

STATE OF KANSAS
PUBLIC EMPLOYEE RELATIONS BOARD
DEPARTMENT OF HUMAN RESOURCES
610 WEST 10th, 2ND FLOOR
TOPEKA, KANSAS

KANSAS HIGHER EDUCATION ASSOCIATION

Petitioner,

vs.

JOHNSON COUNTY COMMUNITY COLLEGE

Respondent.

CASE J-UD-1-1978

UNIT DETERMINATION ORDER

Comes now this 15th day of September 1978, the matter of the determination of the appropriate unit of professional employees at Johnson County Community College for hearing. The hearing was conducted by Jerry Powell, the duly appointed designee of the Secretary of the Department of Human Resources.

A P P E A R A N C E S

The petitioner Kansas Higher Education Association appears by and through its counsel, Mrs. Margaret A. Gatewood, Attorney-at-Law, 715 West 10th Street, Topeka, Kansas.

The respondent appears by and through its counsel, John Vratil and Bob Lytle, Attorneys-at-Law, 5100 West 9th Street, Prairie Village, Kansas.

PROCEEDINGS BEFORE THE SECRETARY

1. A request for recognition as the exclusive representative of certain professional employees at Johnson County Community College was submitted by Johnson County Community College Faculty Association-KHEA on April 4, 1978.

2. The request for recognition as exclusive representative submitted by Johnson County Community College Faculty Association-KHEA was rejected by Johnson County Community College.

3. A unit determination petition was filed by Johnson County Community College-KHEA with the designee of the Secretary of the Department of Human Resources on June 5, 1978, seeking determination of the appropriate bargaining unit at Johnson County Community College.

4. A request for description of the appropriate unit as outlined by Johnson County Community College was mailed on June 7, 1978.

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5. An answer to the request for description of appropriate unit as outlined by Johnson County Community College was received by the secretary designee of the Department of Human Resources on June 29, 1978. Said answer requested the dismissal of the petition alleging the petition was improperly before the secretary.

6. The secretary designee determined the petition to be properly before him and notified Johnson County Community College of this decision by letter mailed July 6, 1978. Secretary designee granted ten (10) day extension for submission of answer to petition.

7. Johnson County Community College requested and was granted an extension until August 1, 1978, to answer unit determination petition. Johnson County Community College notified that no additional extensions would be granted except under extreme circumstances.

8. An answer to the petition for determination of appropriate unit was submitted by Johnson County Community College on August 1, 1978.

9. A pre-hearing conference to identify the contested positions was conducted on August 24, 1978. The secretary designee ordered and the parties agreed to exchange descriptions of their proposed unit in order that differences could be exactly identified.

10. On August 28, 1978, the secretary designee notified the interested parties by mail that the hearing to determine the appropriate unit of professional employees at Johnson County Community College would be conducted on September 15, 1978, beginning at 9:00 AM in Courtroom "A" of the Overland Park Justice Center, 8500 Antioch, Overland Park, Kansas.

11. Johnson County Community College-KHEA filed amended description of appropriate bargaining unit with the secretary designee on September 13, 1978.

12. Johnson County Community College filed an objection to the petitioners amended description of appropriate bargaining unit with the secretary designee on September 15, 1978.

Respondent has questioned the secretary's authority to proceed in this unit determination case. Respondent states that a sufficient showing of interest on the part of professional employees must be submitted to the secretary in order to support a petition for unit determination. Further, the respondent suggest that the only means by which it may be determined whether there is agreement or disagreement on an appropriate negotiating unit is through the procedure outlined in K.S.A. 72-5416.

