

BEFORE THE SECRETARY OF HUMAN RESOURCES
OF THE STATE OF KANSAS

COFFEYVILLE COMMUNITY COLLEGE,)
COMPLAINT,)
VS.) CASE NO. 72-UCA-2/3-89
COFFEYVILLE COMMUNITY COLLEGE)
PROFESSIONAL ASSOCIATION,)
RESPONDENT,)
AND)
COFFEYVILLE COMMUNITY COLLEGE)
PROFESSIONAL ASSOCIATION,)
COMPLAINT,)
VS.)
COFFEYVILLE COMMUNITY COLLEGE,)
RESPONDENT.)

UNIT CLARIFICATION ORDER
Pursuant to K.S.A. 72-5413 et seq.

On the 7th day of September, 1989, the above-captioned case comes on for hearing before Miss Merrill J. Hicklin, sitting as the Secretary's Designee for this matter. This matter comes before the Secretary on the petition of the Coffeyville Community College Board of Directors, requesting that a determination be made as to whether the employees who hold the positions as set forth in complainant's petition are professional employees as defined by K.S.A. 72-5413(c) or administrative employees as defined by K.S.A. 72-5413(d). The Coffeyville Professional

72-UCA-2/3-89

Employees Association answered requesting that the scope of the bargaining unit remain as presently defined and that three additional positions be held to be Professional employees pursuant to K.S.A. 72-5413(c) and so included within the membership of the Professional Employee Association.

APPEARANCES

The hearing was held before Miss Merrill J. Hicklin, staff attorney for the Kansas Department of Human Resources.

Coffeyville Community College, appeared by and through Dr. Dan Kinney, President of Coffeyville Community College.

Coffeyville Community College Professional Employees Association, appeared by and through Mrs. Maureen Mosier Thoen-del, President of Professional Employees Association, Coffeyville Community College.

ISSUES

1. Whether the employee who holds one of the positions set forth in the petition is a professional employee pursuant to K.S.A. 72-5413(c) or administrator pursuant to K.S.A. 72-5413(d).

2. If the determination is that the employee is a professional employee pursuant to K.S.A. 72-5413(c), whether the professional employee is included within the appropriate bargaining unit pursuant to K.S.A. 72-5420.

PROCEEDINGS

1. The Coffeyville Community College, on February 21, 1989 filed a petition.

2. The Coffeyville Community College Professional Employees Association on March 6, 1989 filed an answer.

3. A pre-hearing was scheduled for April 13, 1989, at the Coffeyville Community College.

4. The parties agreed to arrange time, date and place of formal hearing by May 19, 1989.

5. As of May 19, 1989, parties were unable to reach agreement as to the date, time and place for the hearing.

6. June 28, 1989, The parties agreed to hold the hearing on September 7, 1989, in the Board of Trustees Meeting Room on the Coffeyville Community College Campus.

7. On August 28, 1989, the Department received notice from the parties regarding the items in dispute and the witnesses to be called at the hearing.

8. The hearing was held on September 7, 1989, at 1:10 PM at the Coffeyville Community College before Miss Merrill J. Hicklin, Secretary's Designee.

FINDING OF FACTS

The Secretary's designee having reviewed the evidence of record and having considered the arguments of the parties, now makes and issues the following:

1. The position of Director of Records and Registrar was developed in February of 1987 and was filled at that time. The Director has no teaching responsibilities or duties. As Director, the employee supervises, evaluates and makes recommendations as to hiring and termination of staff. The staff consists of one full time employee and several work study students.

2. The Director of Records and Registrar is responsible for keeping records of all students enrolled in courses at Coffeyville Community College. The Director is also responsible for maintaining permanent records, for claiming state aid billings, filing transcripts for students that are transferring to other institutions, and evaluating transcripts of students that are transferring to Coffeyville Community College from other colleges.

