

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

IN THE MATTER OF THE COMPLAINT *
AGAINST EMPLOYER FILED BY: *
*
KANSAS UNIVERSITY POLICE *
OFFICERS ASSOCIATION *
*
vs. * CASE NO. 75-UDC-6-1988
*
UNIVERSITY OF KANSAS (POLICE *
DEPARTMENT) *
*
_____*

ORDER

Comes now this 21st day of September, 1988, the above captioned matter for consideration by the Public Employee Relations Board.

APPEARANCES

Kansas University Police Officers Association, appears through Steve A. J. Bukaty, Attorney at Law.

University of Kansas (Police Department), appears through Mary D. Prewitt, General Counsel for University of Kansas and Faith Loretto, Staff Assistant for Labor Relation, Department of Administration.

PROCEEDINGS BEFORE THE BOARD

- 1) Petition for unit determination and certification filed on January 8, 1988.
- 2) Petition submitted to employer for answer on January 8, 1988.
- 3) Request for confirmation of extension of time in which to answer received on January 19, 1988.
- 4) Response to petition received from employer on January 21, 1988.
- 5) Respondents answer submitted to petitioner on January 22, 1988.
- 6) Pre-hearing scheduled for February 12, 1988. Notice of pre-hearing sent to parties on February 8, 1988, all parties in attendance.

7) Formal hearing scheduled for March 8 and 9, 1988. Notice of hearing sent to parties on February 16, 1988.

8) Formal hearing conducted on March 8 and 9, 1988 and concluded on April 8, 1988.

9) Transcript Volume I received on March 15, 1988.

10) Transcript Volume II received on April 13, 1988.

11) Petitioner's brief received on May 18, 1988. Respondent's brief received on May 16, 1988.

12) Petitioner's rebuttal brief received on June 3, 1988. Respondent's rebuttal brief received on June 1, 1988.

FINDINGS OF FACT

1) That the University of Kansas is a "public agency" in accordance with K.S.A. 75-4322(f).

2) That the Kansas University Police Officers Association is an "employee organization" in accordance with K.S.A. 75-4322(i).

3) That this matter is properly before the Public Employee Relations Board for determination in accordance with K.S.A. 75-4321 et. seq.

4) That security officers, police officers, sergeants, and detectives are all normally assigned to perform police functions at university "special events". (T-33, 34, 35, 95, 98)

5) That security officers are primarily responsible for insuring that campus buildings are locked and free from hazardous situations, and unauthorized persons. (T-36, 93, 101, 112)

6) That security officers normally work a shift from 10:00 PM until 6:00 AM. (T-37)

7) That security officers are not sworn, commissioned or armed law enforcement officers. (T-36, 42, 59, 61)

8) That security officers are required to be in radio contact with the police department dispatch section. (T-39, 40)

9) That security officers, in addition to the duties listed in finding of fact #5, are at times required to perform

crowd and traffic control at "special events". (T-34, 35, 41, 94, 98)

10) That security officers are required to wear uniforms. (T-37, 95, 118)

11) That dispatchers (communications officers) are required to wear uniforms. (T-47, 290, 306)

12) That dispatchers receive and disseminate all radio and telephone communications within the Kansas University police department. (T-47, 286, 287)

13) That sworn law enforcement officers periodically relieve dispatchers for lunch and/or restroom breaks. (T-47, 48, 287, 306)

14) That dispatch serves as the sole source of information for sworn officers and is heavily relied upon by those officers in the performance of their duties. (T-47, 49, 50, 286, 304, 305, 320)

15) That patrol sergeants are required to assign the duties of police officers on their shift, insure the accuracy and completeness of all forms and reports issued on their shift, and to resolve disputes between police officers on their shift. (T-50, 203, 204, 211, 447)

16) That patrol sergeants are required to perform patrol functions, make arrests, patrol campus, and make traffic stops. (T-50, 51, 203, 204)

17) That in their absence, patrol sergeants' duties are performed by the police officer designated as the Officer in Charge (O.I.C.). (T-52, 321)

18) That detectives investigate crime reports and provide V.I.P. security. (T-53, 218, 221, 239)

19) That detectives, on occasion, are required to perform patrol duties. (T-54, 218, 219, 220, 239, 240)

20) That detectives make arrests, direct traffic, and respond to emergency signals when performing patrol duties. (T-54, 55, 218, 220, 240)

21) That police officers conduct investigative interviews at times, and on occasion are assigned to "plain clothes" investigative duties to be performed in conjunction with department detectives. (T-56, 209, 221, 241, 317, 325, 326)