The examiner takes exception with the respondent's statements. K.S.A. 72-5420 states in part: "In each case where the question is in issue the secretary shall decide.." This language is in reference to the determination of the scope of an appropriate unit. As a practical matter many school districts in Kansas have "recognized" exclusive representatives for "employees" of the district without clearly defining the scope of the unit. Language such as, "all professional employees of the school district shall be included within the unit," is many times utilized in a petition for recognition and the subsequent statement of recognition. During the bargaining process or at a later date when a question of an employees' ability to grieve is raised, the parties find that the term "professional employees" has not been clearly defined. At this point in time there must be some vehicle for raising the questions of an employee's status (as a professional employee,) to the secretary. Clearly K.S.A. 72-5416 is inapplicable since the statute provides a procedure for employee organizations to be recognized. Logic further dictates that situations will arise between a board and previously recognized organization over the scope of the unit. Perhaps the board determines that the heretofore agreed upon inclusion of a certain job classification should now be excluded. Should there not be a vehicle for the board to raise the question to the secretary? K.S.A. 72-5416 provides no such mechanism or vehicle. It would appear that respondents logic is based upon the theory that once a unit is agreed upon, a question concerning the scope of the unit cannot be entertained by the secretary. The examiner concludes that the statute contemplates such questions arising and interprets K.S.A. 72-5420 to provide a vehicle for bringing such questions before the secretary.

Respondents theory concerning a showing of interest requirement for bringing about a unit determination is not supported by statute. K.S.A. 72-5420 certainly makes no such requirement. K.S.A. 72-5418 does require a thirty percent (30%) showing of interest, however, this statute provides for the summary dismissal of an election petition. K.S.A. 72-5418 states:

"Upon receipt of a petition under K.S.A. 1977 Supp. 72-5417, the secretary or a person or persons designated by the secretary may direct and conduct a secret ballot election in order to decide the questions raised by the petition. The secretary's determination shall be based upon the results of such secret ballot election. The secretary shall dismiss, without determining the questions raised therein, any petition filed pursuant to subsection (b) of K.S.A. 1977 Supp. 72-5417 if:

(a) The petition is not supported by credible evidence that at least thirty percent (30%) of the professional employees in the unit described therein are members of the professional employee's organization seeking recognition; or

(b) the board of education, within the previous twelve (12) months, has lawfully recognized a professional employees' organization other than the petitioner as the exclusive representative of any professional employees included in the unit described in the petition." (Emphasis added)

K.S.A. 72-5417 then states:

"Nonrecognition disputes to be determined by secretary of human resources on application therefor. A petition may be filed with the secretary, in accordance with such rules and regulations as the secretary may prescribe for such filings, asking the secretary to investigate and decide the question of whether professional employees of an appropriate negotiating unit have selected or designated an exclusive representative for purposes of K.S.A. 1977 Supp. 72-5415 by:

(a) A board of education alleging that it has received a request for exclusive recognition from a professional employees' organization and has a good faith doubt as to the accuracy or validity of the claims made in such request; or

(b) by a professional employee's organization alleging that it has filed a request for recognition as exclusive representative with a board of education and that such request has been denied."

(Emphasis added)

The question raised by a petition filed under K.S.A. 72-5417 is whether employees have designated an exclusive representative. The language contemplates that the appropriate unit has previously been determined either by agreement of the parties or by order of the secretary.

Respondent has made numerous references to K.S.A 75-4321 et seq., the Kansas Public Employer-Employee Relations Act. This act provides a vehicle for unit scope questions to be properly brought to the Public Employee Relations Board. K.S.A. 1976 Supp. 75-4327 (c) provides in part:

"When a question concerning the designation of an appropriate unit is raised by a public agency, employee organization or by five (5) or more employees, the public employees relations board, at the request of any of the parties, shall investigate such question and, after a hearing, rule on the definition of the appropriate unit in accordance with subsection (e) of this section." (Emphasis added)

Under this statute there is no requirement that thirty percent (30%) of the employees of a proposed or established appropriate unit file a showing of interest. K.S.A. 1976 Supp. 75-4326 (d), however, provides for such a showing of interest before the Public Employee Relations Board can consider a certification election. Therefore, it is the finding of the secretary designee that the petition for unit determination filed by Johnson County Community College-KHEA under the signature of Victor J. Salem is properly before the secretary.