3. The Dormitory Supervisor supervises three dormitory assistants. Two are full time employees, and one is a part time employee. All are members of the Professional Employee's Association. The Dormitory Supervisor also supervises a dormitory maid and work study students. The Dormitory Supervisor may hire, terminate, evaluate and reprimand employees. The Dormitory Supervisor's duties additionally include recommending changes in dormitory policy, handling discipline problems in the dormitories, and recommending corrective action to the Dean of Student Services.

4. The Dormitory Supervisor is also the head women's basketball coach and by supplemental contact is the head volleyball coach. The Dormitory Supervisor, in his or her capacity as head women's basketball coach, teaches a three-credit-hour course in rules and officiating for the members of the women's basketball team, and supervises an assistant coach. Furthermore, by supplementary contract, the Dormitory Supervisor teaches three credit hours of Rules and Officiating for members of the women's volleyball team.

5. Approximately one year ago, the positions of Director of Admissions and Director of Financial Aid were combined into a single position of Director of Admissions and Financial Aid. The

Director of Admissions and Financial Aid has specialized training in financial aid and is responsible for the Work Study program. Currently the director supervises one full time secretary. The Director has no teaching responsibilities or duties. The Director works directly with parents and students on matters related to financial aid and during the past two years has also done recruiting.

6. The Men's Basketball Coach is responsible for the basketball budget, recruiting participants for the basketball program, the scheduling of games, arranging travel, mode of transportation, time of arrival and departure, and team accommodations. Also, the Men's Basketball Coach works with the booster organization and does various fund raising projects.

7. The Men's Basketball Coach supervises, evaluates, selects and terminates the assistant coaches. The coach teaches one credit hour for the athletes that are enrolled or participate in basketball. Any class taught beyond the one hour credit course would be on a supplemental contract.

8. The position of Director of Student Recruitment and Head Track and Cross Country Coach are combined into a single position. The Director of Student Recruitment and Head Track and Cross Country Coach supervises, evaluates, hires and terminates

their coaching duties do require instruction. In addition, each coach is assigned to teach a class or classes. (Football--one credit hour; baseball--six credit hours; basketball--one credit hour). The coaches are responsible for their entire sports program. They select, supervise, evaluate and terminate assistant coaches. They schedule games, order equipment, make travel and accommodation arrangements, and recruit athletes. The head coaches are responsible for the daily operation of their programs and preparation of their budgets. They use independent judgment in carrying out the program goals and objectives, and report directly to the president.

Upon balancing the educational duties against the administrative duties, the head coaches are predominantly administrative.

2. Head Coaches combined with other positions -- Women's Basketball/Dormitory Supervisor; Track-Cross Country/Director of Student Recruitment;

As noted above, when an employee holds more than one position, one must look to the totality of duties

one secretary. In the capacity as head track and cross country coach, the Director teaches a two hour credit course in the theory and techniques of track to the participating athletes. As coach of the track and cross country team, he manages the track and cross country budget, recruits athletes to participate in track and cross country, and schedules the athletic events, arranges travel, time of departure and arrival, and team accommodations. As the Director of Student Recruitment, he is responsible for and manages a budget, develops travel schedules for himself and college staff members, and attends various recruiting events.

9. The Head Baseball Coach supervises and evaluates, hires and terminates assistant coaches, and teaches six credit hours. The Head Baseball Coach is responsible for and manages the baseball team's budget, recruits athletes for the baseball program, schedules games, selects umpires to officiate for the home contests, and all travel.

10. The Head Football Coach is responsible for and manages the football program's budget, the team's travel schedule, scheduling of football games, and recruiting of athletes to participate in the football program. The Head Football Coach supervises, evaluates, elects and terminates three full time assistant coaches and teaches one hour credit course, Introduction to Football, to football team members.

