

ISSUE TO BE DETERMINED

"WHETHER THE CLASSIFICATION OF CRIMINALIST SHOULD BE CONSIDERED IN THE PHYSICAL AND NATURAL SCIENCES UNIT EVEN THOUGH THE POSITION DOES NOT APPEAR IN THE DETERMINATION ORDER, CASE NO. 75-UCA-5-1989 BECAUSE IT WAS ALLEGEDLY INADVERTENTLY LEFT OFF THE ORDER REFLECTING RENAMED CLASSIFICATIONS."

FINDINGS OF FACT

1. The Physical and Natural Sciences Unit was established by the Public Employee Relations Board ("Board") as part of the 1974 statewide unit determination order on May 16, 1974. Included in that unit were the following classifications:

Air Pollution Control Engineer
Air Quality Engineer
Architect
Ceramist
Chemist
Civil Engineer
Ecological Specialist
Engineer in Training
Entomologist
Environmental Pesticide Specialist
Epidemiologist
Fish and/or Game Biologist
Forensic Chemist
Geologist
Hydrologist
Landscape Architect
Mechanical Engineer
Microbiologist
Paleontologist
Petroleum Research Specialist
Pharmacist
Plant pathologist
Public Health Physicist
Radiation Protection Specialist
Sanitarian

Sanitary Engineer
Vertebrate Zoologist
Veterinarian
Water Quality Biologist

2. The Council of Kansas Governmental Engineers and Scientists ("Council") was certified as the recognized employee organization for the Physical and Natural Sciences Unit on April 8, 1975 following a certification election.
3. The Kansas Association of Public Employees ("KAPE") filed a Petition for Unit Clarification and Amendment on September 15, 1988 which was given case number 75-UCA-5-1989.
4. The case file in case no. 75-UCA-5-1989 indicates notice of the petition was served by the Public Employee Relations Board only upon Gary Leitnaker, Director of Labor Relations, Department of Administration, State of Kansas ("State"). This was confirmed by the testimony of Paul Dickhoff, Senior Labor Conciliator and Executive Director of the Board at the time of the filing.
5. The case file in case no. 75-UCA-5-1989 indicates that an Answer to the Petition was filed only by Mr. Leitnaker.
6. On October 17, 1988 the Nation Association of Government Employees ("NAGE") filed a motion to intervene in the Petition for Unit Clarification and Amendment.
7. The case file in case no. 75-UCA-5-1989 indicates that the Motion to Intervene was served by the Board only upon Gary Leitnaker, Director of Labor Relations, Department of Administration, State of Kansas and Brad Avery, Counsel, KAPE.
8. On November 14, 1988 the State filed its Answer. Included therewith was Attachment B, a suggested updated list of the classifications for the unit. The Answer indicated that since the original determination there had been "certain class name changes and abolishment." Attachment A set forth a list of the original classifications with an indication of name change or abolishment of classes. Attachment A showed that the

classification of "Forensic Chemist" had been abolished but did not indicate any new name.

The Certificate of Service on the State's Answer show it was sent only to NAGE and KAPE.

9. The Board entered an order amending the unit on February 15, 1989. The order stated:

"Pursuant to the mutual agreement of the parties, and the Board finding no statutory violation in the proposed action hereby orders that the appropriate unit in the above captioned matter (case no. 75-UCA-5-1989) shall be comprised in the following manner:

INCLUDE: Architect
Chemist
Civil Engineer
Ecological Specialist
Engineer in Training
Epidemiologist
Fisheries Biologist
Geologist
Hydrologist
Landscape Architect
Mechanical Engineer
Microbiologist
Pharmacist
Public Health Physicist
Veterinarian
Water Quality Biologist
Wildlife Biologist"

10. The testimony at the hearing revealed the Council was not included in nor took part in the "mutual agreement of the parties."
11. The case file in case no. 75-UCA-5-1989 indicates that the Order was served by the Board only upon Gary Leitnaker, Director of Labor Relations, Department of Administration, State of Kansas and Brad Avery, Counsel, KAPE, and Mark Clevenger, Business Agent, NAGE.

