

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

IN THE MATTER OF THE PETITION
FILED BY:

Teamsters Local 696, International
Brotherhood of Chauffeurs, Warehouse-
men and Helpers of America for Unit
Determination and Certification of
Certain Employees of the Shawnee
County Jail, Topeka, Kansas, A Divi-
sion of the Shawnee County Department
of Corrections.

CASE NOS: 75-UC-1-1986
75-UC-1a-1986

Comes now on this 1st day of April, 1986, the
above captioned case for consideration by the Public Employee Relations
Board. The case comes on petition of Teamsters Local 696 asking that
a unit of certain employees at Shawnee County Jail be determined to
be appropriate. After investigation by staff, Mr. Jerry Powell, was
appointed to serve as hearing examiner in the matter.

APPEARANCES

For the Petitioner, Teamsters Local 696, Patrick L. Dunn, Blake
& Uhlig, Attorney at Law, New Brotherhood Building, Kansas City, KS;
and William A. Moore, Business Representative, Teamsters Local 696,
1231 Eugene, Topeka, Ks.

For the Respondent, Shawnee County, Joseph W. Zima, Assistant
County Counselor, Shawnee County, 200 East 7th, Topeka, Ks; Charles
Wells, Director of Human Resources, Shawnee County, 200 East 7th,
Topeka, KS; and Richard Kline, Director, Shawnee County, Department
of Corrections, Topeka, KS.

For the American Federation of State, County and Municipal
Employees (AFSCME) Local Council 64, AFL-CIO; Wayne Wianecki, Executive
Director, 214 West 6th Street, Topeka, Ks.

PROCEEDINGS BEFORE THE SECRETARY

1) Petition filed by William Moore, Business Representative for
Teamsters Local 696, International Brotherhood of Chauffeurs, Ware-
housemen and Helpers of America, against Shawnee County on October
2, 1985.

2) Petition served on Respondent, Charles Wells, Director of
Human Resources for Shawnee County on October 2, 1985.

3) Answer of Respondent received by the Department of Human
Resources on October 4, 1985.

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4) Answer of Respondent served on Petitioner on October 8, 1985.

5) Pre-hearing conducted on October 23, 1985.

6) Petition amended on October 23, 1985. Amendment hand delivered on October 23, 1985.

7) Formal hearing scheduled for November 25, 1985. Notice of Hearing sent to parties on:

Petitioner - November 12, 1985

Respondent - November 12, 1985

Intervenor AFSCME - November 12, 1985

8) Request received from Joseph Zima, Counsel for Shawnee County, to postpone hearing until after December 5, 1985.

9) Formal hearing rescheduled for December 16, 1985. Notice of hearing sent to parties on:

Petitioner - December 2, 1985

Respondent - December 2, 1985

Intervenor AFSCME - December 2, 1985

10) Subpoenas issued to Elaine Wilder, Phil Gonzales, Gene Belinski, Craig Ciafullo, Tim James, Robert Zweisler and Russ Greene on November 16, 1985.

11) Formal hearing conducted on December 16-17, 1985.

FINDINGS OF FACT

1) That Shawnee County is subject to the provisions of the Kansas Public Employer-Employee Relations Act by virtue of the majority vote of the governing body bringing such coverage on the County.

2) That the petition filed by Teamster's Local 696 is properly and timely before the Public Employee Relations Board.

3) That the Shawnee County Youth Center was an "institution" operating directly under the County Commissioners prior to the time that the Shawnee County Department of Corrections was created. (T-7)

4) That Mr. Patrick Dunn, attorney representing the Teamster's in this matter, stated on the record that following an investigation of the facts by the petitioning party, it appeared to them that quite possibly the County's position of creating one unit might be correct. (T-8)

5) That the County Commission by Charter Ordinance Resolution #80-2 established the Shawnee County Youth Center as a part of the Shawnee County Department of Corrections (See Respondent's Exhibit #15).

6) That the Shawnee County Commission by Resolution enacted the 28th day of May, 1981, transferred the operation of the Shawnee County Jail to the entity entitled, "The Shawnee County Department of Corrections" (See Respondent's Exhibit #16).

7) That Mr. Richard Kline is currently employed as the Director of the Shawnee County Department of Corrections. The Shawnee County Department of Corrections was created in October of 1980. (T-30)

8) That the position of Deputy Director of Administrations/Community Corrections is an individual by the name of Tom Magerkurth. (T-33)

9) That under Mr. Magerkurth's direction, Mr. Pat Henry is employed as the Community Corrections Coordinator. Mr. Henry,

then, is directly responsible for the Intensive Supervisory Probation Officers, the Juvenile/Adult Diagnostic Services and the Juvenile/Adult Contractual Services. The Intensive Supervisory Probation Officers are primarily responsible for supervising offenders who have been referred to them by the judges. The Juvenile/Adult Diagnostic Services people and the Juvenile/Adult Contractual Services people are contracted with by the Shawnee County Department of Corrections and as such, are not employees of Shawnee County. (T-35)

10) That within the Administration section of the Department of Corrections, under the supervision of the Deputy Director of Administrations/Community Corrections, Mr. Tom Magerkurth, there are two employees: a Secretary II and a Clerk I. These two individuals perform primarily clerical duties consisting of answering the phone, typing, filing, attending staff meetings for the purpose of taking minutes, etc. These individuals are viewed by the County as meeting the definition of "confidential" employees. The Clerk I has unrestricted access to personnel files. (T-38)

11) That the Deputy Director of the Adult Detention Division (jail) is Mr. Earl Hindman. Directly under Mr. Hindman's supervision are two positions. One position is that of Division Manager Administration. The position is currently occupied by Tom Merkel. The other position is a Division Manager Operations currently occupied by Mr. Gary Bayens (See Respondent's Exhibit #2).

12) That there are five Unit Supervisors employed within the Shawnee County Jail. There are also five Line Supervisor positions within the Shawnee County Jail. (T-39)

13) That the Shawnee County Department of Corrections organizational chart indicates that the two cooks in the Shawnee County Jail are directly responsible to the Food Service Manager within the jail. The chart also shows that Account Clerk I, a Clerk III and a Secretary II report directly to a Unit Supervisor within the Shawnee County Jail. The chart then shows that

Correctional Specialists report to Line Supervisors who, in turn, report to Unit Supervisors. The chart further shows that the Custodial Supervisor reports to the Division Manager Operations (See Respondent's Exhibit #2).

