



STATE OF KANSAS

Office of the Attorney General

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November 11, 1975

ATTORNEY GENERAL OPINION NO. 75- 427

Mr. B. V. Hampton
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Pratt, Kansas 67124

Re: Schools--Teachers' Contracts--Bargaining Unit
Determination--Regular, Part-time Classroom
Teachers

Synopsis: K.S.A. 72-5420 requires any unit having classroom teachers to include in the bargaining unit all full and part-time teachers employed by the local board in order for that unit to be deemed appropriate for the purposes of collective bargaining.

There is no statutory justification nor logical reason for classroom teachers employed by the board solely for adult education programs to be excluded from a bargaining unit on the basis that their pupils are of adult age or that they are employed part-time. Classroom teachers for adult education must also be included with other classroom teachers for the bargaining unit to be appropriate under K.S.A. 72-5420.

* * *

Dear Mr. Hampton:

As counsel for Pratt Community Junior College, you inquire concerning the propriety of including regular, part-time classroom teachers in a proposed bargaining unit for purposes of determining whether this unit demonstrates the required

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majority support necessary for recognition under K.S.A. 74-5416 as the exclusive bargaining representative. In reference to the part-time classroom teachers, it is our understanding that these individuals are employed on regular basis to the extent that they have specific teaching assignments which necessitate their services at prescribed classroom periods. They are part-time only to the extent that they do not carry as many hours of classroom and extra curricular duties as those teachers considered full-time.

In reference to any bargaining unit to be composed in whole or part of classroom teachers, K.S.A. 72-5420 provides:

"In each case where the question is in issue, the state board of education shall decide, on the basis of the community of interest between and among the professional employees of the board of education, except administrative employees, their wishes and/or their established practices including, among other things, the extent to which such 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, except administrative employees, or some subdivision thereof: *Provided, That a unit including classroom teachers shall not be appropriate unless it includes all such teachers employed by the board of education, except administrative employees. A unit including administrative employees shall include all administrative employees employed by the board of education.*" [Emphasis supplied.]

The applicability of this statute to Pratt Community Junior College is established by K.S.A. 72-5413(b) which defines "Board of Education" broadly to include ". . . the board of trustees of any community junior college of Kansas."

Although the Kansas Supreme Court has not had occasion to consider the precise meaning of the above proviso, it is a well-settled rule in the area of labor law that where a labor relations statute expressly defines an appropriate employee unit for the purpose of choosing a representative to negotiate with the employer, it is considered determinative of the issue. *In re International Association of Machinists Lodge No. 1406, A.F.L., 249 Wis. 112,*

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23 N.W.2d 489, 174 A.L.R. 1267 (1946); *See, Delsby v. Board of Education of City School District*, 304 N.Y.S.2d 236, 60 Misc. 2d 822 (1969); 51 C.J.S., *Labor Relations*, § 173, p. 936 (1967). In this instance, the State Board of Education, in exercising its power to determine the appropriate bargaining units, must comply in the first instance with all statutory requisites. *Allis-Chalmers Mfg. Co. v. N.L.R.B.*, p. 162 F.2d 435 (7th Cir. 1947). Its exercise of discretion is therefore limited only by the statute itself. *N.L.R.B. v. Libbey-Owens-Ford Glass Co.*, 241 F.2d 831 (4th Cir. 1957); *N.L.R.B. v. Continental Oil Co.*, 179 F.2d 552 (10th Cir. 1950). Accordingly, the determinative question implicit in this inquiry is whether regular, part-time classroom instructors are encompassed within the definition of "classroom teachers," as those terms are used in the proviso to K.S.A. 72-5420, and whether the employee is properly classified as a "professional employee" within the meaning of the Act under K.S.A. 72-5414.

Without the guidance of a prior judicial interpretation, resort to the rules of statutory construction becomes essential. The legal presumption generally accorded all statutes is that the legislative body expressed its intention, that it intended what is expressed, and that it intended nothing more. *Woolsey v. Ryan*, 59 Kan. 601, 54 P. 664 (1898). Construction and interpretation have no place or function where the terms of a statute are clear and certain, and its meaning is plain. When the language of a statute is unambiguous, and its meaning evident, it must be held to mean what it plainly expresses, and no room is left for judicial construction. *Railway Co. v. Phelps*, 137 U.S. 528, 536, 11 S. Ct. 168, 24 L. Ed. 767 (1877); *Johnson v. Southern Pacific Co.*, 117 F. 462 (8th Cir. 1902). Applying the above-stated rules to the statute here in question, it appears the language employed raises no substantial question concerning the intended meaning. K.S.A. 72-5420 undertakes to describe the factors the State Board of Education is required to consider in deciding the appropriateness of any proposed bargaining unit. Specifically, it sets forth the following criteria to guide the State Board of Education in its decision-making process:

"The state board of education shall decide, on the basis of the community of interest between and among the professional employees of the board of education, except administrative employees, their wishes and/or their established practices including, among other things, the extent to which such employees have joined a professional employees organization, whether the unit appropriate for

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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, except administrative employees, or some subdivision thereof."