11. The position of Coordinator of Title III Grant is to be discontinued at the end of September.

12. The Director of Public Information negotiates advertising contracts and space with the appropriate media. As Director, she works closely with the Head Football Coach and faculty, and is responsible for managing the public relations budget. The Director of Public Information does not supervise personnel nor performs any teaching responsibilities or duties. The office is solely staffed by the Director who reports directly to the President of the college.

13. The Director of Student Life is also the Assistant Dormitory Supervisor with supervisory responsibilities or duties commensurate with the position. The Director of Student Life is responsible for directing student activities on campus including all intermural sports and student government. The Director presently manages two budgets, and will be responsible for the student union budget in November. Beginning in November, the Director of Student Life will also be responsible for operation of the new student union when it opens.

14. The Director of International Affairs coordinates and supervises all activities of Central America and other inter-

national students, arranges all the foreign students' travel to and from their home countries, and coordinates the experience America activities. The Director of International Affairs supervises one part time secretary, manages two budgets--a general fund and a \$400,000 contract with Georgetown University--and reports directly to the President of the college.

15. The Athletic Trainer and Instructor teaches approximately fifteen hours each year, advises students who wish to pursue a degree or to study athletic training, and serves as the athletic trainer for sports and athletic teams. The Athletic Trainer and Instructor does not have supervisory responsibilities.

16. The Director of Endowment Foundation's actual title is Director of Development and is employed by the college foundation board. The Director of Endowment Foundation supervises one full time secretary. The Director of Endowment Foundation is responsible for fund raising for the college and works closely with the community, faculty and other groups on fund raising projects. The Director of Endowment Foundation manages approximately \$700,000 worth of assets and is responsible for preparing the financial statements of the foundation, making reports to the board of directors and the president of the college, managing for the foundation, the expenditures of all the funds raised and interest

earned from investments, and accounting for the expenditures from such funds. The Director of Endowment Foundation is also responsible for donor recognition and having student scholarship recipients write "Thank You" notes to donors.

17. The primary duty of the Division Chair is teaching, and this position is supplementary to the teacher's primary contact. The Division Chair is also responsible to evaluate part time teaching staff, and develops and administers the division's budget.

18. The Head Softball Coach position is currently not being filled due to termination of the softball program.

19. The positions of Director of Humanities and Music Teacher were combined into a single position. This position has no supervisory responsibilities.

20. The Admissions Counselor position has been terminated.

21. The position of Head Tennis Coach is not currently being filled due to termination of the tennis program.

22. The position of Director of Cheerleader and Drill Team is filled on a part time basis.

Conclusions of Law and Order

I. Standards to be followed:

This case comes before the secretary's designee on the petition of the Board of Trustees of the Coffeyville Community College filed on February 21, 1989. This petition requests the exclusion of specific listed positions from the Professional Employee Association, claiming the employees holding such positions are administrators. The positions sought to be excluded are as follows: Director of Records/ Registrar; Dormitory Supervisor; Director of Admissions/ Financial Aid; Head Basketball Coach (Men and Women); Head Football Coach; Director of Student Recruitment and Track/Cross-Country Coach; Head Baseball Coach; Coordinator of Title III Grant; Director of Public Information; and Director of Student Activities.

The Professional Employees Association filed an answer on February 27, 1989, requesting that the specified positions remain in the bargaining unit and that certain additional positions be included. The positions requested for inclusion are: Director of International Studies, Athletic Trainer/Instructor and Director of Endowment Foundation.

Further, in an August 23, 1989 letter, the Board of Directors and the Professional Employees Association jointly requested a determination as to whether employees in the following positions are administrators or professional employees, and if

professional employees should be included in the bargaining unit: Division Chairs; Head Softball Coach; Director of Humanities; Admissions Counselor; Head Tennis Coach; and Director of Cheerleading/Drill Team.

