

BEFORE THE SECRETARY OF HUMAN RESOURCES
OF THE STATE OF KANSAS

NEA-COFFEYVILLE,)
)
 Complainant,)
)
 vs.) CASE NO. 72-UCA-2-1985
)
 U.S.D. 445 - COFFEYVILLE,)
 KANSAS,)
)
 Respondent.)
 _____)

Comes now on this 31st day of July, 1987, the above captioned case for consideration by the Secretary of the Kansas Department of Human Resources. Mr. Jerry Powell, Labor and Employment Standards Administrator, as his designee in this matter. The case comes before the Secretary designee on petition of NEA-Coffeyville asking the Secretary to amend the existing appropriate bargaining unit of classroom teachers to include counselors, school nurse, youth and business in partnership coordinator and activities director. After having given full consideration to all evidence and testimony the Secretary designee makes the following findings and enters the following order.

APPEARANCES

For the Complainant, Mr. C. A. Menghini, Attorney at Law, 316 National Bank Building, Pittsburg, Kansas 66762.

For the Respondent, Ms. Patricia E. Baker, Attorney at Law, 5401 S.W. Seventh Street, Topeka, Kansas 66606.

PROCEEDINGS

- 1) Petition filed December 19, 1984, under the signature of Linda Handshumaker.
- 2) Answer received January 4, 1985, under the signature of Dr. John E. Battitori.
- 3) Pre-hearing conference conducted February 22, 1985.
- 4) Entry of appearance filed by Mr. C. A. Menghini on behalf of Coffeyville-NEA.
- 5) Hearing record opened August 15, 1985. Hearing continued pending resolution of the statutory authority of the Secretary of the Department of Human Resources to issue subpoenas.

6) Honorable James P. Buchele, District Judge, issues denial on February 7, 1986, of Secretary's request to enforce subpoena by Secretary.

7) Subpoena authority given to the Secretary of the Department of Human Resources by the amendment of K.S.A. 72-5432 by the 1986 Kansas Legislature.

8) Memorandum of Decision and Order entered by Honorable James P. Buchele, District Judge, on September 26, 1986 ordering Respondent school district to comply with Secretary's subpoena of certain evaluation documents.

9) Hearing reconvened February 26, 1987.

10) Brief of Complainant received May 1, 1987.

11) Brief of Respondent received May 1, 1987.

12) Reply Brief of Respondent received May 19, 1987.

FINDINGS OF FACTS

1) That the pending matter is properly before the Secretary for determination.

2) That counselors (lawyers) for both parties stipulated at the outset of the hearing as follows:

1) That the positions in question in the instant case are professional employees as defined by the Professional Negotiations Act, K.S.A. 72-5413 et seq., rather than public employees as defined, or who would bargain under the provisions of K.S.A. 75-4321 et seq.

2) That none of the individuals occupying the positions in question in the instant case hold an administrator's certificate, nor are administrator's certificates required in order to meet the qualifications for the positions which they hold. (T-6)

3) That prior to the 1986-87 school year, the four positions in question were evaluated in the same manner and by use of the same evaluation instrument as were members of the existing bargaining unit. However, starting with the 1986-87 school year, the four positions in question are being evaluated by the use of a different evaluation instrument than are the teachers within the bargaining unit. (T-16, 17)

4) That Dr. John Battitori does not believe that the four positions in question are mentioned within the negotiated agreement between the district and the NEA-Coffeyville. (T-18)

5) That the librarians employed by USD 445 are included within the appropriate bargaining unit of all certified teachers. (T-19)

6) That there are currently no position descriptions for any of the four positions in question in the instant case, with the possible exception of the school nurse. (T-19)

7) That Dr. Battitori testified that counselors were informed of their job requirements during their interview process, and the remainder of their job expectations were given to them by the principal of the building in which the person is hired to work. (T-20)

8) That there are no existing position or job descriptions for librarians employed within USD 445. (T-23)

9) That the hours of work prescribed for the four positions in question in the instant case are, as a general rule, determined between the individual occupying the position and the building principal. These hours normally consist of at least as many hours as certified teaching professionals and, in many instances, additional hours because of the nature of the position. (T-23)

10) That the instructional or teaching staff is required to be present fifteen (15) minutes prior to the beginning of the instructional day and to stay thirty (30) minutes after the dismissal of the instructional day. (T-25)

11) That guidance counselors receive the same fringe benefits as members of the teacher bargaining unit. (T-25)

12) That persons employed within the four classifications in question in the instant case would be paid the same extra duty pay as teachers within the bargaining unit if they were, in fact, involved in these "extra duties". (T-25)

13) That the leave provisions applicable to the bargaining unit teachers' members would be the same leave provisions applicable to the persons occupying the four positions in question in the instant case. (T-26)

14) That the individuals occupying the four positions in question in the instant case have the same option of being paid over a twelve (12) month period as do members of the teacher's bargaining unit. (T-26)

15) That in Dr. Battitori's interpretation there are approximately four areas of the currently negotiated agreement governing the terms and conditions of professional service of the bargaining unit members which are not applicable to the four positions in question in the instant case. Those four areas are: 1) salary schedule; 2) professional day; 3) planning periods; and 4) teacher's evaluation. (T-28)

16) That Dr. Battitori believes that past practice has been for the negotiated salary schedule to be used as the initial hiring point for the positions in question and then in subsequent years, raises were given to the people in those positions by the Board on individual basis. (T-29)

17) That a certificate by the state board of education is required for all of the positions in question in the instant case. (T-36, 37)