Respondent has moved for denial by the Secretary of the Petitioners Amended Description of Appropriate Negotiating Unit. The examiner met with the parties at Johnson County Community College on August 24, 1978, in order to clearly define the issues in this case. At that meeting it was evident to the examiner that both petitioner and respondent had omitted disputed classification from their respective petitions. The examiner requested that respondent and petitioner exchange listings of disputed classifications in order to expedite the hearing. Additionally, the examiner has repeatedly stated his desire to hear testimony and receive evidence in regard to all disputed positions. Both parties were afforded the opportunity to file supporting briefs in this case. Respondents motion to deny acceptance of petitioners amended unit description and objection to petitioners oral request to consider the position of photographer is hereby denied.

FINDING OF FACTS

1. That the Audio Visual Specialist assists instructors in regard to which equipment is to be utilized. (T 35)
2. That the Audio Visual Specialist does not prepare educational material. (T 36)
3. That the Audio Visual Specialist's primary concern is maintenance and distribution of audio visual equipment. (T 38)
4. That the Audio Visual Specialist has not joined an employee organization. (T 37)
5. That the Audio Visual Specialist is salaried and employed by contract. (T 37)
6. That the Audio Visual Specialist's position does not require a degree. (Res. Ex. 2B)
7. That the Research Evaluation Specialist assists in planning new programs by assessing the needs. (T 40)
8. That the Research Evaluation Specialist assists students by answering questions about research technique. (T 42-43)
9. That the students mentioned above are on contract to an independent company but the program has educational value. Some students get credit for the project. (T 42-45)
10. That the Research Evaluation Specialist is not an instructor. (T 45)
11. That the Research Evaluation Specialist has not joined an employee organization. (T 44)
12. That the Research Evaluation Specialist is salaried. (T 44)
13. That the Research Evaluation Specialist has access to information which could be construed to be of a confidential nature. (T 44)
14. That the Research Evaluation Specialist position requires a degree. (Res. Ex. 2L)
15. That the Community Education Specialist is not an instructor. (T 57)
16. That the Community Education Specialist position primarily involves arranging, coordinating, and developing the continuing education program. (T 57)
17. That the Community Education Specialist has not joined an employee organization. (T 56)
18. That the Community Education Specialist does not consider the position separate from faculty. (T 61)
19. That the position of Community Education Specialist requires teaching experience and a masters degree is preferred. (Res. Ex. 2J)

20. That the Community Education Specialist is salaried on a twelve (12) month contract. (T 56)
21. That the Instructional Aide Life Science answers questions for students and assists in revising materials for course. Has direct contact with students. (T 63)
22. That the Instructional Aide Life Science does not have a teaching certificate. (T 66)
23. That the Instructional Aide Life Science being an hourly employee has different benefits than salaried employees. (T 67)
24. That there is no "instructor" present during the time the Instructional Aide Life Science is in the lab. (T 69)
25. That the Instructional Aide Life Science has not joined an employee organization. (T 65)
26. That the Instructional Aide Life Science is paid hourly for nine (9) months. (T 64)
27. That the Instructional Aide Life Science position requires a degree. (Res. Ex. 2E)
28. That the individual in the position of Instructional Aide Physical Science believes the position implements material presented by the instructor. (T 72)
29. That the Instructional Aide Physical Science must be familiar with what is being taught. (T 72)
30. That the Instructional Aide Physical Science answers questions that arise during experiments. (T74)
31. That the job description for the Instructional Aide Physical Science Department is very similar to the Instructional Aide Life Science Lab. (T 74)
32. That the Instructional Aide Physical Science is a member of the Kansas Higher Education Association. (T 76)
33. That the Instructional Aide Physical Science is paid on a hourly basis. (T75)
34. That the Instructional Aide Physical Science is paid on a twelve (12) month basis. (T 81)
35. That the Instructional Aide Physical Science position requires a degree. (Res. Ex. 2E)
36. That the Testing Assistant administers standardized and make-up tests to students. (T 86-87)
37. That the Testing Assistant has no discretion in grading tests. (T 88)

