Having determined that there is a lack of community of interest between the Parents as Teacher Educator and the positions in the existing professional employees negotiating unit in the District so as to warrant including the position to that existing negotiating unit, the issue of whether the Parents as Teachers Educators should be given the opportunity to vote of the question of inclusion in the existing unit need not be decide.

ORDER

IT IS HEREBY ADJUDGED that the Secretary of Human Resources has the statutory authority to amend an existing negotiating unit of professional employees in each case where the question of the appropriateness of the negotiating unit is in issue.

IT IS FURTHER ADJUDGED that an employee's organization is not required to petition for recognition under K.S.A. 72-5416 before petitioning the Secretary of Human Resources pursuant to K.S.A. 72-5417.

IT IS FURTHER ADJUDGED that the Parents as Teachers Educators are employed by the District in a "professional or instructional capacity" and are therefore "professional employees" pursuant to K.S.A. 72-5413(c). As such, they are covered by the Professional Negotiations Act and entitled to membership in a negotiating unit.

IT IS FURTHER ADJUDGED that the position of Parents as Teachers Educator lacks sufficient community of interest with the teacher positions in the existing negotiating unit of professional employees that the inclusion of that position would be inappropriate.

IT IS THEREFORE ORDERED that the Association's Petition for Unit Clarification and Amendment be dismissed.

Dated this 15th day of May, 1995.



Monty R. Bertelli, Presiding Officer
Labor Conciliator III
Employment Standards & Labor Relations
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NOTICE OF RIGHT TO REVIEW

This Initial Order is your official notice of the presiding officer's decision in this case. The 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 June 2, 1995 addressed to: Secretary of Human Resources, Employment Standards and Labor Relations, 512 West 6th Avenue, Topeka, Kansas 66603.

CERTIFICATE OF SERVICE

I, Sharon Tunstall, Office Specialist for Employment Standards and Labor Relations, of the Kansas Department of Human Resources, hereby certify that on the 15th day of May, 1995, a true and correct copy of the above and foregoing Initial Order was served upon each of the parties to this action and upon their attorneys of record, if any, in accordance with K.S.A. 77-531 by depositing a copy in the U.S. Mail, first class, postage prepaid, addressed to:

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