18) That the contract for Emma Richardson contains a written waiver relative to the Continuing Contract Law. This written waiver is placed within the contract of employees who are compensated utilizing federal or other sources of funding. The waiver is required so that the district can make it abundantly clear that the board would be under no obligation to pick up the entire program through district funding if the outside funding is cut. (T-37)

19) That Dr. Battitori believes that the four positions in question should not be included within the existing teacher bargaining unit because the duties of these people are substantially different than the duties of the teachers within the appropriate bargaining unit. (T-42)

20) That Dr. Battitori feels that the activities director, one of the positions in question, performs supervisory activities as well as directing programs, thus making his inclusion within the bargaining unit inappropriate. (T-44)

21) That Dr. Battitori believes that the activities director assists the principal in evaluation of coaches. However, the other positions in question are not required nor do they perform evaluations of other teachers. (T-44)

22) That two counselors are located at Field Kindley School, two are located at Roosevelt School and one is located at McKinley School. The youth and business career coordinator is located at the senior high school, Field Kindley. The activity director is physically located at Field Kindley, the high school, but he functions at both the junior high and senior high in his duties. The school nurse is housed in the administration building in the education center. (T-53)

23) That Kent Brown currently holds the position of activity director in USD 445 and is also a football coach. (T-67)

24) That Mr. Brown has held his position as activity director for the past two years. He views his job as basically coordinating all activities from transportation to scheduling, purchasing of equipment, security of facility, scheduling of officials and supervision of students. (T-68)

25) That Mr. Brown believes that he assists certain administrative employees in evaluating coaches within the buildings in which he works. (T-71)

26) That Mr. Brown conducts a study hall during the fall term. The main purpose of the study hall is to help athletes who are having a problem, however, the study hall is open to any student who is having trouble in a particular class. There are tutors available during the study hall hours to work with the students. Although Mr. Brown coordinates this study hall, he is not usually physically in attendance during the study hall time. (T-72)

27) That although Mr. Brown occasionally takes a class for an hour or so until a substitute can arrive to take over, he does not make presentations in a particular classroom setting. Mr. Brown has, however, gathered kids together to explain a weight program or summer conditioning program or something of that nature. (T-74)

28) That Mr. Brown attends in-service days and various other types of district-wide or school-wide meetings called by the administration. Mr. Brown does not know for certain whether he is required to attend these types of meetings, but feels or believes that a professional would desire to attend such meetings. (T-75)

29) That Mr. Brown is not totally aware of the manner in which his salary is determined. He is aware that when he was originally hired in 1981 as a guidance counselor, he was placed on a salary schedule. (T-76)

30) That Mr. Brown's wife, who is a teacher within the district, receives substantially the same benefits as does Mr. Brown. (T-77)

31) That although Mr. Brown is aware that numerous other activity directors in various other school districts around the state are included within a bargaining unit with teachers, he does not believe that the position of activities director should be included within a bargaining unit of teachers. His main concern about including the activities director within such a bargaining unit center around the fact that an individual within such a position contained in a bargaining unit might attempt to strictly follow a job description, thus not performing the job as it should be done. Mr. Brown expressed his sentiments that he did not believe it would be in his own best interest to be included within the bargaining unit with teachers. (T-80, 81)

32) That Mr. Brown feels that the nature of his job requires him to work more directly with administrators than with teachers. One example of that logic given by Mr. Brown related to the purchase of equipment on the request of various coaches. In his position as activities director, he, on occasion, must disapprove the purchase of equipment. (T-87)

33) That Mr. Bill Currier is currently employed in USD 445 as a guidance counselor. Mr. Currier is assigned to Roosevelt Junior High School and is in his first year as a guidance counselor. (T-92)

34) That when Mr. Currier became a guidance counselor, he discussed the specific job duties of such a counselor with Dr. Battitori and Joe Martin. In addition to the discussion had with the aforementioned individuals, Mr. Currier was given a teacher handbook which covered the duties of a guidance counselor. (T-93)

35) That as a guidance counselor, Mr. Currier is involved in one-on-one testing of students and in group testing of students. This testing of students is performed mainly when a student is absent the day that a classroom teacher gives the test and subsequently comes to Mr. Currier for testing. (T-96, 97)

36) That as a guidance counselor, Mr. Currier has no specific classroom assignment, but has, on occasion, filled in during a period of time when a teacher was not available. (T-99)

37) That Mr. Currier, as a guidance counselor, evaluates no one within the school system. (T-100)

38) That Mr. Currier believes that he has set hours of work which consist of arriving at 7:45 AM and being released to leave the building at 3:30 PM. (T-101)

39) That Mr. Currier attends in-service meetings, building-wide meetings and district-wide meetings. Mr. Currier attends these meetings because he assumes that as a professional, he is expected to be there. (T-102)

40) That Mr. Currier answers to his building administrator, Mr. Martin. (T-103)

41) That Mr. Currier believes that he was simply placed on the teacher's salary schedule in order to determine his starting salary as a guidance counselor. (T-104)

42) That Mr. Currier, as a guidance counselor, has hall duty as do other teachers within the district. Further, Mr. Currier has similar lunch duty than the other teachers employed within the building. (T-105)

43) That Mr. Currier believes his primary duty as a counselor is in working with students. (T-107)

44) That Mr. Currier stated under oath that he had no opinion or that he did not care when asked whether a guidance counselor

placed within the bargaining unit with other teachers could be represented adequately and fairly. (T-108)

45) That Mr. Currier, as a guidance counselor, teaches no courses. Although Mr. Currier does occasionally fill in or "substitute" for other teachers, he is paid no additional money for that purpose or for attending in-service, district-wide or building-wide meetings. (T-110)

46) That Sally Lundblad is currently employed with USD 445 as a guidance counselor. She is in her eighth year of employment and is currently working at Field Kindley High School. Ms. Lundblad is certified by the State Department of Education as a guidance counselor. (T-114)