38. That the Testing Assistant does not give students substantive material of an instructional or educational nature. (T 90)
39. That the Testing Assistant is not a member of an employee organization. (T 89)
40. That the Testing Assistant is paid hourly on a 12 month basis. (T 88-89)
41. That the position description for Testing Assistant does not require a degree. (Res. Ex. 2M)
42. That the Data Processing Lab Supervisor is responsible for proper operations of all data processing machines. (T 224)
43. That the Data Processing Lab Supervisor does not answer students' questions because of a lack of knowledge on the subject. (T 94)
44. That the Data Processing Lab Supervisor only gives instructions concerning use of equipment of a technical nature. (T 95)
45. That the Data Processing Lab Supervisor is not a member of an employee organization. (T 95)
46. That the Data Processing Lab Supervisor is paid hourly. (T 95)
47. That the Audio Visual Aide is responsible for scheduling and distribution of all audio visual equipment. (T 97)
48. That the Audio Visual Aide does not compose instructional material. (T 97)
49. That the Audio Visual Aide does not have student contact except of a student employee-supervisor nature. (T 98)
50. That the Audio Visual Aide is not a member of an employee organization. (T 99)
51. That the Audio Visual Aide is paid hourly. (T 99)
52. That the Audio Visual Aide's position requires two (2) years of college. (T 100)
53. That the Audio Visual Aide's position is not compatible with the position of an instructor. (T 100)
54. That the job description for the T.V. Producer/Director provides for the following duties and responsibility.
 1. Confers with staff members and TV Coordinator/Supervisor in developing shooting and production scripts.
 2. Conducts rehearsals and directs participants to achieve desired result.
 3. Works with instructors to assist students in developing sets, scripts, and programs in conjunction with instructional assignments; lectures in classroom as requested. (Res. Ex. 2N)

55. That the T.V. Producer/Director worked with faculty to develop videotape programs. (T 14, Res. Ex. 2N)
56. That the T.V. Producer/Director is not considered part of the instructional staff. (T 16)
57. That the T.V. Producer/Director is not a member of an employee organization. (T 15)
58. That the T.V. Producer/Director is salaried on a twelve (12) month contract. (T 14-15)
59. That the Community Services Specialist plans educational activities for special programs. (T 22-23)
60. That the Community Services Specialist feels the position is, in some sense, that of an educator. (T 25)
61. That the Community Services Specialist is not a member of an employee organization. (T 23)
62. That the Community Services Specialist feels the position could not be primarily involved in a bargaining unit. (T 23)
63. That the Community Services Specialist is salaried on a twelve (12) month contract. (T 23)
64. That the T.V. Engineer is primarily responsible for keeping equipment operational. (T 32)
65. That the T.V. Engineer is not a member of an employee organization. (T 33)
66. That the T.V. Engineer is on a salary contract. (T 33)
67. That the T.V. Coordinator has responsibility for planning, organizing and supervising television services. (T 169)
68. That the T.V. Coordinator develops and recommends a budget. (T 170)
69. That the T.V. Coordinator recruits, interviews and recommends new employees. (T 170)
70. That the T.V. Coordinator is a salaried position. (T 170)
71. That the T.V. Coordinator's work is of a varied nature. (T 171)
72. That the T.V. Coordinator has direct line authority of program staff. (Res. Ex. 2D)
73. That the T.V. Producer/Director reports to the T.V. Coordinator. (Res. Ex. 2N)
74. That the Librarian Assistant Circulation maintains records and is responsible for all circulation materials to students and staff. (T 112)

