

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

In the Matter of the Petition Filed
by Lyle J. Dixon for Unit Determination for Certain Employees of
Kansas State University

CASE NO: 75-UD-2-1981

UNIT DETERMINATION ORDER

Comes now this 22nd day of November, 1982, the above captioned matter for consideration by the Public Employee Relations Board.

APPEARANCES

The Petitioner appears by and through Mr. Lyle Dixon, Professor, Department of Mathematics, Kansas State University, Manhattan, Kansas.

The Faculty Senate appears by and through Mr. Heinz Bulmahn, President of the Faculty Senate, Kansas State University, Manhattan, Kansas and Mr. Richard Gallager, Department of Electrical Engineering, Kansas State University, Manhattan, Kansas.

The American Association of University Professors appears by and through Mr. Charles Reagan, Chairman of Unit Determination Committee, University of Kansas Chapter, Waters Hall, Manhattan, Kansas.

Kansas State University appears by and through its counsel, Mr. Richard Seaton, University Attorney, Kansas State University, Manhattan, Kansas, and Mr. Don Tarrant, Assistant Director of Education, Kansas State University, Manhattan, Kansas.

The Board of Regents appears by and through its counsel Mr. William Kauffman, 1418 Merchants National Bank Tower, Topeka, Kansas.

PROCEEDINGS BEFORE THE BOARD

1. Received a unit determination petition on April 16, 1981, from Lyle Dixon for certain unclassified employees at Kansas State University.
2. Filed petition for answer on April 20, 1981, with Duane Acker and John Conard.
3. Mr. Seaton called on April 27, 1981, on behalf of the University for a fourteen (14) day extension of the time limits on filing his answer to the petition.

75-UD-2-1981

4. Received a letter on April 28, 1981, from Mr. Seaton formally requesting fourteen (14) day extension of the time limits.
5. Jerry Powell granted Mr. Seaton's request for extension of time to file his answer on April 29, 1981.
6. Received a letter on May 12, 1981, from Mr. Reagan requesting intervenor status for the AAUP.
7. Received a joint letter on May 13, 1981, from Messrs. Hathaway and Bulmahn requesting intervenor status for the Faculty Senate.
8. Received University's answer to petition on May 13, 1981.
9. Sent letters to Mr. Reagan and Mr. Bulmahn on May 13, 1981, acknowledging receipt of their letters.
10. Sent letters to Mr. Dixon and Mr. Seaton on May 13, 1981, notifying them of the Motions to Intervene and granting them ten (10) days to officially object to the granting of the motions.
11. Received a letter on May 20, 1981, from Mr. Kauffman, Attorney for the Board of Regents, adopting Mr. Seaton's answer to the petition as their own.
12. Mr. Dixon telephoned on May 25, 1981 stating that he had no objection to the Faculty Senate's Motion to Intervene but he had reservations about the granting of intervenor status to the AAUP.
13. Received a letter on May 29, 1981, from Mr. Seaton stating that the University had no objections to either Motion to Intervene.
14. Intervenor status granted to AAUP and Faculty Senate on June 3, 1981, by Jerry Powell.
15. Received a request on June 11, 1981, from Mr. Bulmahn for a seven (7) day extension in which to file the Faculty Senate's answer to the petition. Jerry Powell granted both the Faculty Senate and AAUP an additional fourteen (14) days in which to answer the petition.
16. Received a request on June 16, 1981, from AAUP for a fourteen (14) day extension.
17. Received the Faculty Senate's answer to the petition on June 22, 1981.
18. Received the AAUP's answer to the petition on June 25, 1981.
19. Jerry Powell called Lee Ruggles on September 9, 1981, to set up a pre-hearing meeting.

20. Received a letter on September 28, 1981, from Lee Ruggles concerning the status of the informal meetings at Kansas State University.
21. Sent notice of pre-hearing to the parties on October 27, 1981.
22. Received a copy of a memorandum from Mr. Seaton to the parties on November 3, 1981, concerning the stipulations of the parties.
23. Received a letter on November 4, 1981, from Mr. Kauffman stating that he would be unable to attend the pre-hearing meeting of November 6, 1981.
24. Received a copy of a memorandum sent by Mr. Seaton to the parties concerning a change in the hearing date on November 5, 1981.
25. Held a pre-hearing meeting at Kansas State University on November 6, 1981.
26. Notice of formal hearing mailed to the parties on November 12, 1981.
27. Received a motion by the University to withdraw paragraph one of its answer on November 19, 1981.
28. Memorandum and order mailed to the parties notifying them of the Board's allowance of the University's motion on November 24, 1981.
29. Received the University's witness list on December 3, 1981.
30. Received the Faculty Senate's witness list on December 3, 1981.
31. Received Mr. Dixon's witness list (no witnesses) on December 4, 1981.
32. Received a copy of Mr. Seaton's request to add a witness to the University's witness list on December 7, 1981.
33. Received the AAUP's witness list (no witnesses) on December 10, 1981.
34. Formal hearing held on December 15, 16, and 17, 1981, and January 18, 1982.
35. Memo sent to the parties on March 29, 1982, informing them that copies of Volume I and II of the transcript were sent to Mr. Bulmahn.
36. Memo sent to the parties on April 14, 1982, informing them that copies of Volume III and IV of the transcript were sent to Mr. Bulmahn.
37. Received a letter on April 20, 1982, from Mr. Seaton acknowledging receipt of the full transcript.

38. Received Mr. Dixon's final brief and closing statement on June 1, 1982.

39. Received a request on June 16, 1982, from AAUP for an extension of time to file their final brief.

40. Received the Faculty Senate's final brief on June 17, 1982.

41. Received a notice on June 17, 1982, that the parties had agreed to a sixty (60) day extension for the filing of final briefs.

42. Memorandum sent on June 18, 1982, notifying the parties of the additional sixty (60) day extension of time to file briefs.

43. Received AAUP's final brief on June 19, 1982.

44. Received a copy of a memorandum on July 26, 1982, from Mr. Seaton concerning an agreement by the parties for an additional extension of fourteen (14) days to file briefs.

FINDINGS OF FACT

1. That there are eight (8) subject matter colleges in the University. (Volume I, T - 85)
2. That there are fifty-six (56) departments at Kansas State University. (Volume I, T - 85)
3. That the provost is responsible for the coordination of the teaching, research and extension functions. (Volume I, T - 86)
4. That every college is involved in research and extension endeavors as well as teaching. (Volume I, T - 88)
5. That split appointments for employees are common at land grant university such as Kansas State University. (Volume I, T - 89)
6. That split appointments may provide for an employee's salary to be paid from the research, extension, or teaching budget. (Volume I, T - 89)
7. That federal funds are a very small part of the teaching budget. (Volume I, T - 99)
8. That the Kansas Board of Regents has the ability to shift personnel from one salary source to another. (Volume I, T - 108)
9. That the current interpretation of the Faculty Handbook with regard to the paragraph entitled "Eligibility for Professorial Rank" is that those unclassified employees who are not affiliated with an academic department are not eligible for the rank of Assistant, Associate or full Professor. (Volume IV, T - 94)
10. That at Kansas State University academic rank includes Assistant Instructor and all ranks above. (Volume IV, T - 112)
11. That there are two types of tenure which are granted to employees at Kansas State University: 1. Academic tenure and 2. Administrative tenure. (Volume I, T - 169)
12. That the Regent policy calls for the earning of tenure to be restricted to individuals engaged in teaching, research or extension. (Volume I, T - 140)
13. That there are inconsistencies with the University's use of academic rank. (Volume I, T - 142)
14. That there are three types of appointments:
 1. Temporary - No expectation of employment beyond a specific stated period.
 2. Permanent - Non-tenured - More rights than temporary - notice of termination must be given.

3. Permanent - Tenured - Termination for cause or financial exigency.

(Volume I, T - 152, 153)

15. That at least one difference between academic tenure and administrative tenure is that there is extensive peer review involved in the granting of academic tenure while such peer review is not necessarily utilized in the granting of administrative tenure.

(Volume IV, T - 95, 96)

16. That the primary purpose of academic tenure is not for job security but for academic freedom. (Volume IV, T - 98)

17. That academic freedom would be essential to the functioning of faculty in teaching, research and extension. (Volume IV, T - 99)

18. That Assistant Instructors, Research Associates and Research Assistants are not eligible for election to the Faculty Senate and do not participate in the election process of the Faculty Senate.