47) That Sally Lundblad is aware that there is a faculty handbook which in part describes the duties of a guidance counselor, however, she does not believe that the handbook goes into detail relative to all of the duties performed by a guidance counselor. (T-115)

48) That although Ms. Lundblad does not teach classes as such, she is involved in working with students individually and in group setting. This work is for the purpose of preparing them for tests, to provide make-up testing and on planning for careers. (T-116, 117)

49) That Sally Lundblad, as a guidance counselor, neither supervises nor evaluates other employees. (T-120)

50) That although Sally Lundblad keeps, for the most part, the same hours as the classroom teachers. She believes that there is a technical difference with regard to hours of work between teachers and counselors. As a counselor, Ms. Lundblad does not have to sign in or sign out as do the other teachers. Therefore, she believes that she could arrive later or leave earlier than can the classroom teachers. (T-121)

51) That Sally Lundblad, as a guidance counselor, is not aware whether or not she was started on the teacher's salary schedule when she became a guidance counselor. (T-121)

52) That Sally Lundblad, as a guidance counselor, does have occasion to fill in for classroom teachers. (T-122)

53) That Sally Lundblad, when asked whether or not she believed guidance counselors could be fairly and adequately represented in the same bargaining unit with classroom teachers replied; "I think I would carry out my duties and do everything the same, whether I was in the bargaining unit or not. So, I have been satisfied the way I am but I can work either way." (T-124)

54) That Sally Lundblad works on an annual contract for a period of ten months. Ms. Lundblad has no regular planning period during her work day. (T-124)

55) That Darrell Sommers is a guidance counselor employed by USD 445 at the high school. (T-128)

56) That Mr. Sommers testified that he believed his salary was determined strictly on merit. Further, that this merit is determined by the administration at the central office and the board of education. (T-130)

57) That Mr. Sommers believes that his primary duty as a guidance counselor is to assist students in any way he can from an educational standpoint or in any personal aspect of their life. (T-132)

58) That Mr. Sommers believes that guidance counselors within USD 445 have no set hours of work. (T-136)

59) That Mr. Sommers, in his role as a guidance counselor, supervises no one nor does he evaluate anyone. (T-137)

60) That when Mr. Sommers was asked for his opinion with regard to whether or not guidance counselors could be adequately represented within a bargaining unit of other teachers, stated that he did not believe that special interest groups such as guidance counselors could be very adequately represented by an organization that is made up entirely of teachers. (T-138)

61) That Susan Brown is currently employed in USD 445 as a school nurse. Ms. Brown is in her sixth year of employment. (T-143)

62) That Ms. Brown holds a certificate issued by the Kansas Department of Education. (T-143)

63) That Ms. Brown perceives her job as school nurse to be a consultant on health needs to the administration, school

personnel, parents and students. In this role, Ms. Brown has had the opportunity to make short class presentations to students on various health related matter. (T-145, 146)

64) That in addition to the duties listed in the previous finding, Ms. Brown keeps track of all the immunization records for students and does vision and scoliosis rescreening. (T-148)

65) That Ms. Brown works out of the central office. In her job, she neither supervises nor evaluates anyone. (T-150)

66) That Ms. Brown's hours as a school nurse are normally from 8:00 AM to 4:00 PM. However, on many occasions, she makes presentations to groups after hours. (T-151)

67) That Ms. Brown does not believe that she is on the regular teacher salary schedule. However, she does believe that she receives raises in most years based upon the percentages given to the teachers. (T-153, 154)

68) That Ms. Brown stated that in the past she really felt the need to be a part of the unit, but did not feel so at the current time. (T-154)

69) That Ms. Brown's school year as a school nurse consists of one hundred and eighty (180) days plus six in-service days which is the same or a similar schedule to classroom teachers. (T-155)

70) That Ms. Brown believes that her benefits are pretty much the same benefits as classroom teachers within USD 445. (T-155)

71) That Ms. Brown, the school nurse, does not feel that she is a part of the administration, nor is she a classroom teacher and she is not a counselor. Therefore, there are times when she feels the need for support or backup in challenging situations. (T-159)

72) That Ms. Brown believes that the existence of a grievance procedure which might be open to her would be reassuring in her dealing with the school district. (T-162)

73) That John Hough is currently employed at McKinley Middle School as a guidance counselor. Mr. Hough is in his first year in the position of guidance counselor. (T-170)

74) That Mr. Hough formed his concept of the job responsibilities for a guidance counselor from the interview that was conducted prior to the time he was hired as a guidance counselor and from his twelve (12) years of experience as a guidance counselor. (T-171)

75) That although Mr. Hough has on occasion been involved with group counseling sessions, he primarily places emphasis on individual counseling. (T-173)

76) That Mr. Hough was informed by the principal of the school of which he is employed that his hours or the hours for people in the building were fifteen (15) minutes before school began and thirty (30) minutes after school closed. (T-175)

77) That Mr. Hough, in his role as a guidance counselor, has made a few classroom presentations. Further, he has filled in for classroom teachers on very rare occasion but only in extreme emergencies and then only for just a few minutes. Mr. Hough also has noon duties at McKinley. (T-175, 176)

78) That Mr. Hough was hired in on the negotiated salary schedule. After he had signed the initial contract for 1986-87, he received a raise in salary that he believes was based upon the negotiated salary schedule between the classroom teachers and the school district. (T-179)