Without any further limitations, these guidelines would vest substantial discretion in the State Board of Education to determine on a case by case basis the balance of these factors measured against the proposed inclusions and exclusions of any bargaining unit. However, further limitations do appear in the proviso which states that a unit having classroom teachers is not to be deemed appropriate unless it includes all such teachers employed by the board. This represents the only limitation attached to the bargaining unit determination procedure employed by the State Board of Education. In this particular case then, all discretion is removed from the state board in its decision-making. Conspicuously absent is any indication that the appropriateness of any unit composed of classroom teachers is contingent upon the extent or duration of their respective teaching duties. If such had been the legislature's intent, the simple inclusion of the word "full-time" after the word "employed" in the last sentence to the proviso would have readily accomplished this result. Furthermore, there would have been no need to include even a proviso if this latter interpretation had been intended. By simply removing the proviso, those factors listed would vest sufficient discretion in the State Board of Education to determine whether there was sufficient community of interests between full and part-time teachers so as to include both in the same bargaining unit.

A final indication of the meaning attributable to "classroom teacher" may be taken from the manner regular, part-time employees are treated for purposes of bargaining unit determination under the National Labor Relations Act (N.L.R.A.). In determining the propriety of a proposed bargaining unit or representative, regular part-time employees--those who work on a regular and continuing basis, perform duties similar to those of full-time employees, and show the same supervision and working conditions--are eligible to vote in a representation election regardless of the number of hours that they work. *In re Dependable Parts, Inc.*, 112 N.L.R.B. 581 (1955); *In re Food Fair Stores, Inc.*, 120 N.L.R.B. 1669 (1958); *N.L.R.B. v. Economy Food Centers, Inc.* 33 F.2d 468 (4th Cir. 1964); *Indianapolis Glove Co. v. N.L.R.B.*, 400 F.2d 363 (6th Cir. 1968). Although this analogy is not accorded determinative weight in this matter, it does reveal there is not necessarily anything inconsistent with the idea of "community of interests" by including both full and part-time employees together in the same bargaining unit.

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A further question arises in regard to whether an employee is a "professional employee," within the meaning of the Act. Under K.S.A. 72-5413(c), a professional employee is defined 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 in a professional capacity by a board of education." [Emphasis supplied.]

We are aware of the recent legislation eliminating the requirement that instructors at junior colleges within the state be certified.

Those part-time employees about whom you inquire are, so far as we are advised, employed in a teaching capacity. We understand that at least in some instances, these persons are employed as instructors in adult education programs, and their duties may entail instruction in skills and talents of general interest to members of the community, rather than courses which are part of the general educational curriculum of the institution leading to an associate of arts degree. Thus, it is questioned by some whether such employees have a basic community of interest with full-time teaching employees, first, and second, whether such employees are indeed professional employees.

Given the mandate of K.S.A. 72-5420, a unit including classroom teachers shall not be appropriate unless it includes all teaching employees. This mandate, in my judgment, overrides any possible and arguable distinctions between persons employed in teaching capacities as professional or nonprofessional employees on the basis of the courses and subjects taught. Employment in a teaching capacity renders those persons so employed professional employees of the board, employed in an educational capacity. Certainly, if there is some distinction to be made between those full-time teaching employees of the college, and part-time employees engaged in teaching adult education courses, it is not a distinction which we are justified in drawing purely as a matter of law. On the basis of the act itself, we are constrained to conclude that a unit proposed under K.S.A. 72-5420 is appropriate only if all teaching employees of the board be included therein, and that we have no basis for distinguishing purely as a matter of law among those employees some who may be deemed employed in a professional educational capacity and those who are employed in

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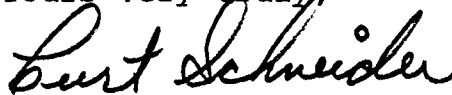
an educational capacity which is other than professional. Accordingly, I must conclude that the part-time teaching employees about whom you inquire must be included in the bargaining unit pursuant to K.S.A. 75-5420.

I regret the delay in responding to your inquiry. The board understandably wished to have an earlier response. However, the question is apparently one in which there is some general interest, and as a result, the question received more extended consideration. However, intervening circumstances since the request was submitted to this office should not affect the board's action upon the pending request for recognition. In *Liberal-NEA v. Board of Education*, 211 Kan. 219, 505 P.2d 651 (1973), the court stated in paragraph two of the syllabus:

"Under K.S.A. 72-5413 *et seq.* a board of education may not withdraw recognition and refuse to negotiate with a recognized exclusive bargaining representative because of a claimed loss of majority representation in the absence of an application from another group of employees to terminate the authority of the previously recognized exclusive bargaining representative."

Thus, although the request for recognition has been held pending during the preparation of this opinion, the board's action thereon should be governed by the status quo at the time the request was received by the board, and in accordance with the views expressed herein.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

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