(Volume I, T - 52, 55)

19. That Assistant Instructor, Research Associate and Research Assistant are nonpermanent positions. (Volume I, T - 52)

20. That Assistant Instructors, Research Associates and Research Assistants do not accumulate contracts toward tenure. (Volume I, T - 53)

21. That degree credential requirements for Assistant Instructor, Research Associate and Research Assistant are often less than for other ranks. (Volume I, T - 53)

22. That appointments of Assistant Instructor, Research Associate and Research Assistant are sometimes different than other ranks. (Volume I, T - 54)

23. That Assistant Instructor, Research Associate and Research Assistant are not evaluated on the same merit system as others.

(Volume I, T - 55-66)

24. That Assistant Instructor and Research Associate can utilize the General Faculty Grievance Board in the same manner as a full Professor. (Volume I, T - 57)

25. That the new Faculty Handbook, page 115, provides utilization of the grievance board only for Research Associates, not for Research Assistants and Assistant Instructors. (Volume I, T - 58)

26. That permanent ranks are those of Professor, Associate Professor, Assistant Professor and Instructor. (Volume I, T - 59, 60 Faculty Handbook page 16)

27. That nonpermanent ranks are those of Assistant Instructor, Research Associate, Research Assistant and below. (Volume I, T - 60, Faculty Handbook page 16)

28. That salary increases for Research Associate, Research Assistant and Assistant Instructor are made on the same type of merit evaluation award as higher ranks rather than across the Board. The merit evaluation is also less formal than in higher ranks. (Volume I, T - 69-70)

29. That Research Associates and Research Assistants are paid more than graduate students. (Volume I, T - 71)

30. That some personnel policies of the University are applicable to the Research Associate and Research Assistant. (Volume I, T - 72)

31. That Research Associates and Research Assistants are funded through experiment station budgets and are recruited through the departments. A position is developed by a department and a search committee advertises and fills the position through the same mechanism as for higher ranks. (Volume II, T - 8)

32. That the Research Associates and Research Assistants referenced in finding number thirty-one (31) are eligible for the same fringe benefits as those in higher ranks. (Volume II, T - 10)

33. That the Research Associates funded through experiment stations carry out aspects of a research program as would other faculty and would normally hold a Masters or a Ph.D. Degree. (Volume II, T - 11)

34. That some Research Associates are engaged in routine research while others are engaged in original research and hold either a B.S. or a Masters Degree. (Volume II, T - 11-12)

35. That both state and federal funds might be utilized on the same research project. (Volume II, T - 13)

36. That the Business and Procedure Manual states that Research Associates and Research Assistants have no option between nine (9) month pay and twelve (12) month pay. (Volume II, T - 17, Petitioner's Exhibit No. 1)

37. That at Kansas State University Research Assistants, Research Associates are not eligible for sabbatical leave. (Volume IV, T - 119)

38. That about one half (1/2) of the Research Assistants funded by the experiment stations are working toward a degree at Kansas State University. (Volume II, T - 26)

39. That Research Assistants quite often take courses related to the research problem on which they are working. (Volume II, T - 28)

40. That University expectations for publication are not as great for Research Assistants as they are for other faculty members. (Volume II, T - 29)

41. That Research Associates, Research Assistants and Assistant Instructors do not normally participate in the selection of department heads or in the development of curriculum. (Volume I, T - 184)

42. That it is possible for a Research Associate or Research Assistant to find himself/herself in the position of receiving a course grade from another faculty member. (Volume I, T - 186)

43. That the third year of employment and beyond may count toward tenure for an Assistant Instructor. (Volume I, T - 187)

44. That the University does not award tenure to the rank of instructor. (Volume I, T - 154)

45. That Research Associates, Research Assistants and Assistant Instructors who are not designated "temporary" are "permanent-non tenured". (Volume I, T - 154-155)

46. That pay increases for all ranks of Research Associate, Research Assistant, Assistant Instructor and above are determined by merit. (Volume I, T - 155)

47. That all Kansas State University faculty including Research Associates, Research Assistants and Assistant Instructors are eligible for many of the same University benefits as those in higher ranks. Those benefits include things such as; credit union, parking permits, travel loans, social club, library privileges, and discounts on athletic tickets. (Volume I, T - 158)

48. That the extension function is largely a teaching function, although less formal than classroom teaching. (Volume I, T - 116)

49. That those faculty who are fifty percent (50%) or more funded by the Cooperative Extension Services budgeted funds have the privilege of participating in federal civil service. (Volume I, - 106)

50. That funds cannot be transferred from the extension budget to the instructional budget. (Volume I, T - 106)

51. That Cooperative Extension Services are funded by federal, state and county funds. The federal funds are treated as University funds. (Volume I, T - 112)

52. That there are five (5) Agricultural Experiment Stations. (Volume I, T - 125)

53. That individuals employed at the Agricultural Experiment Stations carry an academic rank. (Volume I, T - 126)

54. That county extension agents do not carry an academic rank. (Volume I, T - 122)

55. That there are eleven (11) experimental fields. (Volume I, T - 126)

56. That experimental fields exist to do research. (Volume I, T - 128)

57. That extension offices exist to coordinate teaching programs. (Volume I, T - 128)

58. That there are five (5) administrative units: 1) Community Resource Development, 2) Extension Information, 3) 4-H and Youth Programs, 4) Home Economics Programs, 5) Radio, television and film, which operate under the Director of Cooperative Extension located on campus. (Volume I, T - 132)

59. That the five (5) administrative units referenced in finding of fact number fifty-eight (58) are not attached to an academic unit. (Volume I, T - 132, 181)

60. That persons in the administrative units referenced in finding of fact number fifty-eight (58) hold an academic rank. (Volume I, T - 133)

61. That extension specialists carry the same appointments as teaching faculty and are subject to rank promotion. (Volume I, T - 134)

62. That extension faculty participate fully in Faculty Senate governance. They serve on standing committees, faculty affairs, academic affairs, and other ad hoc committees as representatives.

(Volume II, T - 131)

63. That one category of extension faculty is the state extension faculty. These are faculty that are based on the campus and are responsible for state-wide programs in their subject matter area of expertise. (Volume II, T - 132)

64. That there are approximately one hundred twenty-four (124) state extension faculty. (Volume II, T - 133)

65. That there are area faculty based in area extension offices in Chanute, Hutchinson, Garden City, Colby and Manhattan. (Volume II, T - 133)

66. That the extension faculty shares common office space with the teaching and research faculty and in so doing are closely involved with the total departmental program. (Volume II, T - 133)

67. That all of the state and area faculty report to the academic department heads who are responsible for their evaluation and coordination. (Volume II, T - 133)

68. That extension faculty members participate in discussions concerning tenure and promotion for faculty members funded in research and instruction. (Volume II, T - 134)

69. That people who are employed with extension appointments of five-tenths (.5) time or more are mandated to participate in federal retirement programs. (Volume II, T - 142)

70. That extension faculty members of five-tenths (.5) time or more participate in federal health benefit programs, disability plans, life insurance program, and other federal programs. (Volume II, T - 143, 144, 145)

71. That extension faculty members can and do participate in curriculum development and attend faculty meetings. (Volume II, T - 154)

72. That the State of Kansas is divided into five (5) administrative areas or units for extension purposes. There are five (5) area offices located in northwest Kansas at Colby, southwest Kansas at Garden City, south central Kansas at Hutchinson, southeast Kansas at Chanute, and the northeast area is located off campus in Manhattan. (Volume II, T - 163)

73. That each of the five (5) area extension offices are supervised by area directors. (Volume II, T - 164)

74. That the Kansas State University extension faculty salaries

are appropriated on a merit basis following the same guidelines as those for the academic teaching faculty. (Volume II, T - 178)

75. That the Kansas State University extension faculty hold academic rank and are granted tenure or are eligible for tenure. They are considered for promotion under the same basic guidelines, methods and criteria as other Kansas State University faculty. (Volume II, T - 178)

76. That the Kansas State University extension faculty may present guest lectures and seminars in classrooms on the campus. They may also serve as members of the Faculty Senate, Faculty Affairs Committee and the Faculty Grievance Board. (Volume II, T - 179)

77. That there are county extension agents in each of the one hundred five (105) Kansas counties. (Volume III, T - 6)

78. That county agents' budgets and salaries under present state law, are arrived at by a county extension council composed of twenty-seven (27) members in most counties. (Volume I, T - 112)

79. That it is quite possible for county agents to be treated differently, with respect to salary and budget, from one county to another. (Volume I, T - 112)

80. That the County Extension Council, located in each Kansas county, is organized under the State Extension Council law. The Council consists of twenty-seven (27) individuals that are elected in the counties, nine (9) of the members are representing Agricultural, nine (9) of the representatives are from Home Economics and nine (9) members represent 4-H and Youth. This council is elected by the people in the county. (Volume III, T - 7-8)