79) That Mr. Hough believes that placing counselors within the bargaining unit of classroom teachers would have small financial impact on counselors. Professionally, he believes it would be damaging for the counselors to become a part of the bargaining unit. This concept is based upon Mr. Hough's perception of the unique nature of being a guidance counselor. He believes that guidance counselors currently enjoy an autonomous role between classroom teachers and administrators. This autonomy is needed since counselors desperately need the support of the administrative staff at the building level and at the central office level and that they also need the support of the faculty in performing the prescribed duties of a guidance counselor. Mr. Hough testified that there are a number of things that the faculty

confides in him as a guidance counselor simply because he is not a part of the administration. Additionally, there are things that the administration confides in him because he is not a classroom teacher. As a result of placing guidance counselors within the bargaining unit with classroom teachers, Mr. Hough feels that the aforementioned autonomy would be jeopardized. (T-182, 183)

80) That Judith Evans-Lombe is currently employed within USD 445 as a guidance counselor at Roosevelt Junior High. Ms. Evans-Lombe is in her first year as a guidance counselor. Prior to accepting the position as a guidance counselor, Ms. Evans-Lombe served as a classroom teacher in USD 445. (T-188)

81) That Ms. Evans-Lombe was made aware of her job responsibilities by reading the Roosevelt Junior High faculty handbook which was placed in her teacher's box when she assumed her duties at Roosevelt. (T-189)

82) That Ms. Evans-Lombe is occasionally called upon to make brief classroom presentations and to supply films and other information. (T-190)

83) That Ms. Evans-Lombe is included in the extra duty schedule at Roosevelt Junior High. This extra duty consists of being on duty at the door in the morning and at noon when the children are allowed into the building. (T-190)

84) That Ms. Evans-Lombe believes that her duty day consists of arriving fifteen (15) minutes prior to commencement of classes in the morning and leaving thirty (30) minutes after classes end in the afternoon. Ms. Evans-Lombe believes that counselors are required to put these times down on a slip of paper when they come and go from the building. (T-191)

85) That Ms. Evans-Lombe believes that the placement of guidance counselors within the bargaining unit with classroom teachers would have little, if any, impact on her salary-wise. Professionally, she feels that guidance counselors might be at a disadvantage if they were placed within the bargaining unit. Ms. Evans-Lombe believes that having some stated due process such as a grievance procedure might be of benefit to guidance counselors, but that as a whole, counselors would be at a disadvantage if they

were placed within the bargaining unit because of the autonomy or confidentiality that counselors now enjoy. (T-192)

86) That Emma Richardson is currently employed within USD 445 as a career coordinator. Ms. Richardson is in her second year within that position. (T-196)

87) That the position of career coordinator is partially funded by a grant and partially funded locally by the Coffeyville school district. (T-196)

88) That Ms. Richardson, in her role as a career coordinator, is employed on a ten month extended contract. (T-197)

89) That Ms. Richardson believes that the amount of her salary changed upon the completion of negotiations between the school district and the bargaining unit consisting of classroom teachers. Ms. Richardson feels that she was placed on the same salary schedule as classroom teachers when she commenced working in USD 445. (T-197, 198)

90) That Ms. Richardson, as a career coordinator, is primarily responsible for working with senior or twelfth (12th) year students, to improve their job attainment skills and with placement of them after they have completed school. Ms. Richardson primarily works with economically disadvantaged students under the guidelines of the Job Training Partnership Act (JTPA) administered through the Department of Human Resources. (T-199)

91) That Ms. Richardson's work is mainly done in small groups or in a one-on-one situation. She works with students in helping them to feel good about themselves so that they might desire to go to work. She then assists them and instructs them on how to fill out job applications and perfecting interview techniques. (T-200)

92) That Ms. Richardson stated that she really didn't have any feelings one way or the other with regard to whether or not her position could be adequately represented within a bargaining unit of classroom teachers. (T-205)

93) That Ms. Richardson believes that she not only reports to the administration in USD 445, but also to various people within the Job Training Partnership program. (T-206)

94) That Sally Lundblad has spent approximately three and one-half (3½) days working with students in the area of career presentations. Additionally, she spends three or four days working with students in English and algebra classes, preparing the students for taking the S.A.T. tests. Ms. Lundblad also spends time in working with senior students in the classroom, preparing them for the A.C.T. and the S.A.T. tests and visiting with them about financial aid. (T-208, 209)

95) That the time Ms. Lundblad spends with students as set out in the previous finding is not time for which the students receive credit nor over which students are required to take a test. (T-209)

96) That Joe Martin is a principal at Roosevelt Junior High School and is in his sixth year of employment. (T-210)

97) That Mr. Martin believes that the junior high faculty handbook adequately sets out the guidelines for guidance counselor. (T-211)

98) That counselors at Roosevelt Junior High School request and receive personal leave in the same manner as classroom teachers. (T-216)

99) That Mr. Martin believes that the inclusion of guidance counselor with a unit of classroom teachers would hamper his relationship as principal with the guidance counselors. He feels that he has the ability to relate to guidance counselors in confidence and that with the inclusion of these counselors within the bargaining unit that confidential process might be changed. (T-217)

100) That Mr. Martin testified that it was his usual procedure to present ideas to counselors for their input and consideration prior to making certain moves. It is, thus, this analysis of various proposed actions that Mr. Martin feels might be jeopardized by the inclusion of counselors within the bargaining unit. (T-218)

101) That Mr. Martin on occasion goes into classrooms to substitute for a teacher that is ill or absent. He also supervises lunchroom whenever he is not obligated to be someplace else. (T-219)

102) That counselors are not required to receive permission from either the principal or the assistant principal before leaving the school building during the duty day. Classroom teachers, however, are required to seek permission from either the principal or assistant principal before leaving the building during the school day. (T-220)