22) That police officers and detectives are armed while dispatchers and security officers are not armed. (T-59, 61)

23) That police officers have arrest powers, issue traffic citations, testify in courts of law, investigate crimes, collect evidence, direct traffic, and patrol the campus. (T-59, 60, 317)

24) That police officers must successfully complete or have completed the course of study offered by the Law Enforcement Training Center as a condition of continued employment. (T-60, 61)

25) That security officers and dispatchers are not required to complete the course of study offered by the Law Enforcement Training Center as a condition of continued employment. (T-63, 64)

26) That a patrol sergeant is normally the most senior officer on duty at all times other than between 8:00 AM and 5:00 PM Monday through Friday. (T-72, 161, 213)

27) That patrol sergeants have the authority to relieve police officers from duty, to issue written reprimands, to assign police officers to various patrols and duties within their shift, to recommend discipline, to perform evaluations, and to adjust disputes between officers on their shift. (T-88, 89, 90, 147, 154, 155, 159, 160, 163, 211, 212, 449, 452, 453, 456, 479)

28) That the Security Officer II, in addition to performing the duties of a Security Officer I, has the authority to relieve security officers from duty, to issue written reprimands, to assign security officers to various routes, to recommend discipline, and to perform evaluations. (T-126, 130, 132, 133, 134, 135, 137, 140)

29) That on Saturdays, Sundays, and holidays, security officers also work a shift from 2:00 PM until 10:00 PM. (See Finding of Fact #6) (T-140)

30) That background files on police department personnel are maintained in a locked cabinet, the key to which is maintained by the detective lieutenant. (T-224, 225, 242)

31) That the training sergeant, in addition to the performance of the duties of a police officer, is responsible for providing firearms training, interdepartmental training, remedial training and recruit training. (T-261, 264, 265)

32) That the training sergeant has authority to recommend discipline and to issue written reprimands to police officers. (T-270, 271)

33) That the training sergeant does not present all training or grade all of the performance of personnel receiving the training. (T-276, 277, 279, 282, 283)

34) That various personnel of the police department provide training on their specialized area of expertise. (T-276, 277, 283)

35) That police department training is graded on a pass-fail basis and the effect of a failing grade is to cause the failing officer repeat the training. (T-279, 280)

36) That dispatchers receive training from the Federal Bureau of Investigation on the use of the NCIC (National Crime Information Computer) and are required to possess a certificate for its use. (T-294, 309)

37) That in addition to the K.U. Police Department, dispatchers serve as the university communications link with the Lawrence, Kansas Police Department, the Lawrence, Kansas Fire Department, the Douglas county Emergency Operations Center, and the Motor Vehicle Department. (T-428, 444)

38) That dispatchers do not relieve police officers. (T-435)

39) That sergeants perform evaluations on police officers which are reviewed by but unaltered by the police lieutenant.

(T-477)

40) That the evaluations which are performed on sergeants include supervisory responsibilities which constitute 70% of the entire evaluation. (T-485, 486)

41) That access to background files and personnel files is restricted to a "need to know" basis. (T-527, 529, 530, 531, 532)

42) That the recommendations of promotion boards are effective. (T-670)

43) That any sergeant is empowered to initiate disciplinary action against any police officer within the department. (T-687)

44) That any detective is empowered to initiate disciplinary action against any police officer within the department. (T-693, 694)

45) That the director or the assistant director of police determines the need to initiate an internal investigation. (T-522)

46) That detectives perform internal investigations in accordance with the suggestions and/or direction of the detective lieutenant. (T-523)

47) That the district attorney, and not an employee of the university police department, determines if criminal action is dictated by the results of an internal investigation. (T-523)

48) That detectives participate in background investigations of applicants for employment by the police department. (T-525)

49) That a detective would have knowledge only of the information he had gathered for inclusion in any particular background file. (T-527)

50) That security officers report through a police lieutenant to the assistant director of police and ultimately to the director of police as do all sworn police officers and detectives. (Joint Exhibit #9)

CONCLUSIONS OF LAW/DISCUSSION

The instant case comes forth as a petition for the determination and certification of an appropriate bargaining unit within the University of Kansas Police Department.