14) That Mr. Kline views the responsibilities of a Line Supervisor as being differed from the duties of a Correctional Specialist. He believes that these Line Supervisors interpret policies and procedures whenever a Correctional Specialist has a question. Further, he feels that the Line Supervisors assign work to the Correctional Specialists on a daily basis. He also believes that Line Supervisors have some discretion on approving sick leave, vacation leave and other types of leave. Mr. Kline also states that Line Supervisors adjust grievances at the initial level. (T-54)

15) That Mr. Kline views the Food Service Manager as a supervisory position. He also believes that the Clerks and Account Clerks perform duties of a confidential nature. (T-55)

16) That it is a common practice for the Secretary to fill in for the Clerk when the Clerk is absent from the work place. (T-57)

17) That Mr. Kline believes that the Intensive Supervisory Probation Officers, Program Coordinators, Work Release Coordinators, Correction Counselors and Social Workers are professional employees under the definition of the Public Employer-Employee Relations Act. (T-57)

18) That Mr. Kline feels that the business officer employed at the Shawnee County Youth Center is a supervisor within the definitions found in the PEERA. (T-58)

19) That some of the job classifications currently being utilized within the Shawnee County Department of Corrections were created back when the Department of Corrections was formed in October of 1980. Other job classifications have been created over the years as positions were developed. (T-60)

20) That the position descriptions for Secretary and Clerk do not specifically mention that these positions perform confidential work. (T-71)

21) That Mr. Kline interprets the job classification for Food Service Manager as specifying that the Food Service Manager supervises the two cooks within the jail. (T-74)

22) That the Secretaries and Clerks provide no direct services to residents or inmates of any of the detention facilities. Nor do they perform any actual detention functions, counseling, or other types of service directly for the inmates/clients. (T-75, 76)

23) That there exist within the Shawnee County Department of Corrections basically four facilities in question. Those facilities are Administration, Youth Center, Work Release Center and Jail. (T-76)

24) That there is a current memorandum of agreement between AFSCME council 64 and the Shawnee County Youth Center which expires December 31, 1985. (T-77)

25) That Mr. Charles Wells is currently serving as Director of Human Resources for Shawnee County, Kansas. (T-79)

26) That Mr. Wells estimates that approximately seventy percent (70%) of his time is taken up in negotiating contracts on behalf of Shawnee County. (T-80)

27) That Mr. Wells testified that all employees with the Department of Corrections earn the same vacation leave, the same number of holidays and the same amount of sick leave. Further, that they are all covered by the same Workman's Compensation, health insurance plan, life insurance plan and retirement system. To Mr. Wells' knowledge, about the only difference in working conditions of employees of the Department of Corrections involve salaries. (T-81)

28) That the difference in salary schedules for the three facilities consist of a five percent (5%) premium for employees working in the jail. (T-84)

29) That there exist different salary schedules for the Youth Center and the Work Release Center. (T-85)

30) That there are written policies and procedures for Correctional Specialists and those policies are separate documents for each of the three facilities. (T-85)

31) That employment records are maintained in Mr. Wells' office within the Shawnee County Courthouse and also in the facility in which the employee is employed. (T-86)

32) That evaluations of employees are performed by that employees' immediate supervisor. (T-86)

33) That the evaluation forms utilized at the Youth Center and the one utilized at the jail are not the same form. The county policy contains a provision specifying that any form can be used for evaluation so long as the Director of Human Resources approves the form. (T-93)

34) That an individual seeking a job at any one of the facilities operating under the Department of Corrections would need to go to the personnel office at the Shawnee County Courthouse in order to fill out an application for employment. (T-94)

35) That an employee of a particular facility under the Department of Corrections who desires to transfer to another facility under the Department of Corrections would need to file an application with the Shawnee County Personnel Department whenever that individual was aware of a vacant position at the other facility. Shawnee County has historically given preferential job treatment to employees making such an application for a "transfer". (T-96)

36) That the difference in the salary schedule between the Youth Center and the other facilities under the Department of Corrections came about as a result of negotiations by AFSCME on behalf of the Youth Center employees. (T-98)

37) That the County provided for the five percent (5%) across-the-board additional salary to employees of the jail because the County Commissioners believed that working in the jail was a particularly hazardous duty. (T-97)

38) That the Shawnee County Department of Corrections

does not have its own personnel department. Rather, they utilize the services of the County Personnel Department. (T-99)

39) That the County has personnel policies which are applicable to all non-union, non-civil service people regardless of where they're employed throughout the various Shawnee County Departments. (T-99, 100)

40) That all "transfers" from one facility to the other within the Shawnee County Department of Corrections must, during their normal course, go through the Shawnee County Personnel Office. In the period of times since the end of February, 1985, three "transfers" of people have been made from the Youth Center to the jail. All three of these individual "transfers" were made as a result of the fact that the personnel were going to be laid off at the Youth Center. These three applied for and were "transferred" to the jail. (T-104, 105)

41) That clerical employees are currently excluded from all bargaining units within Shawnee County. (T-106)

42) That Mr. Tom Merkel is currently serving as the Jail Manager with the Department of Corrections. Mr. Merkel has been serving in that position since 1981. (T-108)

43) That Mr. Merkel interprets the rules and regulations to allow a Line Supervisor to issue commendations to Correctional Officers. (T-112)

44) That Mr. Merkel believes that Line Supervisors have the authority to discipline employees. (T-112)

45) That Line Supervisors perform on-the-job training for Correctional Specialists that work under them. (T-121)

46) That under normal circumstances, an evaluation of an employee is filled out by a Unit Supervisor. Many times the Line Supervisor is asked by the Unit Supervisor to read the evaluation and express an opinion. (T-122)

47) That the term "Shift Supervisor" utilized in the written policy of the Jail Procedure Manual is not a recognized classification of the County. Rather, that term is

utilized to indicate either the Unit Supervisor or the Line Supervisor in charge of a particular shift. (T-126)

48) That Mr. Merkel computes that Line Supervisors serve as the management person in the jail approximately forty-one percent (41%) of the total time. (T-126)

49) That Mr. Merkel perceives that the Line Supervisor's work differs from the work of a Correctional Specialist. The Line Supervisor is responsible for the supervision of the Correctional Officers on the floor and to insure that the job is being done. A portion of the work performed by a Line Supervisor, approximately forty percent (40%) of the time is the interpretation of policy and procedures and doing such things as maintaining time sheets. (T-128)

50) That the Line Supervisor has no authority to hire. (T-129)

51) That a Line Supervisor cannot affect a "transfer". (T-129)

52) That the Line Supervisor can by County Personnel Policy recommend suspension. (T-130)

53) That the forms used for maintaining records of overtime and sick time, vacation time, holiday pay and comp time contain a line at the bottom for the signature of the Shift Supervisor. (T-135)

54) That the Food Service Manager is responsible for scheduling the two cooks in the jail. The Food Service Manager performs periodic evaluations of the two cooks and further has responsibility for initiating disciplinary action of the two cooks. (T-141)

55) That the Account Clerk position at the jail is responsible for maintaining the jail's personnel records and the contents that are contained therein. (T-142)