75. That the Librarian Assistant Circulation normally does not give library tours or explain the use of the library to students. (T 113)
76. That the Librarian Assistant Circulation is paid on an hourly basis. (T 114)
77. That the Librarian Assistant Circulation has not joined a professional employee organization. (T 114)
78. That the Librarian Assistant Circulation does not desire to be included in a bargaining unit. (T 115)
79. That the Librarian Assistant Acquisition is responsible for ordering materials. (T 116)
80. That the Librarian Assistant Acquisition does not have contact with students. (T 116)
81. That the Librarian Assistant Acquisition is paid on an hourly basis. (T 117)
82. That the Librarian Assistant Acquisition has not joined a professional organization. (T 118)
83. That the Librarian Assistant Acquisition was not represented by Faculty assembly. (T 118)
84. That the individual in this position believes that she does not share a community of interest with faculty. (T 119)
85. That the Photographer does not exercise professional discretion as to content of instructional material. (T 121)
86. That Photography is a course at Johnson County Community College. (T 121)
87. That the Photographer supervises student assistants. (T 122)
88. That the Photographer is paid on an hourly basis. (T 123)
89. That the Photographer has not joined professional employee organization. (T 124)
90. That the Photographer does not teach photography courses. (T 125)
91. That the extent of the photographer's classroom work is to record what is transpiring. (T 126)
92. That the Fine Arts Lab Monitor gives demonstrations and assists students. (T 102)
93. That the individual in the position of Fine Arts Lab Monitor considers his position to be a secondary instructor.
94. That the Fine Arts Lab Monitor is paid on a hourly basis. (T 108)
95. That the position of Fine Arts Lab Monitor does not require a degree. (T 111)

96. That the job description for Fine Arts Lab Monitor requires completion of college art classes. (Res. Ex. 2G)

97. That the job description number three for the position of Fine Arts Lab Monitor states: assist students with projects at instructor's direction. (Res. Ex. 2G)

98. That one duty of the Instructional Aide Commercial Art is to assist the Commercial Art Instructors with the content of instructional material. (T 174)

99. That the duties of the Instructional Aide Commercial Art are similar to those of the Fine Arts Instructional Aide and the Science Instructional Aide. (T 174)

100. That the Instructional Aide Commercial Art description lists primary duties number one as: answer questions, provides supportive instruction (including demonstrations), assists students in the use of lab equipment..

101. That the position description for the Instructional Aide Commercial Art requires additional specific training in art.

102. That hourly employees are employed on an annual on-going basis. (T 216-217)

103. That salaried employees are on beginning and ending contracts. (T 217)

104. That vacation benefits for hourly and salaried employees are different. (T 217)

105. That some salaried positions are reviewed in a manner similar to the hourly employees. (T 221)

106. That all salaried employees could be paid on a hourly basis, however, it is not practical. (T 233)

107. That instructors in Natural Science and instructional aides all report to the Director of Natural Science. (T 209)

108. That the Instructional Aide Commercial Art reports to the Commercial Art Coordinator. (Res. Ex. 2H)

109. That the Instructional Aide for Nursing reports to the Coordinator of Nursing Program. (Res. Ex. 2F)

110. That the Instructional Aide for Fine Arts reports to the Director of Commercial Arts. (Res. Ex. 2G)

CONCLUSION OF LAW

There are basically two questions raised in any unit determination case under the Professional Negotiation Act.

1. What and who is a professional employee?
2. Shall all professional employees of a Board be included within one appropriate unit?

In this case there are seventeen (17) job classification which the examiner must consider in light of K.S.A. 72-5413 (c), the definition of professional employees. Secondly, the examiner must consider all classifications determined to be professional employees in regard to each classification's placement in the most appropriate unit. This decision will then be based primarily upon criteria contained at K.S.A. 72-5420.

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

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

In a previous unit determination case, J-UC-1-1978 Coffeyville Junior College-KHEA, this examiner stated that there are three groups of employees employed by a board of education. These three groups are: administrative employees, professional employees, and "non-professional" employees.

The "non-professional" employees referred to in the above reference case are those employees who do not fit the definition of "professional" employee contained at K.S.A. 72-5413 (c). Therefore, some employees of Johnson County Community College may actually be professional employees, as defined by a dictionary, but be eligible to organize and bargain under the provisions of the Public Employer-Employee Relations Act; K.S.A. 75-4321 et seq.

It must be remembered that the secretary determines units only in the event of a dispute between the parties. Thus, unit make-up may vary greatly in various jurisdictions as a result of the parties latitude to determine the scope of the unit by agreement.