81. That the County Extension Council elects a nine (9) member group called the Executive Board which meets on a monthly basis to provide guidance to the County Extension Program in that particular county. (Volume III, T - 8)

82. That the County Extension Council, via the Executive Board, is ultimately responsible for the programs and for the budgets, and is involved in the employment of the County Extension staff. (Volume III, T - 8)

83. That the County Extension Executive Board meets monthly to approve the payment of bills and to develop the annual budget for the extension program in that particular county. (Volume III, T - 9)

84. That after the budget has been developed, the Executive Board Chairman, the Area Director and the Commissioners in that county meet as a body to approve the budget. This procedure is set by statute. (Volume III, T - 9)

85. That the County Extension Council has been determined to be a legal entity. (Volume III, T - 9)

86. That there exists a memorandum of understanding agreement in each County Extension Council which specifies the responsibility of the Division of Extension, the County Extension Council and the joint responsibility of the two. (Volume III, T - 10)

87. That there exists a memorandum of understanding between Kansas State University and the United States Department of Agricultural. (Volume III, T - 11)

88. That the members of the County Extension Council serve three (3) year terms. (Volume III, T - 13)

89. That each of the five (5) area extension offices are staffed by an Area Director and a number of extension specialists. (Volume III, T - 18)

90. That the subject matter specialists located in the area offices are recruited and hired by the Area Director and the department head located on campus acting jointly. The Area Director and the department head located on the campus also have the joint responsibility of evaluating extension specialists located in the area office for the purposes of merit-salary increases, and/or the attainment of tenure by the specialists. (Volume III, T - 18)

91. That the County Extension Agents are joint employees of the County Extension Council and the Kansas State University Division of Extension. (Volume III, T - 28)

92. That if a vacancy occurs in a county agent position, the County Extension Council and the Area Director (representing the Director of Extension at Kansas State University) act jointly in the recruitment process, the interviewing process, and the selection process of the replacement. (Volume III, T - 28)

93. That the county agents are supervised jointly by the County Extension Council and the Director of Extension. This procedure is specified by statute. (Volume III, T - 29)

94. That the recruitment and filling of a position for a county agent differs from that of filling a position for a state and area specialist in that the search, interview and final determination is made by the department head or unit head and the Division of Extension. (Volume III, T - 30, 31)

95. That the employment agreement for a county agent is signed by the employee, the Executive Board Chairperson, and the Area Director. (Volume III, T - 32)

96. That once employed, county agents are subject to the identical policies which apply to state and area specialists as set out in the Extension Handbook. (Volume III, T - 33)

97. That the annual employment agreement for county agents is different than the employment document used for area and state specialists. (Volume III, T - 34)

98. That the evaluation process for county agents is similar to the process which is utilized for state and area specialists except that the Area Director confers with the County Extension Council Executive Board to discuss how any problems might be resolved. (Volume III, T - 35-36)

99. That County Extension Agents are paid in a different manner than other Kansas State University employees in that they receive two paychecks. They receive a state warrant for that portion of their salary which comes from state and federal funds and they receive a check from the county treasurer for that portion of their salary which has been approved and is included in the County Extension budget. (Volume III, T - 36)

100. That the salary payment arrangement referenced in finding of fact number ninety-nine (99) is set by statute. (Volume III, T - 37)

101. That on the average about thirty percent (30%) of the County Extension Agent's salary comes from state and federal funds. (Volume III, T - 38)

102. That the fringe benefits package for County Extension Agents is identical to the fringe benefits package available for state and area extension specialists. (Volume III, T - 38)

103. That the employer, Kansas State University, pays the employer's share for the fringe benefit programs that have a federal aspect. (Volume III, T - 42)

104. That the County Extension Agents sometimes participate on search committees for new employees. (Volume III, T - 44)

105. That county agents are not transferred from one county to another county but may apply for a vacant position and be considered by the appropriate employing individuals. (Volume III, T - 49)

106. That many County Extension Agents will deliberately prepare themselves, over a period of time through graduate work, to move into area or state extension positions. (Volume III, T - 50)

107. That county agents are required to hold a minimum of a Bachelor's Degree. (Volume III, T - 55)

108. That county agents are not assigned an academic rank at Kansas State University. (Volume III, T - 55)

109. That none of the county agents currently employed at Kansas State University hold a Ph.D. (Volume III, T - 55)

110. That county agents would not be invited to participate in a general faculty meeting at Kansas State University. (Volume III, T - 55)

111. That approximately seventy percent (70%) of a County Extension Agent's salary comes from the county via an appropriation made by the particular County Commissioners. (Volume III, T - 57)

112. That according to the contract or memorandum of agreement entered into between the state and the county for County Extension Services, if the County Commissioners refuse to appropriate the necessary funds needed to fund a county agent's budget, the county would have to evaluate their services on the basis of a financial exigency situation. (Volume III, T - 58)

113. That one sentence in the memorandum of agreement or contract between the county and the state for state extension agents' salaries states, "Termination for reason of bona fide financial exigency shall be effective at the end of the current contract". (Volume III, T - 58)

114. That county agents can take three (3) weeks of study leave with pay while other employees of the University instructional or extension service may not utilize this provision. (Volume III, T - 62)

115. That if the County Extension Council decides that they no longer want to employ a particular county agent they can initiate the

process for that county agent's removal. (Volume III, T - 64)

116. That there are a few extension employees at Kansas State University who have corresponding academic instruction duties.

Volume III, T - 67)

117. That county agents are the only employees or group of employees who are not stipulated out of the appropriate unit and who are joint employees of the University and some other entity. (Volume III, T - 81)

118. That county agents do not gain academic tenure and that they are employed on an annual basis. (Volume III, T - 84)

119. That county agents are not listed by name in the University budget. (Volume III, T - 85)

120. That county agents do not engage in research as do other Kansas State University employees in extension, research or academic instruction. (Volume III, T - 93)

121. That the salaries for county agents are not distributed strictly on the basis of merit. (Volume III, T - 96)

122. That fringe benefits for county agents are similar to fringe benefits for other Kansas State University employees by virtue of the memorandum of understanding between the Executive Board in a county and the University. (Volume III, T - 107)

123. That both the Executive Board and the Director of Extension must approve the transfer of funds from one budgeted item to another within the county agent's budget. (Volume III, T - 110)

124. That of the fourteen (14) faculty members in the Biochemistry Department only three (3) are budgeted five-tenths (.5) time or more to instructional pursuits. (Volume II, T - 38)

125. That the mechanism, through which the fourteen (14) faculty members in the Biochemistry Department receive salary and working conditions, is the same for all. (Volume II, T - 40)

126. That of the fourteen (14) faculty members in the Biochemistry Department all but one (1) have received their funding from both the instruction and research budgets. (Volume II, T - 45)

127. That all of the faculty in the Biochemistry Department funded by organized research work on the Kansas State University campus. (Volume II, T - 47)

128. That the source of funding will have no effect at all on the vulnerability of individual faculty members in case of financial

exigency. (Volume II, T - 50)

129. That one of the faculty members in the Biochemistry Department who is budgeted at two-tenths (.2) instructional has a significantly heavier teaching load than the other Biochemistry Department faculty members. (Volume II, T - 52)

130. That the head of the Biochemistry Department has the authority to shift an individual faculty member's appointment from organized research to instruction depending upon the nature of the duties being performed by the individual faculty member. (Volume II, T - 57)

131. That joint appointments for faculty members in the College of Agriculture change from year to year with regard to the tenths time of teaching and tenths time of research. (Volume II, T - 64)

132. That some of the research projects in the College of Agriculture are joint projects of faculty members located in different geographical locations around the State of Kansas. (Volume II, T - 65)

133. That articles written for various publications by members of the faculty in the Agricultural Department are many times cooperatively written by faculty members located on the Kansas State University campus and other faculty members located at various locations around the State of Kansas. (Volume II, T - 66)

134. That matters of rank and tenure for individuals who work in the Manhattan area are voted on by station heads that may live in Garden City, Colby, Ft. Hays, or be located at other stations. (Volume II, T - 76)

135. That in the Department of Economics under the College of Agriculture, a faculty member's appointment may vary from year to year. That variance in the split appointment will reasonably reflect the tenths time teaching and tenths time researching. (Volume II, T - 85)

136. That there are eleven (11) experimental fields which are managed through an academic department located on the campus. Nine (9) of the experimental fields are managed through the Agronomy Department and two (2) through the Horticulture Department. (Volume II, T - 97)

137. That the branch stations function with a branch station head, therefore, they are functioning as a department independent of the rest of the departments located on the campus. (Volume II, T - 97)