56) That the Secretary in the jail is in a new position, however, the duties of the position will include such things as typing memos, doing the filing for Mr. Hindman and Mr. Merkel. (T-142)

57) That Correctional Specialists at the jail carry weapons. The Correctional Specialists at the Youth Center and the Work Release Center do not carry weapons. (T-150)

58) That Correctional Specialists in the jail perform the book-in process. (T-150)

59) That Correctional Specialists in the jail are trained in the use of fire arms. The training now consists of one day classroom and then actual days spent on the firing range firing the weapon. (T-151)

60) That Correctional Specialists at the jail wear uniforms. The Line Supervisors at the jail wear the same uniforms as the Correctional Specialists, but the Line Supervisors do have special insignias on their uniforms. (T-152)

61) That the policy and procedures manual of the jail require that sick leave and overtime be approved by the shift supervisor. (T-156)

62) That the approval of overtime is a routine operation wherein the Shift Supervisor is seldom approached concerning working overtime but rather must approach other individuals to find someone to work. (T-157)

63) That in the event a Line Supervisor felt that an employee was misusing sick leave, he would, in fact, make a notation on the sick leave slip. The Unit Supervisor might investigate or might pass the slip on up the chain of command for investigation by the Division Manager or possibly the Jail Administrator. (T-158)

64) That the personnel policies state that, "The Shift Supervisor on duty shall have the authority to immediately relieve any employee from duty who the Supervisor feels has violated County and/or Departmental policy." The policy then goes on to state, "The terms of such suspension will be determined by the Deputy Director." (T-161)

65) That there is a two week training period that Correctional Specialists in the jail must receive within their first

year of employment. This training is not required of Correctional Specialists employed at the Work Release Center or the Youth Center. (T-164)

66) That Mr. Merkel estimates that approximately half of the training required of Correctional Specialists in the jail would be applicable to employees of the Work Release Center and the Youth Center. Further, Mr. Merkel states that the training process will go from two weeks to three weeks in the near future. (T-165)

67) That Mr. Merkel, as the second in command at the jail, has no supervisory or functional authority at the Work Release Center or at the Youth Center. (T-166)

68) That Line Supervisors within the jail are paid by the hour. Also, they receive overtime pay when they work overtime. (T-166, 167)

69) That Mr. Merkel tries to make contact on a daily basis with the three Unit Supervisors under his command. (T-170)

70) That each shift within the jail has a figure head, or the person that is in charge of the shift. That position would be the Unit Supervisor. (T-172)

71) That as a general rule, a juvenile that is arrested would go to the Youth Center for incarceration rather than the jail. An adult who is arrested would be incarcerated within the jail. (T-177)

72) That there are three shifts of employees at the jail. There is the day shift, the evening shift and the night shift. The three Unit Supervisors normally work Monday through Friday with weekends off. Therefore, Line Supervisors are considered to be Shift Supervisors on weekends, vacation time, sick time and training time. (T-186)

73) That Mrs. Prince, the former Food Service Manager in the jail, encountered a problem with one of the cooks in the jail. After all else had failed, Mrs. Prince went to Mr. Merkel in her attempt to resolve the problem with the cook. As a

result of Mrs. Prince's conversation with Mr. Merkel, the cook was terminated. (T-189)

74) That Unit Supervisors are salaried employees who do not receive overtime for working overtime. (T-189)

75) That Mr. Earl Hindman is the Jail Director for Shawnee County. (T-201)

76) That the majority of the population at the Shawnee County Jail consists of adults. The jail is that part of the criminal justice system which serves as a holding facility to house pre-trial detainees and sentenced prisoners until disposition through court. The jail holds sentenced felons in a temporary fashion until they are sent to prison. (T-203)

77) That Mr. J. Kenneth Hales is currently serving as the Director of the Shawnee County Work Release Center. (T-206)

78) That the Work Release Center is responsible to address particular needs of its clients, population being either felons or misdemeanors, working with them on particular issues with regard to their integration back into the community. The work also involves maintaining security and monitoring the activities of the population. Employees of the Work Release Center are responsible for transporting clients back and forth from their jobs. The inmates or clientele of the Work Release Center deal mainly with sentenced persons as opposed to pre-trial individuals such as those being held in the Shawnee County Jail. (T-208)

79) That Correctional Specialists at the Work Release Center receive forty (40) hours of orientation training and then another eighty (80) hours of on-the-job training. Of this amount of training, approximately thirty percent (30%) of the forty (40) hours of orientation training is common to Correctional Specialists employed at facilities other than the Work Release Center. (T-209)

80) That Correctional Specialists at the Work Release Center are not trained in the usage of firearms nor are they

licensed to carry weapons. Correctional Specialists at the Work Release Centers do not wear uniforms. (T-210)

81) That Correctional Specialists at the Work Release Center spend a large percentage of their time in counseling clients or inmates. (T-211)

82) That a normal work day for Correctional Specialists at the Work Release Center consists of ten hours. (T-213)

83) That the mission of the Work Release Center is basically twofold. First, a primary concern would be public safety, keeping track of the inmates or clients, thus minimizing any occurrence of illegal activity outside the facility. Secondly, the mission is to attempt to do whatever possible to help the inmate/client find work and in making the adjustment to move back out into society. (T-213, 214)

84) That the classifications utilized at the Shawnee County Work Release Center are: Line Supervisor, Correctional Specialist, Maintenance Technician, Secretary, Cook, Work Release Coordinator/Counselor and Program Coordinator. (T-218)

85) That Kevin Pellant currently serves as the Deputy Director for the Shawnee County Youth Center. (T-224)

86) That there are three programs at the Shawnee County Youth Center. The mission for the secured detention facility is the security of the environment or keeping the youth within the environment and/or control when taken outside the environment. For the group home, "H.A.R.T.S.", resident treatment program, the mission is to work with the youth in such a way to change or modify their behavior to be more acceptable to society. The third program is Community Home Supervision, which is a community corrections program. The mission of this program is to work with the youths to hopefully become crime free and deal with the community in more of an acceptable manner. (T-225)

87) That there are Correctional Specialists employed only in the detention and treatment programs. (T-225)

88) That Ms. Pelton believes that Line Supervisors at the Work Release Center perform evaluations and do disciplinary and commendation activities. (T-226)

89) That Line Supervisors adjudicate grievances at the initial stage of the grievance procedure under the contract between AFSCME and the Shawnee County Youth Center. (T-226)

90) That Line Supervisors are excluded from the appropriate bargaining unit of employees at the Shawnee County Youth Center. (T-227)

91) That the employees at the Youth Center do not wear uniforms. Nor do they have the authority to carry firearms and they are not trained in the use of a firearm. (T-228)

92) That the normal work day for Correctional Specialists at the Youth Center is ten hours. Line Supervisors at the Youth Center are paid overtime. (T-231)