The petitioner seeks a unit which would include all police officers, police sergeants, detectives, security officers I and II, and communication operators I. The respondent agrees that the unit should include police officers but disputes the inclusion of all other classes for a variety of reasons. The respondent is of the opinion that police sergeants and detectives are supervisory and confidential employees in accordance with the act and should therefore be excluded. The respondent is further of the opinion that communication operators I and security officers I and II lack a sufficient community of interest with police officers to dictate their inclusion in the same unit with police officers. And finally, the respondent believes that the security officer II should be excluded from the unit for the additional reason that the security officer II exercises true supervisory authority over the security officers I in accordance with the act.

In accordance with the mutual agreement of the parties, there is no dispute that all other employees of the University of Kansas Police Department should be excluded from any resultant bargaining unit. The examiner, therefore limits his scope of review to only those positions listed in paragraph one above upon which the parties disagree.

In any unit determination matter which is brought before the Public Employee Relations Board for determination the board, and likewise this examiner, must turn to the statute for

direction. As a starting point, K.S.A. 75-4324 outlines the right of public employees to organize wherein it states:

"Public employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing, for the purpose of meeting and conferring with public employers or their designated representatives with respect to grievances and conditions of employment. Public employees also shall have the right to refuse to join or participate in the activities of employee organizations."
(Emphasis added)

It is important to note that the term "public employee" has a specific meaning within the parameters of the Public Employer Employee Relations Act. That meaning is found at K.S.A. 75-4322(a) which states:

"'Public employee' means any person employed by any public agency, except those persons classed as supervisory employees, professional employees of school districts, as defined by subsection (c) of K.S.A. 72-5413, elected and management officials, and confidential employees."

A supervisory employee is then defined at K.S.A. 75-4322(b) as:

"'Supervisory employee' means any individual who normally performs different work from his or her subordinates, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend a preponderance of such actions, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. A memorandum of agreement may provide for a definition of "supervisory employees" as an alternative to the definition herein."

and a confidential employee is defined at K.S.A. 75-4322(c) as :

"'Confidential employee' means any employee whose unrestricted access to confidential personnel files or other information concerning the administrative operations of a public agency, or whose functional responsibilities or knowledge in connection with the issues involved in the meet and confer process would make his or her membership in the same employee organization as other employees incompatible with his official duties."

From the above it is quite obvious that the legislature did

not intend to extend organizational and/or representational rights to those individuals employed in supervisory or confidential positions. It is extremely important to realize, however, that the nature of one's duties and not his or her title is determinative of that person's status as a supervisor or a confidential employee. A natural extension of that finding is the inclusion or exclusion of the classifications from the scope of a bargaining unit. Even assuming, however, that an individual is found to be a public employee, there is nothing within the act to automatically cause any particular classifications to be incorporated into a bargaining unit. Quite to the contrary. If one is found to be a public employee then the provisions of K.S.A. 75-4327(e) must also be considered in order to determine the appropriate placement of that employee within a bargaining unit. The criteria to be considered within K.S.A. 75-4327(e) include:

- "(1) The principle of efficient administration of government;
- (2) the existence of a community of interest among employees;
- (3) the history and extent of employee organization;
- (4) geographical location;
- (5) the effects of overfragmentation and the splintering of a work organization;
- (6) the provisions of K.S.A. 75-4325; and
- (7) the recommendations of the parties involved."

In the opinion of the examiner, all of the criteria in K.S.A. 75-4327(e) must be considered equally in arriving at a decision regarding the scope of a bargaining unit with no single item taking precedence in terms of controlling importance. The legislature might well add to the list items 8 and 9 which require the unit to be "reasonable" and "functional". Certainly that is the obvious intent of the legislature and therefore the task of the examiner to determine. For that reason, while one item might emerge as the prevailing reason behind a decision, initially they enjoy equal status and are afforded equal consideration.

As a necessary step in the unit determination process, at some point the examiner must also consider the provisions of K.S.A. 75-4327(f) which states:

"A recognized employee organization shall not include: (1) Both professional and other employees, unless a majority of the professional employees vote for inclusion in the organization; (2) uniform police employees and public property security guards with any other public employees, but such employees may form their own separate homogeneous units; or (3) uniformed fireman with any other public employees, but such employees may form their own separate homogeneous units. The employees of a public safety department of cities which has both police and fire protection duties shall be an appropriate unit."

While the question of "professional employees" was not raised as an issue in this case there can be no argument that this case deals with uniformed police employees and the provisions of K.S.A. 75-4327 (f) (2) must be considered.

Prior to addressing any particular classification, the examiner wishes to offer some preliminary comments in regard to unit determinations in general.