This case comes before the Secretary's designee pursuant to the Professional Negotiations Act (PNA), K.S.A. 72-5413 et seq. The procedure to be followed is first to determine whether the position is administrative or professional. If "administrative" the employee in that position is not eligible to be included in the bargaining unit, K.S.A. 72-5413(d), and no further inquiry is necessary. If the position is "professional", the employee may be included in a bargaining unit and a determination must be made as to the appropriate unit according to the criteria set forth in K.S.A. 72-5420. In the instant case only one bargaining unit exists so the process is simplified.

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

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

K.S.A. 72-5413(d) defines "administrator" to mean:

"...in the case of community junior college, any person who is employed by the ...board of trustees, in an administrative capacity and who is acting in that capacity and who has the authority, in the interest of 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, of effectively to recommend a preponderance of such actions, if in connection with the foregoing, the exercise of such

authority is not merely routine or clerical nature, but requires the use of independent judgment."

The criteria for determining the appropriate unit is set forth in K.S.A. 72-5420. K.S.A. 72-5420 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 education 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.

There appears to be some confusion among the parties as to the application of the phrase in K.S.A. 72-5420 stating "engaged in teaching or performing duties of an educational nature". The criteria of teaching or duties of an educational nature is not the current factor to use to determine eligibility for inclusion of the position within a professional bargaining unit. That determination is controlled by K.S.A. 72-5413(c) and (d).

There is little doubt that most positions that require contact with students are, in one form or another, educational in nature or affect the educational process. However, as is apparent using such criteria all positions would be professional and eligible for inclusion within a bargaining unit. There would be no administrators. Such is clearly not the intent of the law.

In this case, the Board of Trustees and the Professional Employees Association are in disagreement whether for each position in question the employee is an "administrator" pursuant to K.S.A. 72-5413(d) or a "professional employee" pursuant to K.S.A. 72-5413(c). In making the determination one must take into account all the duties and responsibilities of each position. Where an employee holds more than one position, the determination cannot be made solely upon one of the positions but must look to all duties and responsibilities to determine whether the employee is predominantly an administrator or a professionally employee. Supplemental contracts are not to be considered in making that determination.

Reviewing the definition of "professional employee" under K.S.A. 72-5413(c), there is no question the individuals are employed in a "professional" capacity, and as noted above, most also perform some duties in an educational or instructional nature. Some positions, however, also require the employee to perform administrative duties or responsibilities. The Hearing Officer must review the nature and extent of each duty performed and weigh them to determine whether the position is predominantly administrative or professional.

II. Findings as to petitioned positions.

A. Director of Records/Registrar

The Director of Records/Registrar clearly has no teaching duties or responsibilities. The type of duties and responsibili-

ties as set forth in findings of fact--which are carried out by the Director--are more akin to that of administrator.

Although the Director may deal on a daily basis with students, the Director is administering the flow of information and the maintenance of records. The Director is not providing educational services such as a teacher would do. The position also has those responsibilities for supervision of employees set forth in Finding of Fact #1. The service provided by the director relates predominantly to the operation of the college.

B. Coaches

There can be no question that coaches do instruct the athletes in the fundamentals and strategies of the sport. The duties of a coach, however, are more extensive than mere instruction. Whether a coach will be considered an administrator or professional employee will depend upon the nature of all duties performed. A balancing test must then be applied to the determination.

1. Head Coaches -- Men's Baseball, Basketball and Football.

The duties and responsibilities of the head men's baseball, basketball and football coaches are similar. (See Findings of Fact 6, 7, 9 and 10) As noted above,

rather than a single position to make the determination.

a. Women's Basketball/Dormitory Supervisor.

The Dormitory Supervisor also serves as the Head Women's Basketball Coach and, by supplemental contract, the Head Volleyball Coach. The supplemental contract will not be considered in making the determination.

In addition to the instruction given as the Head Coach, the Dormitory Supervisor also teaches a three-credit-hour course. The supervisory duties as Head Coach and Dormitory Supervisor are set forth in Findings of Fact 3 and 4. When considered as a whole, the administrative duties are predominant such that the position is administrative rather than professional.

b. Track-Cross Country/Director of Student Recruitment.