93) That the position of Line Supervisor at the Shawnee County Youth Center reports directly to the Division Manager. (T-232)

94) That the position of Secretary is excluded from the appropriate bargaining unit at the Shawnee County Youth Center. (T-238)

95) That Maintenance Technicians and laborers are included within the unit at the Shawnee County Youth Center. (T-238)

96) That Social Workers and Counselors at the Shawnee County Youth Center are excluded from the appropriate bargaining unit containing Correctional Officers. (T-239)

97) That Social Workers are licensed by the state as professionals. (T-239)

98) That Bob Zwiesler is currently employed by the Shawnee County Department of Corrections as a Line Supervisor. Mr. Zwiesler has been employed as a Line Supervisor for approximately one and a half (1½) years. Prior to his employment as a Line Supervisor, Mr. Zwiesler was employed in the Shawnee County Jail as a Correctional Specialist. (T-251)

99) That Mr. Zwiesler has not, during his tenure as a Line Supervisor, interviewed applicants for employment with the jail. However, Mr. Zwiesler is aware of other Line Supervisors who have performed such interviews. (T-251)

100) That Mr. Zwiesler received no additional training or orientation sessions when he moved from the position of Correctional Specialist to the position of Line Supervisor. (T-251)

101) That Mr. Zwiesler attends no meetings specifically aimed towards supervisory personnel. (T-252)

102) That Mr. Zwiesler keeps time-in and time-out records for Correctional Specialists within the jail. These time records are kept by whomever might be sitting at the control center at the time employees check in and out. The person manning the control center might be a Unit Supervisor, a Line Supervisor or a Correctional Specialist. (T-253)

103) That Mr. Zwiesler has, on occasion, orally disciplined a Correctional Specialist. (T-254)

104) That Mr. Zwiesler understands that in the absence of a Unit Supervisor, he, as a Line Supervisor, is the "Controlling Supervisor" of the shift. (T-254)

105) That Mr. Zwiesler's only apparent role in filling out evaluation forms for other employees comes about as a result of a Unit Supervisor asking his opinion on an evaluation performed by the Unit Supervisor on the Correctional Specialist. (T-255)

106) That although the document entitled "Officer Training and Evaluation Report" is initialed in many instances by a Line Supervisor, Mr. Zwiesler's understanding of the process is that a Senior Correctional Specialist provides an orientation session for incoming Correction Officers. Once this orientation session is completed, the Line Supervisor may check to see that all of the proper training was given to the Correctional Specialist, and if the training is complete, will

issue the report. Further, Mr. Zwiesler is aware of an area on the form for comments regarding the opinion of the Line Supervisor and the Senior Correctional Specialist of the individual who has undergone the orientation session. (T-257)

107) That Mr. Zwiesler is aware of the "At-a-boy letters" and believes that he could, if he so desired, prepare such a letter on a Correctional Specialist and present it to him. (T-258)

108) That Mr. Zwiesler is familiar with the "Adult Detention Division Employee Disciplinary Action Document", although he has never filled one out on an individual. Mr. Zwiesler believes his authority to complete the form exists, but that then he would pass the form up the line for a Unit Supervisor to determine whether or not disciplinary action should be taken. (T-259, 260)

109) That Mr. Zwiesler believes that the "Officer's Report Sheets" are utilized by everyone in the jail to report any type of unusual occurrences. (T-261)

110) That Mr. Zwiesler perceives his authority in adjusting grievances to be that of resolving any problem of a personal nature between two Correctional Specialists, if at all possible, at his level. Otherwise, the grievance would be passed up the line to the Unit Supervisor. (T-264, 265)

111) That it is Mr. Zwiesler's understanding that he does not have the authority to disapprove sick leave. (T-265)

112) That Mr. Zwiesler perceives his authority in the assignment of shift work to consist of meeting the required number of staff in the case of an emergency. That is, if, in fact, someone calls in sick or otherwise cannot be on the job, Mr. Zwiesler then will call around to locate someone to work that shift on behalf of the other employee. (T-226)

113) That Mr. Zwiesler believes that he spends a great deal of his time in performing duties that are not performed by Correctional Specialists. That is, he makes out the schedules

for the shifts by assigning bodies to the appropriate work areas, making sure that sick slips, overtime slips, comp slips and vacation slips are filled out and turned in, and that he is responsible for all decisions during the period of time when the Unit Supervisor is not in the jail. (T-268)

114) That Mr. Zwiesler believes that Correctional Specialists spend very little time counseling inmates. (T-269)

115) That Mr. Zwiesler believes that he has the authority to send a Correctional Specialist home from work if, in fact, that Specialist showed up for work drunk. (T-271)

116) That Mr. Zwiesler considers himself a Supervisor. (T-272)

117) That as a whole, Mr. Zwiesler believes that when decisions are to be made and no one above him can be reached, it is his responsibility to make those decisions. (T-274)

118) That Mr. Zwiesler believes that his opinion on matters of discipline, discharge, etc., is encouraged by the supervisors above him. (T-277)

119) That Mr. Zwiesler normally finds himself in charge, that is, without a Unit Supervisor or other individuals above him in the chain of command on weekends and holidays. (T-279)

120) That a majority of the supervisors above Mr. Zwiesler in the jail carry pagers, therefore, in most circumstances, he would be able to contact someone above him in the chain of command in order to make a particularly difficult decision. (T-280)

121) That Mr. Russ Greene is currently employed as a Line Supervisor at the Shawnee County Jail. Mr. Greene has been so employed for the past four months. Prior to that time, Mr. Greene worked for three and one-half (3½) years as a Correctional Specialist in the Shawnee County Jail. (T-285)

122) That Mr. Greene did not attend any orientation sessions or receive any specific instructions when he moved from Correctional Specialist to Line Supervisor. (T-285)

123) That Mr. Greene has not been asked to attend any "supervisory meetings". (T-285)

124) That Mr. Greene has never been instructed that it is one of his duties to fill out an evaluation form. However, on occasion, he has been asked for some verbal input prior to the writing of an evaluation. (T-286)

125) That it is Mr. Greene's understanding that he can make recommendations in disciplinary matters or that he can initiate a disciplinary action. (T-286)

126) That Mr. Greene believes that his duties are substantially the same as Correctional Specialists during that period of time when a Unit Supervisor is present. (T-287)

127) That Mr. Greene, during that period of time in which he is serving in the absence of a Unit Supervisor, reviews all reports that Correctional Specialists write and performs other duties of that nature. However, when the Unit Supervisor is present in the building, he performs essentially the same duties as a Correctional Specialist. (T-288)

128) That Mr. Greene believes that in the absence of the Unit Supervisor, his duties are basically the same as the Unit Supervisor. (T-288)

129) That Elaine C. Wilder is currently employed as a Correctional Specialist at the Shawnee County Youth Center. Ms. Wilder has been in that capacity for the past two years. She has been an employee of the Youth Center for eighteen (18) years. (T-296)

130) That Ms. Wilder's duties at the Youth Center differ from those of Correctional Specialists in the jail inasmuch as she does spend time counseling juveniles and clients. (T-297)

131) That Mr. Phillip Gonzales is currently employed as a Correctional Specialist at the Shawnee County Youth Center. (T-303)

132) That Mr. Gonzales considers his job as a Correctional Specialist to be more of a counselor than of a jailer. (T-304)

133) That the Shawnee County job classification for a Line Supervisor defines the work of a Line Supervisor to be that of "supervising a functional unit and/or shift and taking over for Unit Supervisor in the Unit Supervisor's absence." Further, the examples of duties and the required knowledge, abilities and skills provides for supervisory authority (See Respondent's Exhibit #1).