Traditionally, one of the most difficult questions to be answered in any unit determination case is at what point in the organizational hierarchy does one truly become a "supervisor" in accordance with statutory definition. That task becomes even more difficult when dealing with a para-military organization. It can be argued that every member of such an organization has supervisory authority over every subordinate rank. In the vast majority of cases, and certainly within the system utilized by the State of Kansas, the "appointing authority" is the only level which maintains the right to hire, transfer, suspend, layoff, recall, promote, or discharge employees. For that reason it may similarly be argued that the appointing authority is the only one empowered with supervisory latitude. In the first example, only the lowest ranking officer could be included in a bargaining unit and in the second example only the appointing authority could be excluded as a supervisor. In practice in

the public sector, supervisory authority is exercised traditionally through recommendations arising from the ranks, and the degree to which those recommendations are effective and followed by the appointing authority are good indicators of one's supervisory status. The importance of clearly defining the level at which supervision becomes effective cannot be overemphasized. A unit determination order which narrowly interprets the law in either direction can either deny the employer the right to adequate supervision of the work force or in the alternative can deny public employees of their statutory rights to organization and representation. For both reasons stated above each classification in question is closely studied for its appropriate status.

A second item worthy of discussion is the importance to be placed on units which have previously been certified by the Public Employee Relations Board to be appropriate. In the instant case the parties to this action have entered into an agreement regarding the inclusion and the exclusion of certain classifications of employees from the bargaining unit. Neither the examiner nor the board will receive or review any evidence relative to those classifications prior to the issuance of this order. They will simply be included or excluded pursuant to the mutual agreement of the parties unless the board is confronted with some obvious illegality in the proposed action. In the opinion of the examiner, the ability of the board to approve of units in this manner is derived from a reading of several sections of the act in conjunction with one another.

Specifically, at K.S.A. 75-4323(e) the board is directed to, "intervene in the public employer - public employee relations of political subdivisions to the minimum extent possible to secure the objectives expressed in K.S.A. 75-4321." Secondly, in accordance with K.S.A. 75-4327(c), only the parties, and not the board, may raise the question of the definition of the appropriate unit. Third, the criteria

outlined at K.S.A. 75-4327(e) shall be considered by the board, "in investigating questions at the request of the parties." And finally, K.S.A. 75-4322(b) allows the parties to mutually agree to a definition of supervisory employees as an alternative to the definition contained in the act. Moreover, as a practical matter, if the parties are in agreement on the scope of the unit it is reasonable to assume that any evidence or testimony they would provide at a hearing would serve to substantiate their agreement. If the board were then to define a unit in contradiction to the evidence presented, their order could be easily overturned as arbitrary in nature. Orders which are based on agreements therefore, rather than on evidence and/or testimony, may not reasonably be relied upon as establishing any firm board precedent. Having addressed those generalities, the examiner will now focus on the specific issues raised in this case.

SERGEANTS

The petitioner in this case alleges that patrol sergeants are "public employees" in accordance with the act and in that capacity should properly be included in the bargaining unit of police officers at the University of Kansas. The respondent alleges in the alternative that patrol sergeants are "supervisory and/or confidential" employees in the performance of their duties and should, therefore, be excluded from the bargaining unit.

The record reflects that sergeants within the University of Kansas Police Department are sworn, commissioned, uniformed, and armed police personnel as are police officers on that department. The record further reflects that sergeants regularly perform many of the same duties which are performed by police officers. Among those duties are patrolling campus, making traffic stops, and making arrests. Sergeants must also complete the course of study offered by the Law Enforcement Training Center as do police officers. There can be little

argument that many of the duties performed by the sergeants are common with those performed by police officers. There is also considerable evidence in the record that sergeants perform several additional duties which are not performed by police officers. Among those are the authority to assign duties and patrols on their shift, to review all reports generated on their shift, to relieve police officers from duty, to issue evaluations and written reprimands on police officers, to recommend discipline for police officers, and to adjust disputes between police officers on their shift.

The duties listed above which are in excess of the typical duties performed by the police officers fall squarely within the list of functions attributed to supervisory employees at K.S.A. 75-4322(b). Certainly, the majority of those functions are accomplished through recommendations which are advanced upward through the chain of command to a level where the recommendation can become reality. The statute, however, recognizes that one need not have the absolute authority to take action in order to qualify as a supervisor. One who has the authority to recommend a preponderance of the supervisory functions, and to do so effectively, is a supervisor. The record certainly indicates that the employer perceives sergeants as supervisors and testimony on the record reflects that those expectations are translated into performance expectations on the performance evaluations which are given to sergeants and which constitute approximately 70% of the evaluation.