103) That Mr. Martin feels that the activity director is mainly responsible for scheduling transportation, scheduling the athletic budget, securing of officials and security of facilities. (T-222)

104) That the librarian at Roosevelt Junior High School does not teach any specific classes. There is, however, an orientation period for eighth grade students on how to properly use the library which consists of approximately three to five classroom days. Mr. Martin, principal at Roosevelt Junior High School, views the librarian as a resources person to students. (T-223)

105) That librarians within USD 445 are included within the appropriate bargaining unit of classroom teachers. (T-224)

106) That Mr. Harold Thomas is the principal at McKinley Middle School. (T-224)

107) That the counselor at McKinley reports to Mr. Thomas as do all classroom teachers at McKinley. (T-225)

108) That Mr. Thomas believes that the counselor at McKinley performs certain duties in addition to the normal duties performed by a guidance counselor. Those duties, in Mr. Thomas' opinion, go far beyond what a classroom teacher would be expected to do. The counselor at McKinley, on occasion, acts in Mr. Thomas' absence. (T-225, 226)

109) That Mr. Thomas believes that the inclusion of counselors within a bargaining unit of teachers could possibly violate some of the freedom or accessibility that he now feels with the guidance counselor. (T-227)

110) That Mr. Thomas, as principal, has occasion to go into classrooms to make presentations for the students, occasionally substitutes in a regular classroom and does supervise lunchrooms. (T-228)

111) That Mr. Thomas believes there is a difference between counselors and teachers in the area of their role as a disciplinarian. That difference being that a classroom teacher might initiate discipline whereas a counselor would work with the student to resolve the problem which resulted in the original discipline. (T-229)

112) That Mr. Thomas testified that counselors in his building were not required to receive permission to leave the building. However, teachers in the building are required to receive permission to leave the building during the duty day. (T-230)

113) That beginning with the 1986-87 school year, counselors and classroom teachers are evaluated on two different instruments. (T-231)

114) That Mr. Thomas believes that he has the authority to require a counselor to attend meetings or activities outside the regular duty day. However, he does not believe that he has that same authority with classroom teachers. (T-233)

115) That there is no vice principal located at McKinley school. However, there is a head teacher located within the building. (T-235)

116) That the head teacher referenced in the previous finding does possess an administrator's certificate and, on occasion, does act as an administrator. (T-236)

117) That Ned Richardson is currently employed within USD 445 as principal of Field Kindley High School. Mr. Richardson is in his third year in that capacity. (T-237)

118) That there is a librarian employed at Field Kindley High School. The librarian does not have a planning period. The librarian also keeps the same hours as the regular classroom teachers. (T-238)

119) That there are two counselors employed at Field Kindley High School. One counselor usually works the same hours as the classroom teacher while one spends much more time at the school. (T-238)

120) That all classroom teachers, the librarian and the guidance counselors at Field Kindley High School all report to Mr. Richardson, the principal of the high school. (T-242)

121) That Mr. Richardson believes that a problem might arise with placing the guidance counselor within the bargaining unit with classroom teachers if and only if the amount of time available for their job was dictated by the labor contract. (T-243)

122) That the existing negotiated agreement between Coffeyville USD 445 and the Coffeyville NEA contains a statement under Article XI, Professional Day as follows: "No teacher will be required to accept all or any part of another instructor's class." (T-245)

123) That Mr. Richardson believes that because of the language stated in the previous finding, he is unable to require classroom teachers to substitute in emergencies for other classroom teachers. However, he is at liberty to require counselors to perform this duty in light of the fact that they are not covered by the current contract or represented within the bargaining unit. (T-246)

124) That teachers at Field Kindley High School are required to obtain permission from the administration prior to leaving school during the duty day. Counselors at the high school are not required to receive such permission. (T-246)

125) That classroom teachers at Field Kindley High School discipline students, however, counselors do not discipline students. (T-247)

126) That counselors employed within Field Kindley High School are required to rotate with regular classroom teachers on hall duty. (T-247)

127) The Gene Neely is currently employed within USD 445 as an instructor at the high school. Mr. Neely has been so employed for fourteen (14) years. Mr. Neely has served in various capacities with the Coffeyville NEA including the teacher's right chair, a member of the bargaining team for nine years and has served as the chief negotiator for the past two years. (T-250, 251)

128) That the agreement existing between Coffeyville NEA and USD 445 cover the gammit of instructional positions as well as all extra positions and duties that are performed outside the duty day. (T-252)

129) That Mr. Neely believes that guidance counselors could be included within the appropriate bargaining unit with classroom teachers and librarians without any real problems arising. He feels that guidance counselors could be fairly and adequately represented by the exclusive representative. (T-254)

130) That Mr. Neely agrees that the activities or duties of a counselor, activities director, school nurse and career coordinator are quite different or unique from that of a classroom teacher. However, he does not believe that this uniqueness in duties would preclude the NEA-Coffeyville from adequately and fairly representing counselors, the school nurse, the activities director and the career coordinator. (T-256)

131) That the State Board of Education issues a certificate for guidance counselors. The State Board also issues a certificate for the position of school nurse. The business career coordinator is not a category in which the State Board issues a certificate, therefore, any person with a teaching certificate could occupy that position. The activities director is another position for which the State Board issues no particular certification. However, the position of activities director is one for which a certificate of either teacher, counselor or administrator is necessary. (T-256)

CONCLUSIONS OF LAW/ORDER

The instant case comes before the examiner on petition of NEA-Coffeyville requesting an amendment to the existing appropriate bargaining unit of classroom teachers and librarians to include: 1) guidance counselors, 2) school nurse, 3) Youth and Business in Partnership Coordinator, and 4) activities director. Respondent school board has opposed the inclusion of these positions arguing that although the classification in question are "professional employees" within the meaning of K.S.A. 72-5413 et seq., they should not be included within the unit of classroom teachers. This argument is based upon the concept that the above mentioned four workers classifications do not share a community of interest with classroom teachers nor do the individuals within the four classifications desire to be included within the unit of classroom teachers. Petitioner NEA-Coffeyville argues that a community of interest does exist between and among the four classifications and classroom teachers and that failure to include or the creation of a separate unit will work a disservice to all parties.