134) That the Shawnee County job classification for Correction Counselor provides that, "The Counselor establish and maintain counseling programs for Correctional Center residents." Further, this position requires training and experience of graduation from an accredited four year college or university and three years experience in counseling (See Respondent's Exhibit #1).

135) That the job classification for Work Release Coordinator for Shawnee County, Kansas defines this position to develop and maintain employment programs for residents. The position description requires knowledge, abilities and skills to perform counseling and requires considerable knowledge of employment resources. Training and experience required for the position are graduation from an accredited four year college or university and two years experience in vocation counseling. (See Respondent's Exhibit #1).

136) That the Shawnee County job classification of Intensive Supervised Probation Officer defines the work to perform supervision of clients under the jurisdiction of the court. The duties of this position require investigation with family members, friends and teachers of an inmate to present the results and recommendations to the court. This position requires graduation from an accredited four year college or university and experience in court services work in the way of training and experience (See Respondent's Exhibit #1).

137) That the Shawnee County job classification of Food Service Manager defines the work of the position as managing

the food service function of the jail. Further, the classification requires supervisory skills and directing the work of inmate kitchen help. There is no mention within the position description of supervising employees (See Respondent's Exhibit #1).

138) That the Shawnee County job classification of Program Coordinator directs the incumbent to develop, coordinate and implement therapeutic and educational programs and classes with program residents and in assisting the program management in duties relating to in-service training and contracted services. Within the example of duties, this classification is directed to examine client educational and social skills to determine deficiencies for staff training purposes. The position requires graduation from an accredited four year college or with no less than one year experience in providing direct service to offenders (See Respondent's Exhibit #1).

139) That the Shawnee County job classification of Social Worker requires a licensed Bachelor of Social Work and two years social work experience or licensed Master of Social Work as a prerequisite for filling the position (See Respondent's Exhibit #1).

140) That the Policy and Procedure Manual for the Shawnee County Department of Corrections Adult Detention Division state that Food Service employees will work those hours as determined by the Food Service Manager. Further, this document specifies that all requests for shift assignment and days off must be submitted to the Division Manager. The policy states that any change in scheduling and assignments after the roster has been posted must be approved by the Division Manager or Jail Administrator (See Respondent's Exhibit #9).

141) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the heading of "Personnel/Sick Leave" states, "You must . . ."

". . . contact your Shift Supervisor at least one hour before your shift begins and advise of your illness." (See Respondent's Exhibit #9).

142) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the heading "Personnel/Vacation Leave" states, "With limited staff, it is important that you let your supervisor know of vacation requests well in advance." Further, that policy states, "Written notification of vacation requests must be made to the Division Manager through your Shift Supervisor." (See Respondent's Exhibit #9).

143) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the heading "Personnel/Evaluation" provides that four different types of evaluations may be performed upon employees of the Detention Division. That policy specifically states, "Performance evaluations shall be used as a management tool by supervisors to show employees how they are performing during a specific time period." While the evaluation document is silent with regard to a definition of the "supervisors" who will be making these evaluations, the policy does state, "The appointing authority may or may not make these special evaluations part of the employee's official personnel record." The document further states, "The evaluation form has ten major categories to be completed by the employee's immediate supervisor." The evaluation section further states, "In addition to those evaluations above, all new probationary employees will have an Officer Training and Evaluation Report completed during their first ninety (90) days by their Unit Supervisor." (See Respondent's Exhibit #9).

144) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the topic of "Personnel/Sexual Harassment" states, "Supervisors are responsible for the actions of their subordinates, if they. . ."

". . . know or should have known that such conduct existed."

Further, that document states, "Depending upon the nature and originator of the harassment, it should be reported to your immediate supervisor. The report will then be forwarded to the Jail Administrator. If not reported to your immediate supervisor, the reporting employee must report directly to the Jail Administrator, Personnel Director or EEO Director. All complaints will be handled with confidentiality and will be investigated by the Jail Administrator, Personnel Director or EEO Director and the appropriate action will be taken." (See Respondent's Exhibit #9).

145) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the topic of "Personnel/Officer Conduct" and the subtopic "Intoxicants" states in part, "Should any Shift Supervisor feel that an employee is under the influence of alcohol, the supervisor may order said employee to submit to a breath test with an intoxilyzer. The Shift Supervisor will determine further actions depending upon the test results." This document also states under the subtopic of "Appearance" that, "If attire other than a uniform must be worn, its appropriateness will be determined by the Shift Supervisor." The document also states, "Your assignments and the subsequent evaluations of your performance at your assignment, is the responsibility of your Shift Supervisor." (See Respondent's Exhibit #9).

146) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the subtopic of "Personnel/Personnel File" states in part, "Every employee of the Adult Detention Division will have a confidential employee history started on the first day of employment in the jail by the Support Services Division." That document further states, "Only jail administration and records personnel will have access to these files." Also, the document provides that, "Any information that is contained . . ."

". . . within the file which the employee wishes to contest or have removed, may be done so only by the Jail Administrator after receiving a written request from the employee."

(See Respondent's Exhibit #9).

147) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the subtopic of "Personnel/Promotion/Line Supervisor" provides a policy for employee promotion. Under the subtopic of "Procedures" the policy states, "Each applicant will be scheduled for testing and an oral interview. The interview will be conducted by all Unit Supervisors, Division Manager and Jail Administrator." The policy further provides that, "After all areas have been stored, the applicant will be ranked. The Jail Administrator will then make a selection for promotion from that list." (See Respondent's Exhibit #9).

148) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the subheading of "Personnel/Staff Dining in the Jail" states, "Non-jail staff will not be allowed to eat in the jail unless approved by the Jail Administrator, Division Manager or Food Service Manager." (See Respondent's Exhibit #9).

149) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the subheading of "Personnel/Off-Duty Employment" provides for "Management Review of All Off-Duty Employment." The policy further provides that once all information has been gathered, "The Jail Administrator or his designee, will act upon the employee's request."

150) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the subtopic of "Personnel/Racial and Ethnic Slurs" provides a policy for reporting all forms of ethnic and racial slurs. This policy provides that, "Supervisors are responsible for the action of their subordinate." The policy further provides

that, "Depending upon the nature and originator of an ethnic or racial slur, it should be reported to your immediate supervisor. The report will then be forwarded to the Jail Administrator. If not reported to the immediate supervisor, the reporting employee must report directly to the Jail Administrator, Personnel Director or EEO Director." The policy also provides that, "All complaints will be handled with confidentiality and will be fully investigated by the Jail Administrator, Personnel Director or EEO Director and the appropriate action taken." (See Respondent's Exhibit #9).

151) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the subtopic of "Employee Discipline Policy and Procedure" provides that, "The initiation of disciplinary actions is the responsibility of the appointing authority or his/her designee. The appointing authority, or his/her designee may elect to . ." The policy then provides that an oral reprimand may " . be administered for any policy or procedure infraction. This disciplinary action may be imposed by supervisory or management staff." The policy then provides that a written reprimand " . may be initiated by any supervisory staff member, but must be approved by the Deputy Director or his/her designee." This policy under the subtopic "Suspension With Pay" states in part, "The Shift Supervisor on duty shall have the authority to immediately relieve any employee from duty who the supervisor feels has violated County and/or Departmental policies in such a way as to prevent a significant breach in the continued safe and efficient operation of the facility. The term of such suspension will be determined by the Deputy Director." The policy further provides that, "The Shift Supervisor should state, at the time of the suspension, the violation and the reasons for the action taken. The supervisor is to follow up a suspension-with-pay action with a complete report of the circumstances surrounding it. All reports are to be immediately . ."

" . . . forwarded to the Deputy Director for investigation and/or further disciplinary action." The policy on Suspension Without Pay provides, "Suspension Without Pay may not exceed ten days and may only be imposed by the facility's Deputy Director." Under Demotion, the policy provides that, "Demotion may only be imposed by the facility's Deputy Director." Under Dismissal, the policy provides that, "Dismissal of Department of Corrections employees shall be effected by the Deputy Director." (See Respondent's Exhibit #9).

152) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the subtopic of "Complaint Procedure" provides that at step one, "Any employee who feels aggrieved should first discuss the complaint with his/her supervisor." At step two of that procedure an employee is directed to ". . . submit it to his/her appointing authority within ten working days after the employee knew or should reasonably have known of the cause of such complaint." Step two is to be utilized in the event the grievance is not resolved at step one (See Respondent's Exhibit #9).

153) That the Shawnee County Department of Corrections Adult Detention Division Policy and Procedure Manual, under the subtopic "Personnel/Long Distance Phone Calls" provides that employees may not use the jail's telephone for personal business long distance calls unless a slip is completed and acknowledged by the supervisor's signature. The policy further provides that, "Upon completion of a long distance phone call slip, the shift supervisor will forward it to the Operations Division Manager." (See Respondent's Exhibit #9).

154) That the Shawnee County Work Release Center Policy and Procedure Manual, under the subtopic of "Recruitment" creates a policy for the posting of the vacancy notices and for completing applications. Further, this policy provides that, "Following selection, the interviewers shall complete. . ."

". . . the EEO interview sheet and submit them to the County EEO Director." This policy does not state the individuals or classification of employees who will serve as interviewers (See Respondent's Exhibit #19).

155) That the Shawnee County Work Release Center Policy and Procedure Manual, under the subtopic of "Employee Probation" provides that, "Monthly supervision meetings shall be held between the new employee and his direct supervisor." The policy then states, "At the conclusion of the probationary period, the supervisor shall complete a performance evaluation on the new employee." This policy does not specify the classification deemed to be the supervisor (See Respondent's Exhibit #19).

156) That the Shawnee County Work Release Center Policy and Procedure Manual, under the subtopic of "Employee Relations and Grievance" provides a grievance procedure to be followed by employees. Step one of that procedure states in part, "Any employee who feels aggrieved should first discuss the grievance with his/her supervisor." Step two of the grievance procedure provides, "If the grievance is not resolved at the first step, the employee shall state the grievance in writing and submit it to the Administrator within ten working days after the employee knew or should have reasonably known of the cause of such grievance." (See Respondent's Exhibit #19).

157) That the Shawnee County Work Release Center Policy and Procedure Manual, under the topical heading of "Discipline" states, "The initiation of disciplinary action is the responsibility of the Administrator or his/her designee." That policy goes on to state that an oral reprimand ". . . may be imposed by supervisory or management staff." The policy provides that, "The supervisor shall talk to the employee as soon after the infraction as possible." The policy provides that a written reprimand ". . . may be initiated by any supervisory staff member, but must be approved by the Administrator or his designee." The policy provides under Suspension With Pay that, "The . . ."

". . supervisor on duty shall have the authority to immediately excuse any subordinate employee from duty for the remainder of the day." The policy provides that suspension without pay ". . may only be taken by the Administrator." The policy further provides that demotion and dismissal may only be affected by the Administrator (See Respondent's Exhibit #19).

158) That the Shawnee County Work Release Center Policy and Procedure Manual, under the subject heading "Personnel Records" provides that, "The personnel records for each employee shall be maintained by the secretary at the direction of the Administrator." This policy, under "Access to File" states, "Facility supervisors may have access to the files of those under their supervision." (See Respondent's Exhibit #19).

159) That the Shawnee County Work Release Center Policy and Procedure Manual, under the subject heading "Employee Leave" states, "To use sick leave, the employee is to contact his/her immediate supervisor and advise of the illness." Further, the policy states, "The person receiving the notification is to complete a sick leave sheet and place it in the immediate supervisor's bin." The policy then states that, "The Administrator or designee may require the employee using sick leave to submit a medical statement from an attending physician or submit to a medical examination scheduled at the Topeka/Shawnee County Health Department." The leave policy further provides that, "All vacation requests must be approved by the employee's supervisor." (See Respondent's Exhibit #19).

160) That the Shawnee County Work Release Center Policy and Procedure Manual, under the topic "Performance Evaluation" provides that, "Evaluations shall be completed on all employees annually and upon the completion of the probationary period." The policy further provides that the evaluation form must be ". . signed by both the employee and evaluator." Under the subparagraph "Special Evaluations" the policy provides that a special evaluation ". . may be performed at the request of the employee, his/her respective supervisor or Division Manager. ."

". . . or Administrator." (See Respondent's Exhibit #19).

161) That the Shawnee County Work Release Center Policy and Procedure Manual provides, under the topical heading of "Schedules" that, "The Work Release Center Administrator, or designate, has full authority to adjust, reassign or otherwise change personnel duty schedules pursuant to the proper management of the facility." (See Respondent's Exhibit #19).