The reasoning set forth for the Women's Basketball Coach/Dormitory Supervisor when applied

to the Findings of Fact #8 results in the same conclusion. The duties are predominantly administrative making the Coach/Director an administrator rather than a professional employee.

3. Head Softball and Tennis Coaches.

The Softball and Tennis programs have been terminated. The positions of Head Coach will not be filled. No decision concerning these positions is required at this time.

C. Director of Financial Aid/Admissions

From the evidence in the record, the Director of Financial Aid/Admissions duties and responsibilities are professional but relate to the operation of the college rather than the education of the students. (See Finding of Fact 5).

The director supervises one full time employee and several work study students. While the right to hire and fire is unclear, this position appears to have the authority to recommend changes in staffing. More importantly, there definitely exist the right to control and direct their activities. The position is predominantly administrative.

D. Coordinator of Title III Grant

The position of Coordinator of Title III Grant is to be discontinued at the end of September. The coordinator of the

program had no teaching duties. The concern of the Professional Association is that the duties of this position will be transferred to another employee's position.

Whether the employee who assumes the responsibilities of the Title III Grants is an administrator or a professional employee will depend upon their responsibilities and duties viewed as a whole. At this time since the coordinator position is to be discontinued and no evidence was introduced into the record as to which position would assume those responsibilities nor as to the responsibilities and duties that position presently performs, no ruling as to whether the position is that of an administrator or a professional employee can be made. Once the position is established, if the parties cannot agree as to its status they may petition the Secretary for review and determination.

E. Director of Public Information.

This position is difficult to classify. While it is "professional" in nature, the professional duties performed are essentially "administrative". However, since the position does not supervise any employees it does not meet the criteria of K.S.A. 72-5413(d) to be an "administrator". By definition, the employee in this position must therefore be considered a "professional employee".

To make the determination more difficult, the position involves no teaching responsibilities or close contact with

students, yet involves contact with administrators and faculty. The position reports directly to the President. There exists a question as to the community of interest between this position and most other professional positions within the Professional Association. However, since there exists but one certified employee organization at this time, the position should be included.

F. The Director of Student Life.

It is unclear from the evidence in the record the range of duties and responsibilities of the Director of Student Life or the extent of the authority of the person in that position. It would appear the Director serves as Assistant Dormitory Supervisor. It can be inferred that while not necessarily having final authority to act, as Assistant there would be some responsibility to "direct" other subordinate employees, and the opportunity to make recommendations to the Dormitory Supervisor concerning firing, promotions, assignment and discipline.

The evidence also indicates that the Director of Student Life, beginning in November, will have the added responsibility of the student union. Again, it can be inferred that such activities will require the direction of employees and other personnel matters. This position is administrative.

G. Director of International Studies

The Director of International Studies works directly with students. Even though the Director manages two budgets (a

general fund and a \$400,000 contract with Georgetown University), supervises one part time secretary, and reports directly to the president, the director is employed in an educational capacity. The Director is directly involved with foreign students' every day needs and concerns. The major focus and responsibility of the position of the Director is to work with the foreign students to educate them on American culture and history. As part of the education process, the director accompanies the students on travels to various places in the United States. Because of the direct involvement with students, the director is employed in the capacity of a professional employee.

Since the determination is that the Director of International Studies is employed as a Professional employee, the facts indicate that membership in the Professional Employees Association would be appropriate. The Director of International Studies is employed by the board in an educational and instructional capacity. Therefore, pursuant to K.S.A. 72-5420, the Director of International Studies has the same responsibilities and duties as others at the college who are members of Professional Association. Because of the community of interest with other professional employees, the Director of International Studies should be included within the unit.