138. That there are thirty-two (32) faculty members located at the branch stations. (Volume II, T - 98)

139. That there are faculty members at the branch stations who have their academic home in departments on the Kansas State University campus. (Volume II, T - 89)

140. That the thirty-two (32) faculty members located in the branch stations have the same academic training as any of the teachers, researchers, or extension faculty in any of the Agricultural Departments. (Volume II, T - 100)

141. That the thirty-two (32) faculty members at the branch stations are screened for employment in the same manner as those located on campus and that they are subject to the same appointment procedures. (Volume II, T - 100)

142. That the thirty-two (32) faculty members at the branch stations are eligible for promotion, are evaluated, and are eligible for tenure under the same procedures and standards as all faculty members located on the Kansas State University campus. (Volume II, T - 100)

143. That the branch stations are funded by approximately twelve percent (12%) from the federal government via the Hatch Act formula, approximately forty-four percent (44%) of the funds come from the state legislature and the balance of approximately forty-four percent (44%) is from fee income and other grants. (Volume II, T - 109)

144. That Kansas State University faculty members in academic departments review branch station faculty members status for tenure and promotion. (Volume II, T - 118)

145. That none of the experimental station organized research personnel are on federal retirement plans. (Volume II, T - 124)

146. That the employees at the Ft. Hays experiment station have essentially the same degrees and training and they perform research functions similar to the academic personnel on campus. (Volume II, T - 124-125)

147. That employees at the branch stations can transfer to a like position on the Kansas State University campus. (Volume II, T - 128)

148. That one paragraph of the new draft of the Faculty Handbook states, "eligibility for Professorial Rank - Unclassified personnel (in student-service departments or in other support units of the University) who are not associated with an academic department or unit are not eligible for professorial rank. Because of tradition, however, academic rank is used for Library and Extension faculty." (Volume IV, T - 32, Exhibit number

149. That the University support units, i.e., library - computing center, etc. provide services for the extension, research and teaching functions. (Volume I, T - 92)

150. That faculty members in support units do not acquire academic tenure but are eligible for administrative tenure. (Volume IV, T - 21,22)

151. That most of the unclassified staff of the various support units who hold academic rank are granted that academic rank without a designation of a discipline. (Volume IV, T - 93)

152. That academic advisors advise undergraduate students in their first years of school or at least until such undergraduate students select a major. After undergraduate students select a major they go to a specific department where a faculty member of that department serves as their advisor. (Volume IV, T - 26)

153. That the computing center assists the academic departments in numerous manners. They maintain the computer terminals, provide manuals for the use of the computer and provide statistical packages. (Volume IV, T - 45-46)

154. That in the Office of University Relations there are approximately five (5) unclassified positions. (Volume IV, T - 61)

155. That the major goal of the unclassified positions in University Relations is to describe the Kansas State University academic programs to the public. (Volume IV, T - 62)

156. That the unclassified positions in University Relations would not generally have doctoral degrees. (Volume IV, T - 62)

157. That the unclassified positions in the Office of University Relations carry the academic rank of instructor and they are evaluated for salary increase purposes on the basis of their performance. (Volume IV, T - 63)

158. That there are three (3) unclassified positions in the office of Architectural Services. (Volume IV, T - 63)

159. That the unclassified individuals in the Office of Architectural Services are involved in planning of facilities and landscape of areas of the campus. (Volume IV, T - 63)

160. That some of the unclassified employees in the Office of Architectural Services give lectures in the classroom although they are not responsible for the total course. (Volume IV, T - 64)

161. That there are three (3) unclassified positions in question within the Educational Resources unit. (Volume IV, T - 66)

162. That the unclassified individuals within the Educational Resources unit hold academic rank and earn tenure as administrators. Two of the individuals currently employed in the Educational Resources support unit have doctoral degrees. Both of these individuals teach credit courses through the College of Education, however their full-time responsibilities are to be of help to faculty in either designing courses or improving teaching techniques. (Volume IV, T - 67)

163. That one of the tasks of the Educational Resources Department is to provide a teaching evaluation system which is utilized by faculty members in academic departments to evaluate their own teaching methods. (Volume IV, T - 43)

164. That the two (2) individuals holding doctoral degrees who are employed within the Education Resources unit hold joint appointments with the College of Education. (Volume IV, T - 67)

165. That there is only one (1) position within the support unit entitled Printing Service. That position is called Director of Printing and, therefore, should be eliminated from the appropriate unit by title. (Volume IV, T - 69)

166. That there are six (6) or seven (7) unclassified positions within the diagnostic laboratory. (Volume IV, T - 70)

167. That the diagnostic laboratory is a support unit within the College of Veterinary Medicine. Veterinarians located all over the State of Kansas send tissue samples and other materials to the diagnostic laboratory for diagnostic examination. (Volume IV, T - 70)

168. That the unclassified people working within the diagnostic laboratory earn academic tenure. It is common for the people in this unit to hold academic appointments in other departments such as pathology or microbiology. (Volume IV, T - 71)

169. That the individuals working within the diagnostic laboratory normally hold Ph.D. degrees or D.V.M. degrees. These individuals are expected to publish as part of their duties. (Volume IV, - 72)

170. That the Kansas Artificial Breeding Service Unit is a part of an academic department at Kansas State University. (Volume IV, T - 73)

171. That there are approximately eight (8) unclassified positions within the Kansas Artificial Breeding Service Unit. (Volume IV, T - 73)

172. That unclassified staff members of the Artificial Breeding Service Unit hold academic rank in the Department of Animal Science and Industry. (Volume IV, T - 73)

173. That the unclassified employees within the Kansas Artificial Breeding Service Unit are evaluated for merit-salary increases in the same manner as other unclassified personnel. (Volume IV, T - 74)

174. That there are approximately thirty-one (31) or thirty-two (32) unclassified personnel in the library support unit. (Volume IV, T - 54)

175. That the faculty members in the library support unit in general hold a professional Master's Degree in Library Science. Often they have a second Master's Degree but rarely do they have a doctorate. (Volume IV, T - 54)

176. That all faculty members in question who are employed in Library Science hold ranks ranging from instructor to professor. (Volume IV, T - 55)

177. That the librarians are responsible for running the entire library. They are responsible for all handling of the acquisitions, and determining how they should be catalogued so they will be easily accessible to the users. At times they conduct "searches" for faculty or students. (Volume IV, T - 54)

178. That the unclassified personnel in Library Science are evaluated for merit-salary increase purposes. (Volume IV, T - 55)

179. That the librarians are engaged in instruction of a noncredit type, concerning the Library and the use of its procedures, for small groups or individual students. They also offer a one credit course each semester through the College of Education. (Volume IV, T - 56)

180. That the unclassified employees working within the Library tend to have a more regular schedule of defined hours than the rest of the academic faculty on campus. (Volume IV, T - 75)

181. That courses offered by the Library are through the College of Education. (Volume IV, T - 76)

182. That unclassified employees within the Computing Center are not subject to teacher evaluation and/or publication requirements for a determination of merit pay increases as are other faculty members within academic departments. (Volume IV, T - 77)

183. That no one within the University Industrial Relations unit except the Director holds a Doctoral Degree. (Volume IV, T - 78)

184. That the unclassified staff in the Computing Center earn administrative tenure. (Volume IV, T - 81)

185. That, although the library staff is awarded administrative tenure, there is a plan to change to the awarding of academic tenure to library staff. (Volume IV, T - 85)

186. That of the six (6) Regents' institutions, all but one (1) awards academic tenure to librarians. (Volume IV, T - 85)

187. That, although unclassified employees within the Computing Center hold academic ranks, they are probably not eligible for promotion to higher ranks. (Volume IV, T - 88)

188. That unclassified employees of the diagnostic lab would be included within the appropriate unit proposed by the AAUP. (Volume IV, T - 131)

189. That there are approximately thirty (30) unclassified positions within the Continuing Education Program at Kansas State University. (Volume IV, T - 134-135)

190. That of the thirty (30) unclassified positions within the Division of Continuing Education only two (2) staff members hold split appointments and are therefore attached to an academic department. (Volume IV, T - 167)

191. That the Division of Continuing Education is structured into five (5) principle subunits which are designated as sections and function similarly to departments in academic colleges. The first section is Academic Outreach, which is responsible for the off-campus credit program conducted by the University. The second section is the conference section which is responsible for on-campus conferences, non-

credit programs and institutes. The third section is the sponsored project section which is responsible for the administration of externally-funded grants and contracts awarded to the University for off-campus purposes which are not related to agriculture, the College of Agriculture or the Division of Cooperative Extension. The fourth section is the developmental section of the division which is responsible for program development, marketing and public relations of the Division of Continuing Education programs. A fifth section in the division serves as the physical agent (the Regents' Continuing Education Network) which is a telephone instructional system operated by the six (6) Regent institutions. There are no contested unclassified positions within the fifth unit. (Volume IV, T - 135-136)

192. That the thirty-one (31) unclassified positions within the Continuing Education Division are evaluated under written guidelines which have existed within the Division since 1977. (Volume IV, T - 137)

193. That within the Continuing Education Unit, unclassified staff members hold academic rank. (Volume IV, T - 138)

194. That within the Continuing Education Unit there are no faculty members holding a rank above instructor who have not had this rank cleared and granted by an academic department or college.