It seems perfectly reasonable to the examiner, considering the critical nature of the police function, that the employer would designate some rank to supervise that function at all times. Uncontroverted testimony on the record indicates that during the majority of time the highest ranking officer on duty is the sergeant.

The examiner is convinced that patrol sergeants are perceived and empowered to act as supervisors by the university

and is further convinced that the supervisory functions performed by the sergeants are effective. The example which most clearly demonstrates that effectiveness is found in relation to the performance evaluations performed by sergeants on police officers. Evidence indicates that evaluations which are less than satisfactory may ultimately result in an employee's termination. Evaluations on police officers are completed by sergeants, and while reviewed by higher authority, are not subject to change by the reviewer. Certainly, the ability to issue an independent and unalterable assessment of an employee's performance, which if unsatisfactory could result in the employee's termination, is a clear example of the ability to effectively supervise in accordance with the intent of the act. Based on the foregoing, it is the recommendation of the examiner that patrol sergeants be excluded from the scope of the appropriate bargaining unit due to their supervisory status.

During the course of the formal hearing there was testimony offered in regard to two particular sergeants employed in the training and the crime prevention sections of the department. The petitioner attempted to demonstrate a distinction between those two sergeants and the sergeants assigned to patrol. There were definitely differences in the types of work performed by those various sergeants but testimony on the record indicates that any sergeant may recommend discipline and/or issue written reprimands to any police officer. As it applies to the sergeant in crime prevention, there is a significant difference in the number of police officers supervised but no substantive difference in the type of supervisory authority exercised. For that reason the examiner also recommends the exclusion of the sergeant in crime prevention from the scope of the appropriate bargaining unit. In regard to the training sergeant, there are no regular police officers directly assigned to the training section under his immediate supervision. The training sergeant is, however, the supervisor of all new hires to the department,

provides them with training during their probationary period, evaluates their probationary performance, and in essence determines if they are suitable for retention by the department. At the point in time the police officer completes his probationary period he is removed from the supervision of the training sergeant and assigned to the supervision of a patrol sergeant. The training sergeant also coordinates training for regular police officers and evaluates their satisfactory completion of that periodic training. The training responsibilities assigned to the training sergeant viewed in concert with his ability to reprimand and/or recommend discipline for police officers leads the examiner to recommend the exclusion of the training sergeant from the scope of the appropriate bargaining unit.

DETECTIVES

Petitioner alleges that detectives are "public employees" and as such should be included in the appropriate bargaining unit. The respondent alleges that detectives are "supervisory and/or confidential" employees and therefore should be excluded from the bargaining unit. In support of respondents' position, the examiner finds testimony in the record offered by Police Department Director Denney which indicates that detectives may initiate discipline against police officers and "theoretically" against sergeants. In the experience of this examiner, most if not all police departments are extremely cognizant of the image which they portray to the community they serve, and take extraordinary precautions to avoid even the slightest hint of impropriety. In that effort, and as officers of the law, department personnel are encouraged to report any behavior by any member of the department which gives rise to suspicion. The examiner is confident that the University Police Department is equally as intent on insuring propriety. Based on that presumption the examiner would be surprised if any officer of the department would be precluded from reporting improper acts of any other officer of the department to superior officers.

Perhaps the department envisions detectives in a more "traditional" supervisory role but if so their expectations have little if any real impact in practice. Testimony on the record indicates that police officers work under the direction of a detective only "on occasion" and the respondent provided no evidence that any detective has been empowered with the authority to act in the capacity of a "supervisor" over police officers or sergeants. The record contains nothing which would indicate that detectives have authority in the interest of the employer to hire, transfer, suspend, layoff, recall, promote, discharge, assign, or reward other employees, or to adjust their grievances, or effectively to recommend a preponderance of those actions. The only action which the examiner recognizes as "supervisory" is the ability of the detective to direct the work of police officers who perform investigations on an "occasional" basis and to initiate disciplinary action against police officers. Keeping in mind the expressed differences in the functions performed by the patrol versus the detective division, it appears to the examiner that the detectives would have extremely limited and irregular opportunities to exercise this alleged supervisory authority. As mentioned earlier, it is not uncommon in a para-military organization for one classification to "out rank" another classification and to enjoy certain power and privileges associated with that rank. The examiner is not convinced that mere rank alone, however, is sufficient to establish an employee/supervisor relationship. The scarcity of detective's "supervisory" authorities, especially when viewed in light of their infrequent potential for the exercise of that authority, further underscores the examiner's opinion that detectives fail to meet the definition of supervisory employees.