It is interesting to note the language utilized in K.S.A. 72-5420. That is, the repeated use of the term "professional employees" when considering community of interest, wishes and/or established practices, and the extent employees have joined an organization. The use of that term is contrasted with the term "all persons" when the statute is read:

"In each case where the question is in issue the secretary shall decide....whether the unit appropriate for the purposes of professional negotiations shall consist of all persons employed by the board of education who are engaged in teaching or performing other duties of an educational nature.."

The statute further directs the secretary to determine the unit, "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."

This language coupled with the language, "person employed... in a professional educational or instructional capacity..." leads this examiner to believe that the intended definition of "professional" employee should not be limited to "teachers" or only those who perform in an instructional capacity. The examiner is further persuaded that this language concedes to the secretary the latitude to determine more than one appropriate unit of "professional employees" for any given employer.

The disputed classifications in this case do not perform in primarily an instructional capacity. Therefore, each job description and individual testimony will be considered with regard to duties being within a professional educational capacity or of being of an educational nature.

The first classification to be considered is that of T.V. coordinator.

K.S.A. 72-5413 (d) defines administrative employee as:

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

Testimony and evidence clearly shows that this position meets the criteria of an administrator. Therefore, the examiner finds this position to be excluded from organizing under the definition of a professional employee as defined at K.S.A. 72-5413 (c).

T.V. Producer/Director, Community Services Specialist,

Community Education Specialist, Research Evaluation Specialists

Judge Barbara writing in his opinion (Pratt Higher Education Association

Application for Recognition in Accordance with the Kansas Professional

Negotiation Act. Shawnee County District Court, Div. 11, Case No. 131242,

Barbara, J.) defines two categories of "professional employee" to be, teachers

and other non-administrative employees. In the category of other non-administrative professional employees, Judge Barbara includes librarian and counselors.

Utilizing the definition of professional as stated in the Pratt opinion, i.e.,

Websters second definition "professional" is one who is "...in an occupation

requiring a high level of training and proficiency", this examiner can only

conclude that the above listed four classifications are professionals. In

addition, all four positions either plan materials, assist in planning materials,

or assist students by answering questions. The four positions are all salaried,

thus, have historically been treated as "professional employees". This examiner

finds that the four classifications: T.V. Producer/Director, Community Services Spe-

cialist, Community Education Specialist, and Research Evaluation Specialists,

to be "professional" employees within the meaning of K.S.A. 72-5413 (c).

Librarian Assistant Acquisition

Librarian Assistant Circulation

These two positions have been shown by testimony and evidence to be of a routine clerical nature rather than a professional education or instructional capacity.

They have no student contact except of a student employee-supervisory nature.

The positions do not require any great degree of higher learning, rather seem to

be of a nature which could be acquired through on-the-job training. Historically

the two positions have been treated in a manner similar to the positions of

"non-professional" under the Public Employer-Employee Relations Act. The examiner

finds the positions of Librarian Assistant Acquisition and Librarian Assistant

Circulation to more closely fall within the definition of "public employee"

contained at K.S.A. 75-4322 (a). Therefore, the two classifications are excluded

from organizing under the definition of a professional employee as defined at

K.S.A. 72-5413 (c).

Testing Assistant

This position is similar to that of Librarian Assistant in that no great degree

of advanced learning is required. The position is more of a technical or clerical

nature. While there is substantial student contact, the contact is of a routine

nature in giving directions for taking tests. This position does not perform

duties of a professional, educational or instructional capacity. The position more closely fits within the definition of a public employee contained at K.S.A. 75-4322 (a). Therefore this position is excluded from organizing as a professional employee as defined at K.S.A. 72-5413 (c).