(Volume IV, T - 139)

195. That unclassified staff members in the Continuing Education Division are eligible for academic tenure if they hold academic appointments in academic departments. All other personnel in the division who are not affiliated with an academic department are eligible for the acquisition of administrative tenure. (Volume IV, T - 140)

196. That approximately seventeen percent (17%) of the unclassified staff of the Continuing Education Unit "hold the normal requirements for appointments in academic departments". (Volume IV, T - 165)

197. That the unclassified staff of the Continuing Education Department are subject to the same general grievance procedure that is available to the balance of the University personnel. (Volume IV, T - 143)

198. That approximately five (5) of the thirty (30) unclassified staff members in the Division of Continuing Education teach in academic departments. (Volume IV, T - 143)

199. That the Division of Continuing Education is somewhat similar in nature to the Division of Cooperative Extension in that they assist in the Extension of University capabilities away from the Kansas State University campus. The Division of Continuing Education provides this Extension assistance in nonagricultural sectors or segments of the State. (Volume IV, T - 146)

200. That the Division of Continuing Education is funded in part from State resources and in part from tutitions and fees, fee income generated by the program, and grants and contract money. (Volume IV, T - 156)

201. That the Division of Continuing Education offers some non-credit courses. The division does not, however, in and of itself award academic credit. (Volume IV, T - 157)

202. That the Division of Continuing Education sometimes offers courses for academic credit, through an academic department, which are self-supporting in nature. The division's involvement in such courses, however, is a matter of administrative involvement as opposed to any direct involvement in the instruction or teaching of those courses. (Volume IV, T - 158)

203. That a majority of the staff members of the Division of Continuing Education are designated as temporary positions. (Volume IV, T - 180)

204. That approximately thirty percent (30%) of the total funding available to the Division of Continuing Education during any fiscal period comes from regular State or University resources. (Volume IV, T - 181)

205. That there are approximately fourteen (14) unclassified positions within the Student Health Service support unit which are in contention in this unit determination case. (Volume IV, T - 183)

206. That of the fourteen (14) unclassified positions within the Student Health Service which are under consideration in this unit determination matter, ten (10) are medical doctors. (Volume IV, T - 183)

207. That the four (4) unclassified positions within the Student Health Services who are not medical doctors are comprised of: two (2) people each in the rank of instructor, one (1) serving as a physician's assistant and one (1) serving as a health educator, an administrative assistant and an assistant professor who is a clinical psychologist

working in the mental health area. (Volume IV, T - 183)

208. That the ten (10) medical doctors within the Health Center hold the following ranks: one (1) person is a full professor, eight (8) people are associate professors, and one (1) person is a consulting psychiatrist. (Volume IV, T - 185)

209. That the Student Health Service has two major areas of responsibility. One is the treatment of disease and the other is the prevention of illness through preventive programming. (Volume IV, T - 184)

210. That the Student Health Center is financed through student fees. Each student enrolled in the University is charged a health service fee which they pay each semester. (Volume IV, T - 186)

211. That two (2) individuals on the staff at the Health Center teach courses for credit at the University. (Volume IV, T - 187)

212. That the two (2) individuals employed within the Student Health Center who teach courses for credit at the University do not hold joint appointments in an academic department. (Volume IV, T - 187)

213. That the staff of the Student Health Center is available when requested to go into classrooms to make presentations in areas related to instructional matter. (Volume IV, T - 188)

214. That there are approximately fourteen (14) unclassified positions within the Center of Student Development which are in contention in this unit determination hearing. (Volume IV, T - 190)

215. That there are four (4) subunits located within the Center for Student Development:

1. The Counselling Center is a subunit;
2. Program Development and Evaluation is a subunit;
3. Foreign Student Office is a subunit; and
4. Cultural and Minority programs is a subunit.

(Volume IV, T - 190)

216. That the fourteen (14) unclassified positions within the Center for Student Development hold academic rank. The six (6) people in the Counseling Center hold the following rank; one (1) person is a full professor, one (1) person is an associate professor, two (2) people are assistant professors and two (2) people are instructors. In the subunit of Program Development and Evaluation, there is one (1)

associate professor and one (1) person with the rank of instructor; within the Foreign Student Office, one (1) person holds the rank of assistant professor; within the unit of Cultural and Minority Affairs there is one (1) person holding the rank of assistant professor, two (2) instructors and two (2) assistant instructors. (Volume IV, T - 191)

217. That the unclassified staff within the Center for Student Development are eligible for promotion in rank. (Volume IV, T - 191)

218. That a policy was adopted in 1975 whereby academic rank could be obtained by staff members in the Center for Student Development with the concurrence of the academic department. (Volume IV, T - 191)

219. That there are six (6) staff members in the Center for Student Development holding Ph.D. Degrees. (Volume IV, T - 192)

220. That there are three (3) people within the Center for Student Development holding joint appointments with other departments. (Volume IV, T - 192)

221. That the unclassified people within the subunit of the Counselling Center provide counsel relating to academic problems at Kansas State University. (Volume IV, T - 194)

222. That the unclassified staff members working within the subunit of the Counselling Center offer a program through the College of Education relating to study skills. This course is offered for supplemental credit. (Volume IV, T - 194)

223. That the unclassified staff of the subunit Counselling Center handle the administration of several major graduate school examinations. (Volume IV, T - 196)

224. That one of the two (2) unclassified staff members within the subunit of Program Development and Evaluation holds a Master's Degree and the other holds a Ph.D. (Volume IV, T - 196)

225. That the one (1) unclassified staff member working within the subunit Foreign Student Office holds an academic rank of assistant professor and holds a Master's Degree. This individual is a student advisor working extensively with foreign students coming to the institution. (Volume IV, T - 198)

226. That there are two (2) federally funded programs within the subunit of Cultural and Minority Affairs. These programs are oriented toward providing assistance to the disadvantaged individual. (Volume IV, T - 199)

227. That there are group tutoring programs offered through the subunit of Cultural and Minority Affairs. (Volume IV, T - 200)

228. That the actual tutoring of students offered through the subunit of Cultural and Minority Affairs is performed by graduate or undergraduate students recommended through the academic departments. (Volume IV, T - 200)

229. That the unclassified staff within the Center for Student Development are eligible for administrative tenure. (Volume IV, T - 201)

230. That the unclassified staff of the Center for Student Development utilize the normal faculty grievance procedure. (Volume IV, T - 201)

231. That there are thirty-six (36) unclassified positions within the Housing Department which are in contention in this unit determination matter. (Volume IV, T - 202)

232. That the academic ranks held by the thirty-six (36) unclassified people within the Housing Department are as follows; there is one (1) Assistant Professor, eleven (11) people identified as dietitians who are appointed as instructors and are on joint appointments with academic departments, the remaining twenty-four (24) are listed as Instructors or Assistant Instructors with responsibility as Hall Directors or Assistant Hall Directors. (Volume IV, T - 203)

233. That there are five (5) positions in contention in this unit determination matter located within the Department of Intercollegiate Athletics. (Volume IV, T - 204)

234. That of the five (5) positions in question within the Department of Intercollegiate Athletics three (3) positions are coaches. The three (3) individuals coach men's basketball, women's basketball and track. (Volume IV, T - 204-205)

235. That one (1) unclassified staff position within the Department of Intercollegiate Athletics is that of a trainer for women's sports and one (1) person is an Assistant Instructor who provides sports information for women's sports. (Volume IV, T - 205)

236. That all three (3) coaches within the Intercollegiate Athletics Department are involved in credit-hour production and do handle courses. These coaches also provide advice and counsel to the athletes. (Volume IV, T - 205-206)

237. That the trainer employed within the Intercollegiate Athletics Department works extensively with each athlete, providing an evaluation and treatment plan and referral to physicians. (Volume IV, T - 206)