12. The testimony at the hearing revealed that at no point in the progress of the case was the Council notified of pending action, consulted, or provided opportunity for input into the action taken by the Board.
13. The testimony of Paul Dickhoff indicated that it was the normal office procedure of the Board to serve copies of pleadings upon all parties who may be affected by the requested action. The fact that the Council was not notified of KAPE's petition, involved in the discussions concerning the updating of classifications in the unit, notified of the pending action of the Board, or received a copy of the Board's order was attributed to administrative oversight.
14. Gary Leitnaker testified that the update of the unit classifications was performed by another employee in his office and he did not check on the abolished classifications to insure they had not been renamed. He did not become aware until filing the State's Answer in the above-captioned case of the fact that the classification of "Forensic Chemists" had been renamed "Criminalist" and included employees performing duties at the KBI under the classifications of "Forensic Chemist" and "Chemist". He stated in the Answer that the classification had been "inadvertently" left out of the February 15, 1989 order in 75-UCA-5-1989. He reaffirmed that fact at the hearing, testified to the belief that the "Forensic Chemists" and "Criminalists" were the same classification only renamed, and further stated it was not his intention to remove the employees in the old "Forensic Chemists", now "Criminalist" from the Physical and Natural Sciences unit.
15. The position specifications for the classification of "Criminalist" is virtually identical to the position specifications of "Forensic Chemist," and those employees in the "Forensic Chemist" classification at the time of the reclassification assumed the classification of "Criminalist."
16. There is no evidence in the record to indicate that KAPE at the time of filing its Unit Clarification and Amendment petition specifically intended by its action to remove the "Forensic Chemist" classification from the Physical and Natural Science unit. The stated purpose for the petition was KAPE's belief "positions in this

unit may be designated improperly or the number of employees may be incorrect or their location within the state system may be improperly stated."

CONCLUSIONS OF LAW AND OPINION

It is abundantly clear, both from a review of the petition for Unit Clarification and Amendment filed by KAPE and the testimony of Gary Leitnaker that it was not the intent of KAPE or the State to specifically remove the classification of "Forensic Chemist," now "Criminalist," from the Physical and Natural Science unit. Mr. Leitnaker's explanation that the "Criminalist" classification was inadvertently left off the updated list of classification names is credible and should be accepted. There is nothing in the record which would prove that such action was "purposefully" done or even raise that inference.

Additionally, it can be assumed that if a classification were to be removed from a unit represented by a recognized employee organization the logical procedure to follow would be to inform the recognized employee organization of the intent to take action affecting the unit and, when completed, to advise the recognized employee organization it no longer is responsible for representing that classification and the employees in the unit that the Council no longer represents them. There is nothing in the record to indicate that either was done. The only reasonable conclusion from

the actions or inactions of the parties is that the classification was "inadvertently" left out of the February 15, 1989 order.

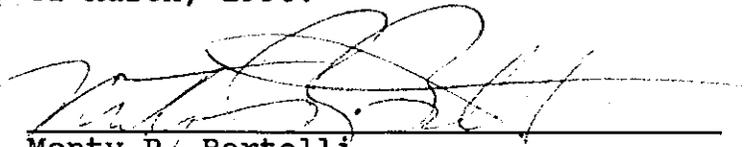
Even if it were the intent of KAPE, NAGE, or the State, acting independently or together, to have the Physical and Natural Science unit amended to remove the "Forensic Chemist" classification, the fact that the Council was not served with KAPE's petition, informed by the Board or any of the parties of the pending action, did not have any input into updating the list of classifications to be in the unit, and did not receive a copy of the Board's order would indicate a violation of the Council's rights as the recognized employee organization under the Public Employer-Employee Relations Act and, at the very least, dictate restoring the status quo existing prior to the Board's February 15, 1989 amendment order, and allowing the Council to participate in KAPE's petition for clarification or amendment.

The simplest and most appropriate action would be to amend the present unit to include the classification of "Criminalist."

ORDER

IT IS THEREFORE ORDERED that the appropriate unit set forth in 75-UDC-5-1989 be amended to include the classification of "Criminalist."

Dated this 11th day of March, 1990.



Monty R. Bertelli
Senior Labor Conciliator
Employment Standards & Labor Relations
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RIGHT TO REVIEW

This is an initial order of a presiding officer. It will become final fifteen days after service unless a petition for review is filed with the Public Employee Relations Board in accordance with K.S.A. 77-527.

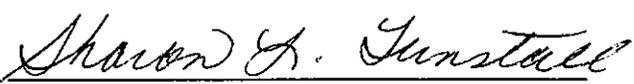
CERTIFICATE OF SERVICE

I, Sharon L. Tunstall, hereby certify that on the 11th day of March, 1991, a true and correct copy of the above and foregoing Initial order was deposited in the U.S. Mail, First Class, postage pre-paid, addressed to:

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Sharon L. Tunstall