162) That the Shawnee County Work Release Center Policy and Procedure Manual under the subject heading of "Time and Attendance Reports" provides that accurate records must be maintained for all employees. The policy states, "All employees shall maintain their time records in their file cabinet or desk as specified by their supervisor." Under the provision for "Record Review" the policy states, "The immediate supervisor, or designate, shall review the time records of those under their supervision. In the event that an adjustment is necessary on a time record, the immediate supervisor shall make the adjustment and initial the entry. All authorized overtime shall be initialed on the card by the supervisor on duty." Further, the policy provides under "Record Adjustment" that, "In the event that an adjustment is necessary on a time card, the immediate supervisor shall make the adjustment and initial the entry." (See Respondent's Exhibit #19).

163) That the Shawnee County Work Release Center Policy and Procedure Manual, under the subject heading "Court Appearance" states that, "Staff persons shall notify their supervisor promptly of all requests or subpoenas to appear in court. On the next regular duty day, the staff member is to inform their supervisor of the amount of time spent at the court appearance." (See Respondent's Exhibit #19).

CONCLUSION OF LAW/DISCUSSION/ORDER

This case comes before the Board on petition of Teamsters Local 696 asking that an appropriate bargaining unit be determined for certain employees of the Shawnee County Jail. In response to that petition the employer, Shawnee County, stated that the appropriate bargaining unit for jail employees should include certain employees of two other facilities under the general supervision of the Shawnee County Department of Corrections. Those two facilities are; 1) Shawnee County Youth Center and 2) Shawnee County Work Release Center. Further, the County pointed out that certain employees of the Shawnee County Youth Center are within an existing appropriate unit and are currently represented by the American Federation of State, County and Municipal Employees (AFSCME). As a result of the response made by the county the Public Employee Relations Board (PERB) staff placed AFSCME on notice of the pending petition. AFSCME, as a party to the matter, then responded that it had no interest in the determination of a unit for jail employees but that Shawnee County Youth Center should stand alone as a separate bargaining unit.

Staff worked with the parties in an attempt to resolve the matter by agreement but to no avail. A hearing resulted in which basically two questions arose. First, comes the question of whether there should be one all encompassing unit or some variation thereof. Secondly, there are questions of the supervisory and confidential status of certain employees.

The examiner shall first address the question concerning how the "facilities" might be grouped into units followed by the question concerning supervisors and confidential employees.

K.S.A. 75-4327 (c) states:

"A recognized employee organization shall represent not less than a majority of the employees of an appropriate unit. When a question concerning the designation of an appropriate unit is raised by a public agency, employee organization or by five or more employees, the public employee 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."

Subsection (e) of that statute then states:

"Any group of public employees considering the formation of an employee organization for formal recognition, any public employer considering the recognition of an employee organization on its own volition and the board, in investigating questions at the request of the parties as specified in this section, shall take into consideration, along with other relevant factors: (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 over-fragmentation and the splintering of a work organization; (6) the provisions of K.S.A. 75-4325; and (7) the recommendations of the parties involved."

First, the examiner notes that these sections allow an employer and group of employees to agree on the scope of the appropriate unit. However, when a question is raised the PERB is directed to rule on the definition of the appropriate unit. The instant case raises just such a question, therefore, the PERB is fulfilling its statutory mandate with the issuance of this order.

Numerous management personnel testified that the efficient administration of government would best be served with a finding that employees of all three facilities be included within one unit. The record reflects that the unions did not contest this fact. Rather the unions attempted to show that no great hardship would befall management by a finding of separate units. The examiner recognizes that there exists the possibility that a greater amount of public funds would be expended if the employer is required to negotiate two (2) or three (3) contracts rather than one (1). However, once negotiated it would seem that contract administration would require no more or less effort and money regardless of the number of contracts. The examiner does however conclude that this criterion weighs more heavily in favor of one all encompassing unit than the separation into one or more units.

The impact of the community of interest question is difficult to assess. That is, some facts in the record point to a definite community of interest shared by all employees of the Shawnee County Department of Corrections while other facts show a distinct

difference. Still other facts point to a definite community of interest for all Shawnee County employees. Facts in the record also reveal that there are numerous existing Shawnee County bargaining units. Certainly some county policies apply equally to all Department of Corrections employees. Yet some of those policies have been changed by negotiations with AFSCME, to suit the unique needs of employees of the Shawnee County Youth Center. Testimony reveals that salary schedules are also tailored to suit the needs of certain employees. Thus the Correctional Officers in the jail are paid more than their counter parts in the other "facilities". Although certain standards are set out by the county, each institution can develop a format for evaluations.

A key to the community of interest question rests with the unique missions of the various facilities. Certainly all are concerned with protecting the public and proper retention of inmates or clients. However, management of each facility testified to the uniqueness or difference of the mission of the facility in which he/she works as compared to others. Those different needs of the client/inmate related to age, seriousness of crime, possibility of rehabilitation, etc. . . The different "needs" then translated into different working conditions, skills, and education of the employees. While certain training was uniformly applicable to all Department of Correction employees, advance training is necessary due to this uniqueness of mission in each facility. Based upon the record it appears that Department of Corrections management perceives a common mission of the three facilities. Management at the local level of each facility, on the other hand, places greater emphasis on the unusual aspects of the operation of the individual facility.

It should be noted that the county personnel policies apply across the board to all county employees except civil service employees and those employees covered by union contracts. As was noted earlier numerous county employees are represented by unions in several different bargaining units. It, therefore, seems somewhat unusual to argue that the employees of the three

facilities under the Department of Corrections be included in one unit since many county policies apply equally to all employees of Shawnee County. The examiner concludes that the community of interest question weighs in favor of separate units at each facility.

The history and extent of employee organization cannot be disputed. Employees of the Shawnee County Youth Center desired to organize at some point in the past. Organization was effectuated and contracts have been negotiated by AFSCME on the employees behalf. Now certain employees of the jail desire to organize and to be represented by the Teamsters union. The record appears void of testimony from employees of the Work Release Center thus the examiner must assume few if any such employees desire to organize and bargain.

The three facilities are separated geographically and the record reveals that few "real" transfers of employees have taken place.

The effect of overfragmentation and the splintering of the work organization must be taken into consideration by the PERB. Certainly the Board does not desire to fragmentize the employees to the extent their bargaining "power" becomes weakened. However, the Shawnee County Youth Center has stood alone in bargaining with the county for a number of years apparently without problems. Logic dictates that the inclusion of additional employees within the "all encompassing" unit would serve to strengthen the employee bargaining position. However, there is no indication in the record that a finding of separate units would impair the process. One might speculate that a finding of separate units would be to the detriment of employees of the Work Release Center since the other two units have indicated an interest to organize. The examiner must dismiss this speculation since certification efforts might fail and all three employee units could revert to being governed by County personnel policies.