The respondent in this matter has also sought the exclusion of detectives from the bargaining unit alleging they qualify as confidential employees. A confidential employee is defined by statute at K.S.A. 75-4322 (c) as;

"any employee whose unrestricted access to confidential personnel files or other information concerning the administrative operations of a public agency, or whose functional responsibilities or knowledge in connection with the issues involved in the meet and confer process would make his or her membership in the same employee organization as other employees incompatible with his official duties."

The respondent has been able to demonstrate that detectives are responsible for the generation of at least part of the information which may be found in the "background files" compiled on each employee. The detective would have knowledge, however, only in regard to the information he or she had generated and would not have access, unrestricted or otherwise, even to other background files, much less personnel files. Each detective may generate some of the information which appears in each of the background files of other employees. What he or she retains is only a part of the overall background file and access to the complete background and/or personnel file of any other employee is limited to a "need to know" basis. Similarly, there was no evidence that any detective exercised any functional responsibility or possessed any knowledge in connection with the issues involved in the meet and confer process.

For the above stated reasons, the examiner does not find the detectives to be either supervisory or confidential employees in accordance with statutory definitions and, therefore, recommends their inclusion within the appropriate bargaining unit.

SECURITY OFFICERS I

Petitioner alleges that security officers I are "public employees" in accordance with the statutory definition and as such should be included within the appropriate bargaining unit within the University of Kansas Police Department. Respondent alleges that the security officers fail to possess a community of interest in accordance with K.S.A. 75-4327(e)(2)

which would dictate their inclusion with police officers as petitioned for. In addition, respondent also asserts that the classification of security officer exists in other university departments and the inclusion of only those security officers in the police department within the unit petitioned for would be inappropriate. And finally, respondent alleges that the security officer II is a supervisory employee.

As stated earlier, the examiner is not particularly interested in the title which has been assigned to a specific set of duties. In a unit determination it is the duties themselves which will serve to dictate placement. The record is void of any evidence or testimony which would place security officer I in any category other than that of "public employee". Based on that fact alone, the security officer I must be placed within the parameters of some appropriate unit.

The record is clear that the security officers are not sworn, commissioned, or armed police personnel. The record is equally clear, however, that security officers are organizationally assigned to the police department, subject to pre-employment background checks, and ultimately accountable to a police lieutenant and ultimately to the same department director as are the police officers. Job duties and continuing training requirements certainly differ for the two groups, yet the code of conduct expected of police officers also extends to security officers. Police officers work three around the clock shifts while security officers work a fixed shift. Certainly an overall observation of the security officers would show that they are something other than a traditional police officer. A close reading of the record, however, will also show that detectives perform different duties than police officers, work a fixed shift, reasonably would receive at least some training which is different than or supplemental to that received by police officers, and are not even uniformed yet no substantive argument may be made that they are not "police employees" as contemplated by the act.

It appears to the examiner that the criteria utilized most heavily by the respondent in an attempt to demonstrate the lack of a community of interest between the two groups is the difference between sworn/commissioned officers and non-sworn or commissioned police personnel. The examiner does not dispute the magnitude of such a difference but is also not convinced that the difference is an item worthy of great significance in a unit determination proceeding. At least not an item which would automatically dictate the separation of the two classifications into separate bargaining units. The examiner arrives at his conclusion through a reading of K.S.A. 75-4327(f) which states;

"A recognized employee organization shall not include: (1) Both professional and other employees, unless a majority of the professional employees vote for inclusion in the organization; (2) uniform police employees and public property security guards with any other public employees, but such employees may form their own separate homogeneous units; or (3) uniformed fireman with any other public employees, but such employees may form their own separate homogeneous units. The employees of a public safety department of cities which has both police and fire protection duties shall be an appropriate unit."

Item 2 of that subsection indicates the contemplation of a unit which could be comprised of various types of police and security personnel in the same unit, in separate units, but in no case in a unit with any other public employees.