Audio-Visual Aide, Audio-Visual Specialist

Instructional Lab Supervisor, T.V. Engineer

Photographer

The above listed five classification at Johnson County Community College do not have classroom responsibility in any manner. They do not have student contact except for a student employee-supervisor role. They do not plan or assist in planning material for classroom instruction. The nature of their duties seems to be technical rather than of a professional educational nature. While three of the above classification are paid at an hourly rate and two are on salaried contracts, all five are concerned with scheduling, operation, maintenance, or repair of technical equipment. The positions more closely fall within the definition of a public employee contained at K.S.A. 75-4322 (a). The positions may or may not fall within the definition of a professional employee as defined at K.S.A. 75-4322 (d). Therefore, the positions of:

1. Audio Visual Aide
2. Audio Visual Specialists
3. T. V. Technician
4. Instructional Lab Supervisor
5. Photographer

are excluded from organizing as a professional employee as defined at K.S.A. 72-5413 (c).

Life Science Instructional Aide

Physical Science Instructional Aide

Commerical Art Instructional Aide

Fine Arts Lab Monitors

The above listed four classifications are required to assist students, answer students' questions and assist instructors in preparing instructional materials. All four have direct contact with students under the direction of an instructor at a time when the instructor may or may not be present in the classroom. These duties are definitely of an educational nature. All four classification require either a degree or additional specific training of a nature not obtainable through on-the-job training. Although, the four positions have historically been treated in a manner similar to the treatment of "non-professional" employees, the examiner is of the opinion that the required duties of the position

dictate a determination that all four position fall within the meaning of "professional" employees as defined at K.S.A. 72-5413 (c).

Now that the determination has been made concerning "professional employees" the examiner will consider criteria for appropriate unit placement.

As stated earlier in this opinion K.S.A. 72-5420 sets out three basic tests for unit placement:

1. Community of interest
2. Established practices - Extent Employees Are Organized
3. Wishes of the employees.

While no criterion is given more weight, by statute, than any other, most labor experts agree that community of interest is given primary consideration when determining appropriate units. Criteria to consider in determining community of interest are many and varied. However, some accepted criteria are:

1. Are the employees located at a common work site?
2. Are the employees part of an integrated work process?
3. Do the employees have similar working conditions and similar type grievances.
4. Do the employees have common skills, training, or educational requirements?
5. Do the employees have common supervision:

The examiner believes the intent of the act is to provide the most appropriate unit for bargaining for both employer and employee. Therefore, certain other standard criteria will also be considered by the examiner. Such criteria as: effective and efficient operation of the agency and over splintering or fragmentation of the work force.

1. T.V.Producer/Director
2. Community Services Specialists
3. Community Educational Specialists
4. Research Evaluation Specialists

These positions have historically been represented by the faculty assembly and are salaried. Testimony and evidence has shown that these position are required and do participate in planning programs and in some cases, directing students. Therefore, there is a strong community of interest among these positions and instructors over terms and conditions of employment. The employees have not, at this time, joined a professional employee organization. However, the simple placement of these positions within an appropriate unit has no bearing on the individuals right to join or not to join any organization. One might conclude that the individuals in these positions do not wish to be represented

by anyone and would prefer to be excluded from any unit simply because they have not joined an organization. It must be remembered that any employee may by statute "make known his position or proposals" to a board or superintendent. Exclusion of these positions from some unit could abridge the rights of these individuals or some other individuals occupying these positions at a later date, to organize and be represented by an organization.

Questions were raised concerning the confidential nature of the work performed by the Research Evaluation Specialist. This examiner finds nothing in the law requiring an exclusion from the appropriate unit based on confidentiality. Since this position has been represented in the faculty assembly and in fact, the individual in this position has served as a representative for other employees, the examiner finds no basis for excluding the position from an appropriate unit at this time. Therefore, the examiner is of the opinion that this position should be placed in an appropriate unit with teachers-instructors or in a separate "professional employee" unit with other "non-instructors". To create a special unit for the four (4) above mentioned classification would certainly work a disservice to both employees and the employer. Over fragmentation is not conducive to the effective and efficient operation of the agency. Such action could also lead to a weak and ineffective bargaining unit in the event the individuals decided to organize. Therefore, this examiner finds for the placement of:

1. T.V. Producer/Director
2. Community Educational Specialists
3. Community Educational Specialists
4. Research Evaluation Specialists

within the appropriate unit of teachers-instructors.