H. Athletic Trainer/Instructor

Because the Athletic Trainer/Instructor teaches approximately fifteen hours each year, counsels students who wish to pursue

a degree or to study athletic training, has no supervisory responsibilities, and serves as trainer for sports and athletic teams, he is employed as a professional employee. There are indications that in the future this employee may supervise others and have administrative duties. If this occurs the board may petition at that time for a determination as to the status of employment.

Since the determination is that the Athletic Trainer/Instructor is employed as a Professional employee, the facts indicate that membership in the Professional Employees Association would be appropriate. The Athletic Trainer/Instructor is employed by the board in an educational and instructional capacity. Therefore, pursuant to K.S.A. 72-5420, the Athletic Trainer/Instructor has the same responsibilities and duties as others at the college who are members of Professional Association. The Athletic Trainer/Instructor should therefore be included within the professional employees unit.

I. Director of Endowment Foundation

The Director of Endowment Foundation is clearly employed as an administrator. The Director is employed by the college foundation board and manages the expenditures of all the funds that are raised, as well as interest from investments and scholarships. Also, the Director supervises one full time secretary, and has the responsibility of evaluating personnel who report directly to him.

The Director is responsible for fund raising for the college and works closely with the faculty and the community in fund raising projects. The Director develops and implements a comprehensive plan for financial support for the college through private sources. Furthermore, the Director has the abilities to make recommendations to the board of directors of the Foundation, and serves as liaison between the Foundation and the President of the college.

J. Division Chairs

Because the Division Chairs are contracted on a supplemental basis and therefore are not part of the employees primary duties there will be no determination made as to whether the employee who fills this position is an administrator or a professional employee. As stated previously, an employee status as an administrator or professional employee is determined based upon what are the responsibilities and duties of their primary employment. Unless the division chairs are the primary responsibility and duty of the employees' contract, there is no basis to make a determination as to whether the responsibilities and duties are that of an administrator or professional employee.

K. Director of Humanities

Besides carrying out the responsibilities and duties of Director of Humanities this Director also teaches music half time. These two part-time positions combined make up one

full-time position. Because at least half of this employee's responsibilities and duties are teaching this employee is determined to be a professional employee.

Since the determination is that the Director of Humanities is employed as a professional employee, the facts indicate inclusion in the Professional Employee Association would be appropriate.

L. Admissions Counselor

Because the position of Admissions Counselor has been discontinued and no employee fills the position, no determination will be made as to whether the responsibilities and duties are that of an administrator or professional employee.

M. Director of Cheerleading/Drill Team

The employee who fills the position as Director of Cheerleading/Drill Team is employed on an adjunct basis. Therefore, no determination will be made as to whether the employee is an administrator or professional employee.

SUMMARY AND CONCLUSIONS

The following employees who hold the following positions are administrators: Director of Records/ Registrar; Dormitory Supervisor; Director of Financial Aid/Admissions; Head Basketball Coach (men and women); Director of Recruitment and Head

Track/Cross Country Coach; Head Football Coach; Head Baseball Coach; Director of Student Activities; and Director of Endowment Foundation.


The employees who are employed in the following positions are held to be professional employees and deem to be appropriately included in the bargaining unit of professional employees: Director of International Studies; Athletic Trainer/Instructor; Director of Humanities; and Director of Public Information.

The following positions are contracted solely on a supplemental basis and no determination is required as their full-time positions are controlling: Division Chairs; Volleyball Coach; and Director of Cheerleading/Drill Team.

The following positions have been discontinued and no determination is required at this time: Admissions Counselor; Head Softball Coach, Head Tennis Coach and Coordinator of Title III Grant.

The parties are so advised this order is final and appealable within 30 days to the district court pursuant to K.S.A. 77-601 et seq. Pursuant to K.S.A. 77-507a, this order is not governed by the Kansas Administrative Procedure Act (KAPA) as the matter was convened prior to July 1, 1989.

IT IS SO ORDERED this 14th day of November, 1989.


MERRILL J. HICKLIN, #13635
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