In its brief the respondent appears to acknowledge that while not mandatory, the statute does permit the determination of a unit including both police officers and security officers if a community of interest can be shown to exist. The examiner is in basic agreement with the respondent but believes that the other criteria listed at K.S.A. 75-4327(e) must also receive proper consideration. A review of those criteria, however, reflects that some have no application in this particular case. Specifically in regard to "the recommendations of the parties involved", it is readily apparent that those recommendations are in direct conflict with one another. In regard to "the provisions of K.S.A. 75-4325", no one has alleged that security

officers I are supervisory employees. In regard to "geographical location", all employees of both classes are employed on the campus of the University of Kansas. In regard to "the history and extent of employee organization", the record would seem to indicate that the petitioner is a rather recent creation with little history on which to draw. The examiner notes, however, that service and maintenance employees of the university have been organized and represented by a different employee organization since 1973 with no apparent consideration given to the inclusion or exclusion of security officers. And finally, in regard to "the principle of efficient administration of government", some evidence was provided in regard to inconveniences which might occur, but nothing was offered which would demonstrate potential inefficiency. The only remaining criteria to be considered are "the existence of a community of interest among employees", and "the effects of overfragmentation and the splintering of a work organization."

As stated earlier in this order certain conditions exist which would serve to establish, at least to some extent, a community of interest between police officers and security officers. Both classes have been organizationally assigned to the police department, both report ultimately to the same director through the police department chain of command, both are subjected to pre-employment background investigations, and both are expected to adhere to the code of conduct established by the department. While these factors tend toward the existence of a community of interest, the examiner places considerable weight on the fact that both classes are primarily employed to protect, secure, and preserve the assets of the university. Certainly the same might be said of any conscientious employee of the university but not to the extent apparent in these two classes. The examiner recognizes the obvious differences in the "means", but believes the "objective" and/or "mission" of the two classes to be very much akin. The objective of the classes when viewed in concert with other

common job requirements of the classes and the organizational placement of the classes, are sufficient in the opinion of the examiner to establish a community of interest between the classes.

The last criteria to be considered deals with the effects of overfragmentation and splintering of a work organization. Overfragmentation of a work organization and splintering of a work organization are conditions both of which can create an overabundance of bargaining units.

Overfragmentation, if allowed, causes an employer to bargain on a nearby neverending basis with a proliferation of highly individualized units, each accorded all the rights of a certified representative. And, if allowed to exist, the employer can be caused to expend vast amounts of time and resources on bargaining and impasse resolution over issues which could have been addressed for all such unit employees in a single set of bargaining sessions. Once fragmented units are certified, a refusal to accord each with all of their rights creates the grounds for unfair labor practice charges, further depleting the employers time and resources.

Splintering of a work organization is a condition wherein the employees have been separated into units of such little importance, size, or strength that their requests and/or demands may be ignored by the employer with impunity from the consequences of its actions.

The examiner is confident that neither the petitioner or the respondent wishes to deal with units that are either overfragmented or splintered. Certainly neither party demonstrated any behavior which would even hint toward an attempt to create such a unit. The criteria, however, are a very real concern to the examiner in his task whether the results are planned or accidental. As stated earlier, the parties do not contest that security officers are "public employees" with the right to organize in some unit. The examiner is convinced from the record that security officers have a community of interest

with police officers. And finally, the examiner is convinced that a unit of 9 security officers would be an overfragmentation and/or a splintering of the work organization and would be totally inappropriate. Some peripheral testimony was admitted to the record concerning a unit of service and maintenance type employees at the university with the obvious intent of suggesting that the security officers might be included in that unit. The examiner rejects that proposition not only for its lack of supporting credible evidence but also for its timing. In way of explanation, the scope of the bargaining unit is not the sole province of the employee organization, it is the charge of both parties to cope with, review, groom, massage, amend, and revise throughout the existence of the relationship. That grooming of the unit should be a joint effort but may be initiated by either party. In this case the classification of security officer I has been in existence for many years and the service and maintenance unit has been in existence since 1973, yet the status and placement of the security officers has not previously been addressed. If there is a unit, other than the police unit, into which the security officers more appropriately "fit", the evidence presented in this hearing fails to demonstrate that fact.

Based on all the foregoing, it is the recommendation of the examiner that security officers I be included within the appropriate bargaining unit.

SECURITY OFFICERS II

The petitioner alleges that the security officer II is a "public employee" in accordance with the act and in that capacity should be included in the appropriate bargaining unit. The respondent alleges in the alternative that the security officer II is a "supervisory" employee and should, therefore, be excluded from the unit.