238. That the sport information individual employed within the Intercollegiate Athletics Department has the responsibility to educate the public at large and the student body regarding the nature of women's athletic programs, and information relating to participants, including achievements in their particular sports, as well as their academic achievements. (Volume IV, T - 207)

239. That there is a separate athletic corporation located at Kansas State University which manages its own funds and pays for staff members involved with all athletic programs except for men's and women's basketball and track. (Volume IV, T - 207-208)

240. That all of the unclassified staff members in the Department of Housing hold administrative tenure rather than academic tenure. (Volume IV, T - 210)

241. That none of the unclassified staff members within the Housing Department hold appointments that involve five tenths (.5) or more time in an academic department. (Volume IV, T - 211)

242. That the staff members in the Center for Student Development do not offer courses on their own. Those courses are offered through academic departments which are on the campus. (Volume IV, T - 211)

243. That the unclassified individuals located within the Student Health Service subunit are eligible for administrative tenure rather than academic tenure. (Volume IV, T - 217)

244. That the physicians within the Lafene Health Center were granted the usage of the term Associate Professor since the University budget material does not use the term physician. These "physicians" may only be promoted through an academic department. (Volume IV, T - 216, 217)

245. That some of the unclassified staff members working within the Counselling Center have joint appointments with other departments, and teach classes or courses within the department. (Volume IV, T - 220, 221)

246. That most positions in Continuing Education coordinate and organize off-campus instructional endeavors. (Volume I, T - 118)

247. That support unit personnel receive some salary increases based on merit. (Volume I, T - 139)

248. That many of the unclassified employees of the support units hold academic rank as a result of past practice. Further, that unclassified employees who may be hired in the support units in the future will not be eligible for academic rank unless such unclassified employee is affiliated with an academic department. (Volume IV, T - 95)

249. That the diagnostic laboratory for all intents and purposes functions like an academic department in Veterinary Medicine. (Volume IV, T - 100)

250. That the physicians in the Lafene Medical Center hold academic ranks. (Volume IV, T - 101)

251. That the unclassified employees who are academic advisors generally carry the title of instructor and are associated with the academic units. (Volume IV, T - 104-105)

252. That the University entered into a stipulation during the administrative hearing on the unit determination which would exclude unclassified employees of the Student Financial Assistance Unit, the New Student Program Unit and the Kansas State Printing Service Support Unit from the bargaining unit under consideration by the Hearing Examiner. (Volume IV, T - 108-109)

253. That there are approximately twenty-four (24) Assistant Instructors in the Housing Department. (Volume I, T - 210)

254. That there are approximately two (2) assistant instructors in the Center for Student Development. (Volume I, T - 210)

255. That the Assistant Instructors referenced in finding number two hundred fifty-four (254) assist students in special assistance type programs which may include tutoring and counselling. (Volume I, T - 211)

256. That the Assistant Instructors referenced in finding number two hundred fifty-three (253) are either Directors of Residence Halls or Dietitians who handle food service. (Volume I, T - 213)

257. That the Assistant Instructors who are Dietitians hold joint appointments in the College of Home Economics and give instructions relating to dietetic services. (Volume I, T - 213)

258. That Assistant Instructors who are Residence Hall Directors assist students by providing them with the best possible out-of-class environment. (Volume I, T - 214)

259. That Residence Hall Directors are quite often doctoral candidates. (Volume I, T - 218)

260. That the Assistant Instructors who are Dietitians normally hold a Bachelor's Degree and are working on a Master's Degree. (Volume I, T - 221)

261. That the Residence Hall Directors are not expected to remain employed as Hall Directors for many years. Rather they are expected to "develop and proceed on". (Volume I, T - 229)

262. That there are approximately four (4) unclassified positions in the Computing Center. (Volume IV, T - 56-57)

263. That the unclassified people in the Computing Center hold Master's or Bachelor's Degrees in Computer Science. (Volume IV, T - 57)

264. That there are two (2) separate computer operations at Kansas State University. One operation is called the Data Processing Center which does the budget matters, the keeping of administration records, etc. The other operation is the Computing Center which is almost entirely devoted to research or training functions. (Volume IV, T - 57)

265. That unclassified personnel in the Computing Center assist students with programming, and faculty in developing programs or reviewing programs. They also help with statistical problems. (Volume IV, T - 57)

266. That the Director of the Computing Center, and at least one of the Associate Directors, hold joint appointments and teach in the Computer Science Department. It is possible that other unclassified personnel in the Computing Center could hold joint appointments at some future date. (Volume IV, T - 58)

267. That there are approximately twenty (20) unclassified people working within the Dean's offices. (Volume IV, T - 58)

268. That the unclassified personnel in the Dean's offices function mainly as academic advisors which is the function that is assumed by a faculty member in an academic department after a student has selected a major. (Volume IV, T - 59)

269. That in the Dean's office of the College of Arts and

Sciences there is one individual who is designated as the prelaw advisor and another individual who is designated the premedical advisor. Also, in the College of Arts and Sciences there is one (1) individual who is involved in the screening and selection of candidates for a type of Scholarship. In that case, the selection is coordinated by one of the advisors in the Dean's office. (Volume IV, T - 59)

270. That the unclassified employees (academic advisors) in the various Dean's offices generally hold the rank of instructor. They are evaluated on the basis of performance and merit for salary increase purposes. (Volume IV, T - 60)

271. That there are two (2) unclassified positions in the Office of Student Financial Assistance and the Office of New Students Programs. One position is currently filled and one position is vacant. When filled these positions will be of an administrative nature and, thus should be excluded by virtue of their title. (Volume IV, T - 61)

CONCLUSIONS OF LAW

This unit determination case comes before the examiner with numerous stipulations, by the parties, relating to specific inclusions and exclusions of unclassified employees of Kansas State University. It has long been the policy of the Public Employee Relations Board to respect those stipulations so long as no statutory violations are proposed. Upon review the examiner finds no statutory violations proposed and, therefore, recommends that the Public Employee Relations Board adopt the stipulations of the parties as a portion of this order.

The record in the instant case indicates that there is little disagreement among the parties that a land grant university such as Kansas State University has three (3) major missions. The first mission is to educate students. The second mission is to engage in organized research. The third mission is to provide extension services to residents of the State. These three (3) major missions are carried out by unclassified employees utilizing State General Fund appropriations, fees, and various federal grants. Kansas counties also contribute funds for County Extension Services.

K.S.A. 75-4327 (e) sets out seven (7) criteria to be considered, along with other relevant factors, when the Public Employee Relations Board determines the scope of an appropriate unit. Those criteria are:

"1. The principle of efficient administration of government; (2) the existence of a community of interest among employees; (3) the history and extent of employee organization; (4) geographical location; (5) the effects of overfragmentation and the splintering of a work organization; (6) the provisions of K.S.A. 75-4325; and (7) the recommendations of the parties involved."

K.S.A. 75-4322 (a) defines public employee as;

"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."

In light of this definition one must remember that all unclassified employees of Kansas State University meeting this definition of "public employee" have the right to organize and to meet and confer within some unit.

One criterion pertains to the recommendations of the parties involved. The record reveals little testimony given by the affected employees. However, the various parties to the matter clearly disagree on the scope of the unit. (See positions of parties) K.S.A. 75-4325 deals with supervisory employees, a matter spoken to by the stipulations of all parties. A majority of the employees are geographically located on the Kansas State University campus. Some research and most extension employees are located off campus. There appears to be little history of employee organization, with the exception that one professional employee organization participated as a party to this case. Other than a stated desire relating to the scope of the unit, the AAUP did not testify to the extent of its membership. One might view the Faculty Senate membership guidelines as indicative of organizational history, however, the purpose and intent of the Senate is much greater than what might be expected via the collective bargaining process. That is, the Faculty Senate addresses questions relating to all matters at Kansas State University and exists by virtue of the fact that the employer allows it to exist. Recommendations by the Senate to the Kansas State University administration are not binding and the employer is not mandated by law to attempt to reach agreement with the Senate. If and when the employees of Kansas State University opt for collective bargaining the employer is bound by statute to endeavor to reach agreement over mandatorily negotiable terms and conditions of employment with the selected representative. These mandatorily negotiable terms and conditions of employment are specified by statute and

the Faculty Senate might be retained by the faculty to address or recommend policies over subjects which are not mandatorily negotiable.

