

2. That U.S.D. 471, Dexter, Kansas is the appropriate employer/ Board of Education/respondent in this matter,

3. That Mr. Mark Wayne Davis is in his first year of employment with U.S.D. 471. (T-28)

4. That Mr. Davis holds a teachers certificate in the State of Kansas. (T-29)

5. That Mr. Davis' teachers certificate enables him to teach social studies and to coach. (T-29)

6. That Mr. Davis has classroom responsibilities for approximately 4/7 of every school day. (T-30, 42, 96)

7. That Mr. Davis, on occasion, alternates with Mr. Pond in supervising the school lunchroom. (T-31)

8. That Mr. Davis is compensated for his lunchroom supervision as part of his administrative duties. (T-31)

9. That Mr. Davis is compensated for his coaching duties. (T-33-34)

10. That Mr. Davis does not hold an administrators certificate. (T-41)

11. That Mr. Davis performs and receives compensation for his duties as a High School teacher, basketball coach, athletic director, and administrative assistant. (Petitioner's Exhibit II and Respondent's Exhibit I)

12. That Mr. Davis assists with the baseball program as a part of his administrative duties. (T-34)

13. That Mr. Davis assists Mr. Pond in determining the direction of the school district and in Mr. Pond's occasional absence is left in charge of the district. (T-78, 82)

14. That Ms. Jean Robinson has been employed by U.S.D. 471 for six years. (T-49)

15. That Ms. Robinson teaches Chapter 1 (previously called Title 1) reading. (T-49)

16. That Ms. Robinson conducts classroom instruction for students in grades one through nine. (T-50, 54, 66)

17. That Ms. Robinson is engaged in classroom teaching for approximately 300 minutes of every school day. (T-51, 53)

18. That Ms. Robinson is responsible for the completion of paperwork and forms as required within the Chapter 1 reading program. (T-55, Petitioner's Exhibit No. III)

19. That Ms. Robinson's duties and responsibilities are dictated in large part by the Chapter 1 Handbook and Regulations published by the

State Department of Education. (T-57, 59)

20. That Ms. Robinson has participated in the hiring of a mathematics teacher, aides, bus driver, and a summer school coach. (T-61, 62)

21. That Ms. Robinson expects in the future to continue fulfilling the responsibilities outlined in finding of fact number twenty (20). (T-62)

22. That Ms. Robinson holds a teachers certificate. (T-66)

23. That Ms. Robinson does not hold an administrators certificate. (T-69)

CONCLUSIONS OF LAW - DISCUSSION

In the instant case, the Secretary is asked to answer a two part question, specifically;

1. Are Mr. Mark Davis and Ms. Jean Robinson employed by Unified School District 471 as "professional employees" and as such included in the appropriate bargaining unit or are they employed as "administrative employees" and therefore excluded, and
2. If Mr. Davis and Ms. Robinson are properly included in the bargaining unit, does U.S.D. 471 have an obligation to negotiate in regard to all the monies those people receive in way of compensation?

Respondent in this matter would have the Secretary find that both Mr. Davis and Ms. Robinson perform some professional duties and some administrative duties. Moreover, respondent asks the Secretary to find that compensation for administrative duties is not subject to negotiations with the professional employees' representative.

The Secretary, when petitioned to answer questions regarding the scope of a bargaining unit, receives statutory guidance from K.S.A. 72-5420 which states:

"In each case where the question is in issue, the secretary shall decide, on the basis of the community of interest between and among the professional employees of the board of education, the wishes of the professional employees and/or the established practices among the professional employees including, among other things, the extent to which such professional employees have joined a professional employees' organization, whether the unit appropriate for the purposes of professional negotiation shall consist of all persons employed by the board of education who are engaged in teaching or performing other duties of an educational nature, or some subdivision thereof, except that a unit including classroom teachers shall not be appropriate unless it includes all such teachers employed by the board of education."

In addition, when answering questions regarding the scope of a bargaining unit, the examiner believes that an individual position must be declared either totally in the unit or totally out of the unit. To do otherwise works an injustice on one of the parties. If an administrator is allowed in the unit, he/she has the ability to exert undue influence on the other bargaining unit members because of his/her official standing. In the alternative, he/she may not faithfully perform his/her administrative duties because of comradeship with other unit members. In short, to find that an employee can be an administrator and a professional employee simultaneously is both impractical and unworkable in a collective bargaining atmosphere.

Testimony and evidence presented in this matter have clearly shown that both Mr. Davis and Ms. Robinson have classroom teaching responsibilities. It was further shown that Mr. Davis and Ms. Robinson are fulfilling duties in positions which require teaching certificates issued by the State Board of Education. Neither Mr. Davis nor Ms. Robinson possess an administrators certificate. Therefore, when reviewing their alleged "administrative" duties, one of two conditions must exist; (1) Either Mr. Davis and Ms. Robinson do not perform truly administrative duties or, (2) Mr. Davis and Ms. Robinson are performing duties for which they are not certificated. There can be no doubt that Mr. Davis and Ms. Robinson are engaged in some duties, in addition to their teaching functions which might be broadly categorized as "administrative". The examiner, however, is asked to define the scope of the bargaining unit in U.S.D. 471 in light of existing statutory restraints. The definitions of "Professional employee", and "Administrative employee", found at K.S.A. 72-5413 (c) and (d) respectively, in fact serve as restraints and place, in the case of a school district, emphasis on the possession of certain credentials to perform certain duties, K.S.A. 72-5413 (c) and (d) defines "Professional employee" and "Administrative employee" as:

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

"(d) 'Administrative employee' means in the case of a school district, any person who is employed by a board of education in an administrative capacity and who is fulfilling duties for which an administrator's certificate is required under K.S.A. 72-7513; and, in the case of an area vocational-technical school or community junior college, any person who is

employed by the board of control or the board of trustees in an administrative capacity and who is acting in that capacity and who has authority, in the interest of the board of control or the board of trustees, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."

Within those definitions it appears to the examiner that the legislature within some other statutes, must have given the boards of school districts, vocational-technical schools, and community colleges the authority to hire professionals as needed to deliver their instructional programs. It also appears that the vocational-technical schools and the community colleges are granted greater latitude than unified school districts in the employment of administrators. That is, in a unified school district, in order to perform administrative duties and be categorized as an administrator, one must possess an administrators certificate. It should be noted that the foregoing discussion regarding an employee's "administrative" capacity is expressed solely as it relates to K.S.A. 72-5413. The examiner cares not how the district chooses to refer to its employees. In the instant case the district may refer to the employees in question as administrators but the examiner is without grounds to find them to be administrative employees of a unified school district for purposes of K.S.A. 72-5413 et seq. so long as they lack administrators certificates. The examiner does not wish to indicate that the board of education of a unified school district is precluded from assigning other than strictly classroom duties to its professional employees. Quite the contrary. The Act contemplates that professional employees will be asked to perform supplemental duties and will be compensated for those duties under supplemental contracts. K.S.A. 72-5413 (o) defines "Supplemental contracts" as:

"(o) 'Supplemental contracts' means contracts for employment duties other than those services covered in the principal or primary contract of employment of the professional employee, and shall include but not be limited to such services as coaching, supervising, directing and assisting extracurricular activities, chaperoning, tickettaking, lunchroom supervision, and other similar and related activities."
(Emphasis added)

The examiner is sensitive to the problems which face the superintendent of schools in Dexter U.S.D. 471 and similar small school districts. That is, financial reality does not allow the district to employ more

than one individual to serve solely as an administrator. The solution to that problem, however, seems to be rather easily achieved. K.S.A. 72-5423 (a) states in part:

"(a) Nothing in this act, or the act of which this section is amendatory, shall be construed to change or affect any right or duty conferred or imposed by law upon any board of education,..."

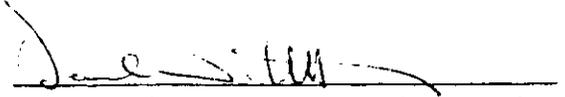
It is rather standard labor relations fare that an employer has the right to determine the methods, means, and personnel by which operations are to be carried on. It is the opinion of the examiner, therefore, that a board of education may delegate or assign extra duties to their employees in keeping with the employees credentials to perform the duties. The representative of the employees has no authority or right to bargain over the nature of the duties or the individuals selected to perform the duties. It is the task of the board of accreditation to insure that employees are qualified for the jobs they are performing. The representative does, however, have the right to negotiate the compensation to be awarded to bargaining unit employees for performing the duties. As another possible solution, the examiner believes that the district could hire an administrator to perform some classroom teaching as an alternative to employing a classroom teacher to perform some administrative duties.

In summary, it is the opinion of the examiner that Mr. Davis and Ms. Robinson are professional employees as contemplated by the statute. The duties which they perform, in addition to their classroom teaching function, cannot be categorized as administrative duties for they do not possess the certificates necessary to perform the duties contemplated by the statute to be "administrative". This opinion assumes, of course, that the district is in compliance with the various statutes pertaining to accreditation of the district. The examiner is of the further opinion that the duties assigned to Mr. Davis and Ms. Robinson are appropriately categorized as "supplemental" and as such are negotiable by the district and the employee representative. The existence of supplemental duties and the selection of individuals to perform those duties are matters left to the discretion of the employer.

It is therefore the recommendation of the examiner that Mr. Mark Davis and Ms. Jean Robinson be declared "professional employees" of Unified School District 471 and included in the appropriate bargaining unit. It is further recommended that the duties performed by Mr. Davis

and Ms. Robinson which are categorized by the district as administrative be declared "supplemental" as defined in the Act and as such, negotiable by the representative of the professional employees.

IT IS SO RECOMMENDED THIS 18th DAY OF JANUARY, 1983.



Paul K. Dickhoff, Jr. Hearing Examiner
Public Employee Relations Section

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The hearing examiner's report and recommended findings in the above captioned matter are hereby approved and adopted as a final order of the Secretary of the Department of Human Resources.

IT IS SO ORDERED THIS 11th DAY OF February, 1983, BY THE
SECRETARY OF HUMAN RESOURCES.



Jerry Powell, Employment Relations
Administrator
Secretary designee for the Administration
of K.S.A. 72-5413 et seq.