K.S.A. 72-5413 (c) defines "professional employee" as follows:

"'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."

This definition clearly provides for any person who is employed to perform duties of an educational or instructional nature to fall under the definition of a "professional employee." Both Petitioner and Respondent agree that the classifications in question meet this test. The totality of the question before the Secretary's designee, therefore, relates to unit placement of the four classifications.

K.S.A. 72-5420 guides the Secretary in making decisions relative to unit placement of "professional employees".

K.S.A. 72-5420 states:

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

The legislature has made it quite clear that "classroom teachers" must, as a group employed by a school district, be included within one appropriate unit. However, the legislature recognized that other classifications of professional employees exist and that there also exists the possibility that these "other" professional employees should most appropriately be placed in a unit separate from classroom teachers. The above cited statute directs the Secretary to look to a community of interest, wishes of the professional employees and the established practice among professional employees in making determinations relative to unit placement.

The examiner notes that the legislature, with the enactment of K.S.A. 72-5413 et seq., failed to define "community of interest." Thus, the examiner must rely on a definition as historically utilized in the labor/management arena. That definition normally includes:

- 1) similarity of duties
- 2) similarity of skills
- 3) similarity of wages and other working conditions
- 4) similarity of qualifications

5) commonality of supervision

6) geographical proximity.

The record is quite extensive as to the relationship between each position in question and classroom teachers. The examiner shall view this question of community of interest as it impacts each of the disputed positions.

Guidance Counselor

The counselor normally performs duties different than those performed by classroom teachers. That is, teachers appear to have assigned classrooms of students to whom the teachers teach specific subjects on a regular basis. Counselors, on the other hand, appear to have a goal of assisting students with school related "problems." While those "problems" may relate to a multitude of areas, a majority of the work relates to testing and/or career planning rather than the giving of assistance in a certain subject discipline. The assistance given by a counselor is seldom given in a classroom setting and is more often given in a one on one confrontation. Testimony indicates that counselors do "take over" a class in emergencies, however, this duty is the rare exception rather than the rule. Further testimony indicated that this "take over" only lasted until a substitute could be found or the teacher returned.

One classic example of the difference in duties which indicates the different "goals" of teacher and counselor is the preparation of lesson plans. Teachers are required to complete lesson plans and are, in fact, given a "planning period" for this and other purposes. Counselors do not prepare lesson plans and do not have a "planning period." The ultimate goal, that of educating and preparing students for future academic or business careers, is shared by both teacher and counselors but the duties are for the most part dissimilar.

Teachers and counselors share, in part, work skills. That is, most counselors appear to be former teachers and both must

know how to deal with students in preparing them to attain the aforementioned ultimate goal. However, the record reflects that one must possess a certification of counselor in order to officially serve as a counselor.

A great deal of testimony was heard relative to the similarity of terms and conditions of service. It appears that most counselors were hired at a salary set by the salary schedule. Most counselors believe that their annual increases in salary is either at, or close to, the amount given to bargaining unit members. Only one counselor testified that he believed his salary was determined on merit without regard to the amount negotiated by the teacher unit representative. There was no evidence presented which would serve to prove or disprove this individual's belief. Some counselors appear to believe that the required hours of work are substantially the same for teachers and counselors. A preponderance of the testimony shows that fringe benefits are the same or similar for counselors and teachers. Administrators testified that until the 1986-1987 school years, both teacher and counselor were evaluated by the same or similar procedure. Teachers are required to check in and out and receive permission to leave the building during the duty day. Counselors at some schools do not sign in and out, while at other schools the counselors check in and out in a manner similar to teachers. Administrators testified that counselors do not need to receive permission to leave the building during the duty day. Administrators also testified that they could require counselors to attend functions after hours but could not require such attendance by classroom teachers.

The examiner must find that the weight of similarity of working conditions falls heavily on the side of a community of interest between teacher and counselors.

The examiner has previously addressed the question of qualifications. Evidence shows that a counselor is certified in that field by the State Department of Education.

The record reflects that the building principal supervises and evaluates both teachers and counselors within the building. Further, the counselors are located in the same geographical area as classroom teachers. The work of both teacher and counselor takes place in that building.

It appears to the examiner that while the duties of teacher and counselor differ, the balance of criteria for determining community of interest are quite similar. Certainly, the similarities would not and do not dictate the exclusion of counselors from a bargaining unit with classroom teachers.

The second guideline given the Secretary in determining unit placement is the wishes of the professional employees. The record reflects that none of the counselors requested inclusion. One testified that it made no difference, at least two were relatively adamant in their desire to be excluded, and the remainder believed that inclusion might hamper the counselors in performing their duties. These individuals did not appear to feel that the local bargaining representative could not represent them adequately. Rather, they seemed to believe that their inclusion would more closely align them with teachers thus removing some of their flexibility to communicate with administrators. One counselor testified to a perception of "them" and "us" as the labels given teachers and administrators in the USD 445 district. Certainly, nothing in the record proves that the counselor's perception is shared by a majority of teachers or administrators within the district. However, it appears that a majority of the counselors feel a need to be a "neutral" in the formalized labor/management relationship.