It appears to the examiner that most weight in this matter must be given to;

1. Community of Interest;
2. Efficient Operation of Government; and
3. Effects of Overfragmentation.

Many definitions have been stated for community of interest. Some are very narrow definitions limited solely to similar terms and conditions of employment or similarity of skills or crafts. Other definitions are quite broad, and encompass such things as "mission of the agency", "being of the same employer", and "having common supervision". The examiner believes the definition to lie somewhere between the two. For example, all employees of Kansas State University work for the same employer, however one would not summarily place all employees in the same appropriate unit based on that singular fact. Likewise, one cannot summarily place all employees who have historically had similar terms and conditions of employment in an appropriate unit. Perhaps the purpose of the employees organizational efforts are aimed at standardizing terms and conditions of employment for a broader group of employees.

Few would question the need for efficient operation of government. The question rather, is what constitutes efficient operation of government. Some might argue for inclusion of all employees in an appropriate unit in order to limit the number of negotiations. The examiner believes one must carefully weigh the community of interest question with the efficient operation question. Certainly we do not wish to subject management to more than the appropriate number of negotiations nor do we want to ask employees with different interests to negotiate together for convenience sake.

Overfragmentation of employees or splintering of the work force can serve to invalidate the purpose of organization. Collective bargaining is a process in which collective efforts are exerted in order to resolve problems between employers and employees. A large number of small units, limits the ability of the employees to be collectively heard.

Frequently a unit cannot be carved out which meets the immediate approval of all parties. Sometimes units are determined by various jurisdictions which are not the most workable for the parties. Time and experience are the best indicators of the "most appropriate" or workable unit. Fortunately, the Public Employer-Employee Relations Act provides avenues for amending appropriate units once they are determined. The examiner appreciates the efforts and cooperation of all parties in assisting the Public Employee Relations Board with this very difficult task of determining the most appropriate unit of unclassified employees at Kansas State University.

MATTER OF RANK

The University argues for inclusion of Research Associate, Research Assistant and Assistant Instructor within the unit of unclassified employees. Petitioner, AAUP, and Faculty Senate argue for exclusion of all below the rank of Instructor. The examiner notes that three (3) positions in question are not considered permanent under the definition set out in the Faculty Handbook. Testimony also shows that many of the University policies are applicable to these three (3) positions as they are to higher ranks. Assistant Instructors are able to count their third year of employment and beyond toward the earning of tenure. These ranks are evaluated on a merit system although less formal than the evaluation procedure utilized for higher ranks. It appears to the examiner that these three (3) ranks hold a similar interest in the mission of the agency as do higher ranks. That interest seems to carry with it the long term expectations of continued employment as evidenced by efforts to earn higher degrees in order to be promoted into permanent ranks. Testimony indicates that many people in these ranks are, in fact, working toward advanced degrees in order to move to higher ranks within the University system. The examiner views the teacher/student relationship between higher ranks and Research Associates and Research Assistants in a different light than the employee/supervisor relationship. That is, the student/teacher relationship would be a short-lived relationship unlike the continuing relationship of supervisor/employee. Logic dictates that the exclusion of Research Associates and Research Assistants because of this student/teacher relationship could serve in the future to remove someone in a higher rank from unit membership if that individual ever chooses to take a class at the University.

The ranks of Research Associate, Research Assistant and Assistant Instructor are engaged in one of the primary missions of the University and may work alongside individuals holding higher ranks.

The record indicates, and the examiner is convinced, that Research Associates, Research Assistants and Assistant Instructors do share a community of interest with other faculty which cannot be diminished by the attainment or lack of rank alone.

In light of this community of interest one must question how efficient operation of the agency would be altered by the exclusion of Research Associates, Research Assistants and Assistant Instructors. Certainly a labor agreement between the University and those in professorial ranks would bear a striking resemblance to a labor agreement between the University and a unit comprised of Research Associates, Research Assistants, and Assistant Instructors. Testimony and the record have shown that a majority of the terms and conditions of employment are similar for all ranks. An exclusion of Research Associates, Research Assistants, and Assistant Instructors would only serve to require the administration to engage in two sets of negotiations which, in all probability, would result in similar contractual language. Additionally, to carve out a unit of Research Associate, Research Assistant and Assistant Instructor would severely weaken the bargaining power of the effected employees.

For the foregoing reasons the examiner recommends that the Public Employee Relations Board include Research Associate, Research Assistant, and Assistant Instructor within the appropriate unit of all unclassified employees at Kansas State University. (See recommended unit inclusions for specific exclusions)

ORGANIZED RESEARCH

Petitioner would exclude any individual whose appointment is five tenths (.5) or more research. One party would exclude anyone located off campus. The University asks to include everyone budgeted to research whether located off or on campus.

As stated previously, research is one of the major missions of the University. The record indicates that many individuals engaged in research are on split appointments. Federal funds are utilized in the research budget. However, these funds are commingled and used on projects along with state funds. At least one witness testified that

transfer of an employee's tenths time of appointment from one budget to another was a simple matter. Further the witness testified that the tenths time shown in the budget for some employees did not necessarily reflect the actual type of work performed by the employee. There is no doubt that the faculty members engaged in Organized Research share a community of interest with employees budgeted to instruction. In fact, some faculty might find their appointment changing from year to year. If the examiner found that persons engaged in Organized Research constituted a separate unit, those people could, at management's whim, be moved from one unit to another. Additionally, a separate appropriate unit for those engaged in five tenths (.5) or more research would over-fragmentize and would not provide for the orderly or efficient operation of government. There are approximately fifty (50) people budgeted under research who are located off campus. Testimony shows that these individuals work under similar terms and conditions of employment and University policy as do those located on campus. There is a great deal of interaction among off campus and on campus personnel and the possibility of transfer exists. Overfragmentation or splintering of the work force would certainly occur if these off campus people engaged in Organized Research were excluded from the appropriate unit.

Therefore, the examiner recommends that all individuals engaged in Organized Research be included within the appropriate unit. (Subject to stipulated exceptions)

EXTENSION

The University has asked to include area, state and county agents within the appropriate bargaining unit of Kansas State University faculty. One party asks for the inclusion of state and area extension personnel while the other parties desire to exclude all extension personnel.

The record reflects that county agents are joint employees of Kansas State University and the various County Extension Councils. As such county agents are subject to the supervision of the Executive Board of the local County Council. A majority of the funds for County Extension Council's budgets are provided by the individual counties.

K.S.A. 75-4322 (f) defines public employer as;

"(f) 'Public agency' or 'public employer' means every governmental subdivision, including any county, township, city, school district, special district, board,

commission, or instrumentality or other similar unit whose governing body exercises similar governmental powers, and the state of Kansas and its state agencies."

The record is extensive and quite clear with regard to the authority of County Council. As result of this authority being vested outside the University, county agents' salaries and budgets may vary from county to county. K.S.A. 2-610 provides for a county to fund a County Extension budget at a level set by the County Commissioners, the Director of Extension, and the Chairman of the Executive Board of the County Council.

As a result of this "joint employer" relationship and the definition of public employer as defined by K.S.A. 75-4322 (f), the examiner believes the proper employer to be a combination of the University, County Council and perhaps the County Commission. This question needs greater consideration than was given at the unit determination hearing. It is quite clear, however, that the appropriate unit of unclassified employees at Kansas State University should exclude county agents. Therefore, the examiner recommends exclusion of county agents from the appropriate unit. Further, the examiner recommends that the question of the appropriate public employer for County Extension Agents be given further consideration by the Public Employee Relations Board in the event a county agent desires to pursue the matter.

State and Area Extension faculty perform a duty which falls within the threefold mission of the University. While their teaching function is not usually performed in a classroom located on campus, they nonetheless fulfill a teaching role. These individuals sometimes work on split appointments and enjoy most of the same terms and conditions of employment as do those individuals budgeted to instruction or organized research. There are basically two arguments for excluding the approximately sixty (60) Area Extension personnel. First, they are located off campus and second, they participate in some federal benefits. While the State Extension personnel are located on campus it can still be argued that they too should be excluded because they also participate in federal benefit programs. The examiner has previously explained why the geographical location of small groups of employees is insufficient reason for exclusion from the on campus unit. It would seem that the major question in this matter revolves around the sources of benefits vs. the amount of benefits an employee receives. Notwithstanding the mandate for five tenths (.5) or more extension to participate

in federal benefits, the employer could bring all employees into parity if the employer so desired. Federal funds are utilized alongside State funds in many instances, thus regardless of the sources or even a specific benefit program, the amount of a benefit can be made equal. The State, not the federal government, controls the total amount of benefits to be paid to all employees. A labor agreement might, for example, provide a greater benefit in one area to offset a lesser benefit in another area. The possibilities are endless. It does not appear to the examiner that this mandate of federal benefits weighs as heavily for exclusion as does the similarity of all terms and conditions of employment and the community of interest between extension personnel and other unclassified employees engaged in teaching or researching, weigh for inclusion.