The record will indicate that the security officer II performs many of the same duties as the security officers I but also performs a great many duties which are totally beyond the

expectations placed on security officers I. Among those duties are the authorities to relieve security officers I from duty, to issue written reprimands, to assign security officers I to various routes, to recommend discipline, and to complete performance evaluations on the security officers I. It is obvious to the examiner that the security officer II is a supervisor in her own opinion, and is certainly utilized in that capacity by the university. As was previously stated in the discussion of sergeants at an earlier point in this order, one need not perform each and every task attributed to a "supervisor" in the statutory definition in order to be a supervisor. The act also recognizes as supervisors those who perform a preponderance of those tasks, and the examiner recognizes a "preponderance" to contemplate not just numbers but also the importance or consequence of the actions. Any employee who may assign your work, review your work, evaluate your work, and effectively relieve you from your work may be called many things, but foremost among them is supervisor.

Based on the foregoing, the examiner is convinced that the security officer II is a supervisory employee in accordance with the act and should, therefore, be excluded from the appropriate bargaining unit.

COMMUNICATION OFFICERS

In referring to this classification the examiner may alternately refer to communications operators I as dispatchers.

The petitioner in this matter alleges that the communication operators I are "public employees" in accordance with the act and should be included in the appropriate unit. The respondent argues, however, that the communication operators I fail to possess a community of interest with police officers sufficient to dictate their inclusion in the same unit.

A review of the record as a whole places communications operators I in a somewhat similar posture as that of the security officer I. Both groups are uniformed, are organizationally assigned to the police department, report through the

same chain of command to the same department director, are not sworn or commissioned officers, are not required to attend the law enforcement academy as a condition of continued employment, and are not armed. While all of these factors may help to indicate a community of interest between dispatchers and security officers, it should be remembered that the examiner didn't find a particularly persuasive community of interest between security officers and police officers. He found only an adequate community of interest and included security officers I with police officers based on the similarity of their general mission, the absence of any preclusion to his action in the statute, and the lack of any evidence which would indicate a more appropriate placement.

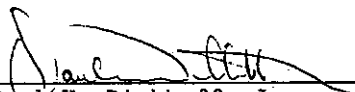
The same conditions, however, do not exist in regard to dispatchers. First, police officers and security officers are employed to actively protect, secure, and preserve the assets of the university. Dispatchers are employed to receive, record, retrieve, and disseminate information. Both tasks are extremely important to the overall operations of the police department and the interests of the university. Arguably both are critical to those operations and/or interests. Without police there would be no need for dispatchers and without dispatchers the police would lose a tremendous amount of effectiveness. And while their relative worth is unquestioned, the fact remains that they perform different functions. One a police function and one a communications function. Even if it could be shown that their interests were blueprint duplicates of one another, the provisions of K.S.A. 75-4327(f)(2) precludes their inclusion in the same unit. Put simply, dispatchers are not "police employees" or "public property security guards" as contemplated by the act and may not, therefore, be included in a bargaining unit with those types of employees. Certainly, dispatchers are "public employees" and as such have the right to organize and to be represented in some unit. The examiner has, however, previously discussed the ill effects of the overfragmentation

and/or splintering of a work organization, and is convinced that a unit consisting of five dispatchers would be most inap-propriate.

In summary, dispatchers are not "police employees" or "public property security guards" in accordance with the intent of the act and may not, therefore, be included within the police unit as defined in this order. The dispatch section of the police department contains too few employees to be defined as a separate unit without that unit being a fragmentation and/or a splintering of the work organization, and finally, insufficient evidence appears within the record which would allow the examiner to determine the appropriate unit placement of the dispatchers. Suffice it to say the police unit is not that appropriate placement.

Based on all the foregoing, it is the recommendation of the hearing examiner that the appropriate unit of police personnel within the University of Kansas police department be comprised in the following manner; include police officers, detectives, and security officers I, and exclude police sergeants, security officers III, communications operators I, II, and III, and all other classifications not specifically included above.

It is so recommended this 25th day of July, 1988.

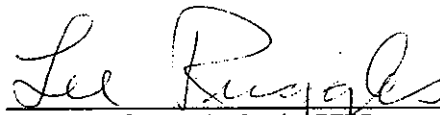


Paul K. Dickhoff, Jr.
Hearing Examiner

The hearing examiner's report and recommended findings are hereby approved and adopted as a final order of the Board.

IT IS SO ORDERED THIS 21st DAY OF September, 1988, BY
THE PUBLIC EMPLOYEE RELATIONS BOARD.

Dorothy N. Nichols, Member, PERB



Lee Ruggles, Member, PERB



Art J. Veach, Member, PERB



Mike Cavell, Member, PERB