The established practice within the district has been to exclude counselors and the record is void of testimony to indicate that any "problems" have arisen for either the administrators or the counselors. Additionally, the union has failed to show any harm to any party by the exclusion of counselors from the bargaining unit of classroom teachers. The record does not give the examiner a clue to any past practice of

counselors joining or belonging to the exclusive organization representing teachers or any other employee organization.

The examiner is aware of the practice of including counselors within bargaining units with classroom teachers in other districts. No evidence or testimony was taken to show any problems or the lack thereof for either counselor, teacher or administrator in those districts.

In weighing all the evidence and testimony as it relates to the placement of counselors in the bargaining unit of teachers, the examiner reaches the following conclusions:

- 1) There is a sufficient community of interest between teacher and counselor to merit inclusion of the two classifications in the same unit if all other criteria are equal. That is, the similarity of community of interest certainly does not dictate exclusion.
- 2) The counselors as a group desire to be excluded from the bargaining unit consisting of classroom teachers.
- 3) The established practice within USD 445 has been to exclude counselors from the classroom teacher unit and there is no evidence to show that the parties have experienced problems. Further, there is no evidence to show that counselors have joined a professional employee organization.

Activities Director

The activities director, like the counselors, does not perform the same duties as a classroom teacher. Although his ultimate goal may be similar to that of a teacher, his methods of achieving that goal differ. There is no written job description for the activities director, however, the person occupying the position stated his duties quite concisely. He testified that his understanding of the duties was gained from visitations with administrators and basically consists of, "coordination of all activities from transportation to scheduling to purchasing of equipment, security of playing facilities and officials supervision." In addition, the activities director works with students to encourage them to participate in various activities. Further, he works with various teachers in attempting to schedule

activities. The activities director makes no classroom presentations although he does occasionally fill in for a classroom teacher in an emergency. Budget requests for equipment purchase and travel flow through the activities director to the superintendent.

It appears that the activities director is certified or has been certified as both a classroom teacher and counselor. The examiner finds nothing in the record to indicate that there is state certification as an activities director necessary in order to hold that position in USD 445. Testimony reflected that anyone holding a teaching certificate, counselor certificate or administrator certificate could hold the position of activities director. The record is void of any statement of qualifications for the position above that perhaps of teacher/coach. It appears, therefore, that the position is one learned as the duties are performed.

Certainly, there are some specialized skills utilized as activities director which are unique to that position. Such skills as analyzing budgets and scheduling events and/or transportation are of the nature that might be acquired with the performance of the job.

The activities director was placed on the teacher salary schedule when hired and is not aware of whether wage increases have been given based upon the negotiated agreement. The activities director believes that his benefits are very similar to the benefits given to classroom teachers.

The activities director is housed in school buildings with classroom teachers and answers to the common supervisor of classroom teachers.

It appears that although the activities director performs different duties than classroom teachers, he does share a community of interest sufficient to determine an inclusion within the existing unit. The examiner is concerned with the limited budget authority given to the activities director but testimony shows that the ultimate authority to make decisions is vested at

a higher level. This area of authority could, however, work a hardship on both employee organization and the administration with an inclusion of the position in the existing bargaining unit. The examiner would recommend a future clarification of this type of authority.

The individual occupying the position of activities director testified that he believed an inclusion within the unit could be detrimental to the goals of the position. He indicated his wishes that the position be excluded from the unit.

The established practice within USD 445 is to exclude the position and there is no showing of the employee having joined any employee organization. The record indicates that no problems have arisen either for the position or management by the exclusion of the position from the bargaining unit. The union has shown no compelling reason for the inclusion of the position.

School Nurse

There can be no argument that the duties of a nurse differ from those of a classroom teacher. The nurse spends little time in classroom presentations although she does occasionally appear.

It is apparent to the examiner that the nurse is primarily responsible for health related matters within the district as a whole. She compiles records, performs certain types of screening, makes student referrals and administers first aid treatment for accidents or illness while the student is in school.

The skills utilized by the school nurse are quite different than those utilized by a classroom teacher. The nurse holds a certificate as a school nurse and meets qualification criteria quite different from those of classroom teacher.

The nurse is not aware of whether or not she is compensated on the negotiated salary schedule but believes she receives whatever raise is negotiated by the bargaining unit. The nurse believes that she receives the same benefits as do classroom teachers. The nurse normally works from 8:00 AM to 4:00 PM.

It appears that the school nurse answers to the central administration rather than to any specific building principal. She is housed in the central office but may perform services in all buildings.

The person occupying the nurse position was not clear in stating her wishes for inclusion or exclusion. She stated that she formerly felt the need to belong to a group and to perhaps be covered by a memorandum of agreement. The testimony indicated that a problem had arisen in her employment which might have been resolved if the position had been placed in a bargaining unit. The examiner is aware that established practice within the district has been to exclude the nurse position. He is also aware that the position of school nurse has been included in some classroom teacher units across the state.

The school nurse testified that she occupies rather a unique position. She feels that she does not fit as a counselor or an administrator and the examiner perceives that the nurse is not accepted as a classroom teacher. The nurse position does qualify as a unique position but it cannot be denied that she is a "professional employee." The nurse performs duties of an educational or instructional nature.

The examiner finds that the position of school nurse shares a community of interest with classroom teachers insofar as wages and other terms and conditions of professional service are concerned. The duties, skills and qualifications differ but these differences standing alone do not dictate the exclusion of the position from a bargaining unit of classroom teachers.