Life Science Instructional Aide

Physical Science Instructional Aide

Fine Arts Instructional Aide

Commercial Art Instructional Aide

These four classification, having been determined to be "professional" employees, present the greatest problem of proper placement in an appropriate unit.

A close comparison of respondent exhibits 2E, 2F, 2G and 2H, indicates very similar duties for the above listed four classifications and the classification of Instructional Aide Nursing. Testimony also shows that these five classifications perform basically the same duties. They all assist students by answering

questions and demonstrating various techniques in a laboratory setting.

While the four do not originate instructional materials, they do have constant contact with students in the role as a supplementary instructor. It is logical to assume that as a result of the educational nature of these positions a commonality of interest is shared in the academic mission of the college by these four classifications and the teaching faculty of the college. As hourly positions these four have different methods of payment and different benefits than other professional employees. The instructional aides share a common lab with the classroom instructor. The instructional aides do not report to the instructors but to a director or coordinator of the program. The four position classifications require degrees or additional specific training. Thus, it seems that the four instructional aides in question have a community of interest except for some working conditions such as method of payment, accrual of vacation, due process, etc. The president of the college has testified that the board could change method of payment and other working conditions. He has also testified that certain salaried employees are reviewed in a similar manner to the hourly employees.

The alternative to the placement of the four "professional" instructional aides in the same unit with instructors is to create a unit of four aides who share a community of interest including an hourly rate of pay. The examiner is of the opinion that such a small unit would work a greater hardship upon both employer and employees than would the inclusion of the aides in the teacher-instructor unit. Therefore, it is the finding of the examiner that the Life Science Instructional Aide, Physical Science Instructional Aide, Fine Arts Instructional Aide, and Commercial Art Instructional Aide, be included within the appropriate unit of teacher-instructors.

Therefore, the appropriate unit of teachers-instructors-others shall:

INCLUDE: Counselors
Librarians
General Studies Professional Staff:
Instructional Specialists
ABE-GED Specialist
Program Specialist
Coordinator of General Studies
Hearing Impaired Professional Staff:
Hearing Impaired Instructor
Interpreter - Specialist
Coordinator of Hearing Impaired

Instructional Coordinators:

Data Processing
Nursing Home Aide
Accounting
Drafting Technology
Marketing and Management
Emergency Medical Technician
Paralegal
Fashion Merchandising
Secretarial
Fire Protection - Public Safety
Dental Hygiene
Equine Management
Medical Records Technology
Nursing
Hospitality Management
Commercial Art
Journalism
Law Enforcement
Electronics

Student Services Coordinators:

Student Activities
Counseling
Testing and Assessment
Career Planning and Placement
Career Planning Advisor

Teachers - Instructors:

Accounting
Art
Commerical Art
Coaches
Communications
Data Processing
Dental Hygiene
Drafting Technician
Economics - Business
Electronics

Teachers - Instructors (continued):

Engineering - Technology
Fashion Merchandising
Fine Arts
French
General Business
German
Hospitality Management
Humanities
Law Enforcement
Life Science
Marketing Management
Mathematics
Medical Records Technician
Music, Instrumental
Music, Vocal
Nursing
Nursing Instructional Assistant
Photography
Physical Science
Psychology
Secretarial
Secretarial - Business
Social Science
Spanish
Speech
Speech - Debate
Auto Technology Instructor
Applied Technology Instructor
T.V. Producer/Director
Community Services Specialists
Community Educational Specialists
Research Evaluation Specialists
Life Science Instructional Aide
Physical Science Instructional Aide
Fine Arts Instructional Aide
Commercial Art Instructional Aide

EXCLUDED: Administrators
And all other employees

IT IS SO ORDERED THIS _____ DAY OF OCTOBER, 1978

BY Jerry Powell
Jerry Powell
Executive Director
Public Employee Relations Board

For

Dr. James A. McCain
Secretary of Human Resources