Therefore, it is the recommendation of the examiner that State and Area Extension personnel be included within the appropriate unit of unclassified employees at Kansas State University. (See specific exclusions) It is also the recommendation of the examiner that county agents be excluded from this unit.

SUPPORT UNITS

The University would include all Support Unit personnel. The petitioner wants to exclude all Support Unit personnel and other parties desire to include academic advisors and library personnel while excluding other Support personnel.

Individuals employed in a majority of the Support Units are not primarily engaged in one of the major missions of the agency. Rather they are concerned with providing a specific service to enhance the delivery of a major mission. The clerical personnel and the boiler operators are similarly providing services which may or may not be equally important as those services provided by the various Support Units. There is no doubt that all of the individuals employed in the Support Units are professional employees. Their degree requirements may differ from those engaged in teaching, researching, or extension and some may be more specialized than teachers or researchers. Nevertheless, they are primarily charged with a Support mission. The examiner concludes that a lay off and recall policy would have to differ for those engaged in a primary mission and those engaged in a supplemental or support missions. One must consider the similarity of terms and conditions of employment as well as other factors effecting community of interest.

The record reflects that Support Unit personnel are no longer eligible for academic rank and do not earn academic tenure unless they are affiliated with an academic department. Administrative tenure is awarded instead of academic tenure to most Support Unit personnel. Merit pay evaluation is utilized although based upon different criteria than for those engaged in teaching, research, or extension. While the same parking problems, desire for holidays, and grievances might arise, a majority of the Support Unit personnel are not promoted nor transferred in the same manner as are individuals engaged in teaching, research, or extension. The exception to the above appears to be the academic advisors who are housed in academic units.

The library staff is in somewhat of a "no man's land" in that they are currently viewed as Support personnel but may soon be changed to earn academic tenure. They, like other Support personnel perform a service rather than carrying out one of the major missions of the agency.

The examiner is convinced that there exists a great deal of difference in terms and conditions of employment between Support Unit personnel and unclassified faculty who teach, research, or provide extension services. This difference coupled with the nature of the services performed by Support Unit personnel dictates the exclusion of such personnel from this appropriate unit. The examiner believes this exclusion to be in the best interests of the employer and the effected employees. The Support Unit personnel may desire to organize and if they do, they should be free to negotiate a labor contract in which their services are viewed as primary rather than merely Support for the major mission of the agency.

For the foregoing reasons the examiner recommends that academic advisors be included within the appropriate unit of unclassified faculty at Kansas State University. All other Support Unit personnel should be placed within a separate appropriate unit comprised of Support Unit professional employees.

The appropriate unit of unclassified faculty at Kansas State University would then;

INCLUDE: A) All unclassified faculty with the Academic Rank of:

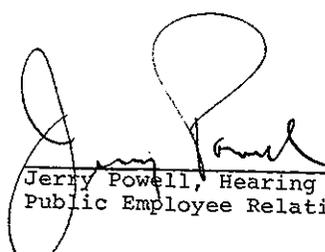
1. Research Assistant
2. Research Associate

3. Assistant Instructor
4. Instructor
5. Assistant Professor
6. Associate Professor
7. Professor

If as such they are engaged five tenths (.5) time or more in teaching, research, or extension;

B) Academic Advisors

- EXCLUDE:
- A) All stipulations of the parties (See attached)
 - B) County Extension Agents
 - C) All Support Unit personnel, who are not budgeted five tenths (.5) or more to an academic department or five tenths (.5) or more to organized research or extension.



Jerry Powell, Hearing Examiner
Public Employee Relations Board

STATE OF KANSAS

PUBLIC EMPLOYEES RELATIONS BOARD

IN THE MATTER OF CASE NO. 75-UD-2-1981 -- PETITIONS OF EMPLOYEES AND AN EMPLOYEE ORGANIZATION FOR A UNITY DETERMINATION OF CERTAIN UNCLASSIFIED EMPLOYEES AT KANSAS STATE UNIVERSITY

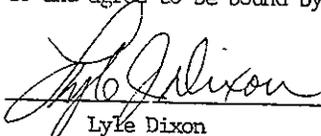
Stipulations of Parties

Come now the parties in this matter and make the following stipulations.

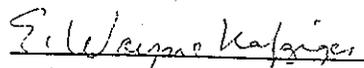
1. Directors, Associate Directors and Assistant Directors: The parties agree to exclude all directors, associate directors and assistant directors as so designated in the Kansas State University budget.
2. Department Heads: The parties agree to exclude all Department Heads, Associate Department Heads and Assistant Department Heads as so designated in the Kansas State University budget from this Kansas State University unit.
3. Part-time: The parties agree to require a .5 time or more appointment for inclusion in this Kansas State University unit.
4. Temporary and/or Visiting: The parties agree to exclude from this Kansas State University unit all temporary unclassified employees and all unclassified appointees designated as visiting or adjunct.
5. Students, GTA's, GRA's, GA's: The parties agree to exclude from this Kansas State University unit all students including all Graduate Teaching Assistants (GTA), Graduate Research Assistants (GRA), and Graduate Assistants (GA).
6. University Officials: The parties agree to exclude from this Kansas State University unit the following additional list of University Officials:

President, Assistants to the President, and Administrative Assistants to the President
Provost, Associate Provost, and Assistant Provost
All Vice Presidents, Associate Vice Presidents, Assistant Vice Presidents, and Assistant to the Vice Presidents
Deans, Associate Deans, Assistant Deans, and the Assistants to the Deans
Directors, Associate Directors, Assistant Directors, and Administrative Assistants
Comptroller, Associate Comptroller, and Assistant Comptroller
Registrar, Associate Registrar, and Assistant Registrar
University Attorney
Branch Station Superintendents
Area Directors of Extension

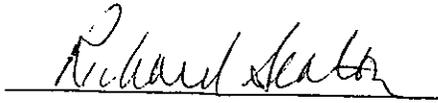
AND NOW on this 26th day of October, 1981, the parties do hereby stipulate to and agree to be bound by the foregoing.



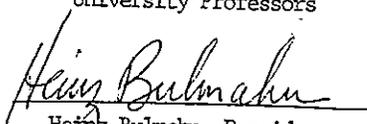
Lyle Dixon
Five Petitioners



American Association of
University Professors



Richard Seaton for
Kansas State University



Heinz Bulmahn, President
Faculty Senate

The Public Employee Relations Board hereby adopts the hearing examiner's findings of fact and conclusions of law in case number 75-UD-2-1981 with the following exceptions:

1. Support Unit personnel share a community of interest with other unclassified personnel at Kansas State University.

2. Library personnel are now granted academic tenure (See stipulations of the parties made before the Board on November 22, 1982).

3. Physicians working at Lafene Health Center shall be excluded from the unit of unclassified personnel at Kansas State University by stipulations of the parties made at the November 22, 1982 hearing before the Public Employee Relations Board.

4. That services performed by Support Unit personnel are interrelated to the teaching, research and extension function thus dictating inclusion of Support Unit personnel within the unit of other unclassified personnel.

It is, therefore, the order of the Board that the appropriate unit of unclassified personnel at Kansas State University shall;

INCLUDE: A) All unclassified faculty with the Academic Rank of:

1. Research Assistant
2. Research Associate
3. Assistant Instructor
4. Instructor
5. Assistant Professor
6. Associate Professor
7. Professor

If as such they are engaged five tenths (.5) time or more in teaching, research, or extension;

B) Support Unit personnel except physicians working in Lafene Health Center

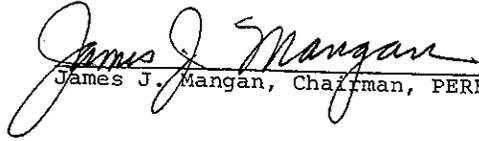
EXCLUDE: A) All stipulations of the parties (See attached)

B) County Extension Agents

C) Physicians working in Lafene Health Center

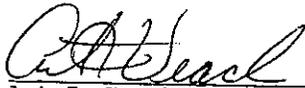
The above inclusions and exclusions are subject to the attached stipulations of the parties.

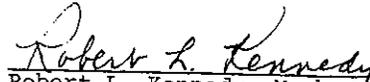
IT IS SO ORDERED THIS 20th DAY OF December, 1982, BY THE PUBLIC
EMPLOYEE RELATIONS BOARD.


James J. Mangan, Chairman, PERB

ABSENT
Louisa A. Fletcher, Member, PERB

ABSTAINED FROM VOTING
Lee Ruggles, Member, PERB


Art J. Veach, Member, PERB


Robert L. Kennedy, Member, PERB