Youth and Business in Partnership Coordinator

This position works, for the most part, with senior students in an effort to increase their job attainment skills. While the ultimate goals of the coordinator and the classroom teacher are synonymous, the attainment of that goal is realized utilizing quite different methods. The coordinator makes few classroom

presentations and works a majority of her time in a one on one situation. She has no assigned classroom or subject discipline which she teaches. There is no doubt, however, that the coordinator "teaches" students skills that are equally important to any subject taught by a classroom teacher. It should be noted that the students with whom the coordinator works are somewhat limited by qualifications set out under federal JTPA specifications.

Testimony indicated that a teacher certification was the only necessary certification to hold the position of coordinator. Thus, skills to perform the job appear to be of the nature one might acquire on the job. Qualifications thus appear to be similar to those necessary to become a classroom teacher.

The coordinator testified that she believed she started working at a salary as outlined on the teacher salary schedule. Further, she believes that she has received increases in salary at the same or approximate rate as is given within the negotiated agreement. Benefits given the coordinator are similar to those given classroom teachers.

Supervision of the coordinator position lies mainly with the chain of command in USD 445, however, JTPA people at the state level are somehow involved in the administration of the coordinator position. Work is performed within the school building in USD 445 where classroom teachers also work.

The person occupying the coordinator position testified that she did not have feelings one way or the other when she was asked her opinion as to whether the coordinator position should be included within the appropriate unit.

The examiner expressed concern over the fact that the coordinator position is funded in part by grant money. Evidence indicated, however, that other positions within the school district are funded in part by grant or federal money, yet, these positions are included within the classroom teacher unit.

In addition to the criteria set forth at K.S.A. 72-5420 the examiner must remain cognizant of one very important principle which any reasonable person must consider in determining the scope of appropriate units. That principle is the principle of efficient and effective operation of government. The examiner believes that the legislature did not consciously omit this principle but rather simply assumed that all parties would seriously consider this principle when shaping appropriate units.

Further, all parties must be aware that every professional employee is, by statute, granted the right to select a representative and through that representative engage in negotiations over terms and conditions of employment with his/her employer.

In light of the above, the examiner must mold a unit(s) which does not hamper organizational efforts and does not hamstring management from carrying out the goals of the governmental entity. Further, the examiner must not create numerous units which require the employer to engage in repetitious bargaining or which deplete the bargaining power of the employees.

As stated previously in this order, the examiner finds that the counselors, career coordinator and the school nurse share a sufficient community of interest with the existing bargaining unit of teachers to warrant inclusion if all other matters are equal. A community of interest is also shared by the activities director insofar as terms and conditions of employment are concerned. However, the examiner is concerned that some duties performed by the activities director may be incompatible with his inclusion within a unit of classroom teachers. That is, it appears that this individual has some budgetary authority and may serve in some unofficial role as evaluator of coaches. There are, however, insufficient facts within the record to dictate exclusion of the activities director for these reasons alone. The examiner urges the USD 445 administration to clearly define the duties, obligations and authority of the activities director in these areas.

Past practices of the employees in joining an employee organization is unknown. The examiner is aware of the fact that the positions in question have heretofore been excluded from the bargaining unit in USD 445. Further, he is aware that some districts in Kansas have included the same position titles in bargaining units with teachers. There is no evidence now before the examiner to show whether the duties of the position in question are truly comparable with duties of similar positions in other districts.

It appears that the pivotal fact in this case relates to the desires of the professional employees effected by the question. The union has shown no prevailing reason for the inclusion of the positions with the possible exception of a problem experienced by the school nurse. The nurse testified, however, that she felt no need for belonging to a unit at the current time. The employer has not argued against the creation of a separate bargaining unit for "special services" people. And the examiner must assume that the employer recognizes the right of these "special services" people to organize if they so desire.

It appears, therefore, that the most workable solution to the question at hand is to create a bargaining unit for special services people which is separate from the unit of classroom teachers. This action will allow the special services people to organize and bargain but will not impact the problem voiced by a majority of the individuals occupying the positions in question. They will be able to retain their independence or autonomy from both teacher and administrator. If a majority of the special services people desire to bargain the group may simply seek recognition from the board pursuant to K.S.A. 72-5416 or file with the Secretary pursuant to K.S.A. 72-5417. This group could choose to be represented by KNEA or any other organization of their choice.

Creation of this separate bargaining unit will further resolve any problem with a change in wishes of the effected professional employees. That is, since there is a community of interest sufficient to include the special services people with the unit of classroom teachers and since the special services unit is being created because of the wishes of the special services people, any change in wishes of the people could cause the combination of the two units. The examiner believes that a simple vote of the special services people would serve to indicate a change in wishes of those people. Thus, a second or subsequent hearing would not be necessary in order to consolidate the two units into one unless changes in terms and conditions of employment should occur in the interim. Creation of the separate unit will also afford the union the opportunity to vie for representation status of the people they sought to include within the unit they already represent. If the administration finds that two organized units hamper the efficient administration of government, they will be free to petition the Secretary for an order combining the two units into one.

In sum, the Secretary's designee finds:

- 1) There is a community of interest among counselors, activities director, school nurse, career coordinator and classroom teachers.
- 2) The professional employees effected do not wish to be included within a unit of classroom teachers.
- 3) Past practice of the district and the organization is to exclude special services people from the unit of classroom teachers.
- 4) The record is void of evidence or testimony to show the extent to which the effected employees have joined any organization.
- 5) The union has shown no prevailing reason for inclusion of the special services people in the unit with classroom teachers.


Thus, the weight of the evidence taken as a whole dictates that a separate unit of special services people be established. This unit shall be comprised of:

- 1) counselors
- 2) school nurse
- 3) career coordinator
- 4) activities director

This special services unit shall exclude:

- 1) administrators
- 2) all other employees.

IT IS SO ORDERED THIS 31st DAY OF July, 1987.



Jerry Powell, Labor and Employment
Standards Administrator
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