The consideration for splintering the workforce is equally important with the overfragmentation question. Further, this consideration is in large part synonymous with the efficient administration of government. In light of management's testimony concerning the unique missions of the institutions the examiner cannot find that separate units would splinter the work organization except to the extent that transfers from institution to institution would be more difficult. Yet the examiner must remain cognizant of the effect three separate units might have on the management of the Department of Corrections. One must note that the concern above is expressed at the Department of Corrections level rather than the county level. Apparently few problems have been experienced at the county level in bargaining with numerous unions in different bargaining units of county employees. It, therefore, appears to the examiner that the overfragmentation and splintering criterion weigh pretty much equally and can therefore be of little assistance in deciding the question.

The provisions of K.S.A. 75-4325 will be addressed in a subsequent section of this order and have no effect on the question of the number of units.

The recommendations of the parties are previously set out in this order and are in fact, the basis of the questions now pending.

The examiner points to that portion of K.S.A. 75-4327 (e) wherein the PERB is directed to . . ." take into consideration, along with other relevant factors . . .". The Kansas Legislature thus did not intend to limit the PERB to the criteria enumerated within the statute when defining the scope of an appropriate unit. Such other relevant factors include;

- 1) The effect of the inclusion of the additional personnel of the jail and the work release center on the on-going negotiations at the youth center.
- 2) The rights of Teamsters Local 696 to bring the petition for unit determination at the jail.

- 3) The provisions of K.S.A. 75-4327 (d) which states in part:

"Any petition calling for an election in accordance with this section shall be dismissed by the board without determining the questions raised therein if such petition is filed more than 150 days or less than 90 days prior to the expiration date of an existing memorandum of agreement which governs the terms and conditions of employment of the employees within the appropriate unit."

The impact of these three relevant factors may be best shown by looking at the various possibilities of unit makeup.

These three factors have no impact in the event the PERB found a unit of jail employees or a unit of jail and work release center employees to be appropriate. However, consider the impact if a unit consisting of employees in all three facilities is found to be appropriate. There can be no doubt that the Legislative intent of the above cited statute is to insure that elections be conducted in a timely fashion thus protecting the rights of employers and employees. It follows then that neither the employer nor the employees (union) can bring about an election at anytime other than for the period of 60 days preceding the 90 days prior to the expiration of a memorandum of agreement. Even if a memorandum of agreement had expired the statute would bar an election unless the certified representative, acting in bad faith, made no effort to negotiate a successor agreement. An employer or group of employees could then bring a prohibited practice charge to the PERB alleging that the organization was failing to represent the employees (making no attempt to negotiate an agreement) and asking the PERB for a decertification election. In the absence of such allegations, however, the PERB cannot on its own volition bring about an election by the alteration of the appropriate unit.

In the instant case the PERB, by creating one all encompassing unit, would either violate the above Legislative intent or deny rights of the employees of the jail the choice of the Teamsters Local 696 as their bargaining representative. The examiner, therefore, finds that the circumstances existing in this case

need to be considered as other "relevant factors". Thus the examiner cannot recommend that one all encompassing unit be determined.

One last factor which must be considered in defining the appropriate unit is the legislative direction given within the Public Employer-Employee Relations Act (PEERA) as compared with that given under the Professional Negotiations Act, (PNA) (K.S.A. 72-5413 et seq.), which was enacted at substantially the same time as the PEERA. Under the PEERA the PERB is directed to define or rule on an appropriate unit. The examiner notes the absence of any language directing PERB to define the most appropriate unit except for language found at K.S.A. 75-4327 (f) which sets out certain types of employees which "shall not (be) included." K.S.A. 72-5420, however, limits the Secretary of Human Resources in determining appropriate units by the statutory language of, "except that a unit including classroom teachers shall not be appropriate unless it includes all such teachers employed by the board of education." It is evident then that the Kansas Legislature recognized that city and county government is unique thus on occasion requiring that an appropriate unit be determined rather than finding the most appropriate unit. Based upon the evidence and testimony put forth by the county one might find that all employees of the county except police and fire employees should be included in the most appropriate unit. This finding is, of course, impossible because of previously agreed upon bargaining units.

Finally, the examiner reminds the county that they could have asked for a unit clarification to create one all encompassing unit at the time the Department of Corrections was created. Employees of the jail had not at that time petitioned for a bargaining unit in which they desired to be represented by the Teamsters. That request was not made until after a petition was filed with the PERB.

The examiner, having considered the enumerated criteria along with other relevant factors finds that the appropriate unit of

employees of the Shawnee County Youth Center should not and cannot be changed.

There remains the question of whether a unit of jail employees or a combination of jail employees, Work Release Center employees and others shall be appropriate. This question can be considered without regard to the three "other relevant factors" previously listed. It appears that five of the criteria listed at K.S.A. 75-4327 (e) weigh in favor of separate units at the jail and the Work Release Center. However, one very important criterion, the efficient administration of government dictates a combination of employees of both facilities along with employees of the administrative center. The examiner points to a statement made by counsel for the Teamsters found on page 8 of the transcript as an indication of the Teamsters willingness to stand for an election in whatever unit the PERB finds appropriate. The examiner therefore finds that the appropriate unit of employees petitioned for by the Teamsters Local 696 shall consist of employees of both the Shawnee County Jail and the Shawnee County Work Release Center.

The next question to be addressed relates to the confidential and supervisory nature of certain positions within these two facilities. The desires of the AFSCME representative in this matter shall not be considered since the AFSCME representative has not petitioned or indicated an interest in representing employees of the jail or the Work Release Center. The record reveals that the concerns of AFSCME in these matters are applicable only in the event one unit should be determined to be appropriate.

Teamsters Local 696 has petitioned for a unit consisting of the following classifications:

- 1) Correctional Officers
- 2) Unit Supervisors
- 3) Line Supervisors
- 4) Cooks
- 5) Maintenance Personnel

The above listed five classifications do not include clerical personnel at the jail or several classification of employees at

the Work Release Center. The positions in question at the Work Release Center include:

- 1) Program Coordinator
- 2) Work Release Coordinator
- 3) Coordinator Counselor
- 4) Maintenance Technician

There is also a classification of Intensive Supervisory Probationary Officer within the Department of Corrections. This position is not utilized at either the jail or the Work Release Center. However, the position is not alleged to be of a supervisory or confidential nature.

The record reveals that clerical employees have been excluded from all appropriate bargaining units throughout Shawnee County. It seems consistent to exclude clerical employees from the unit in question. Further petitioners have not asked for clerical to be included and the County has argued that the clerical in question are confidential employees. Therefore, the examiner recommends the exclusion of all clerical employees within the jail, Work Release Center, and administrative center from the appropriate unit. This exclusion would not preclude the clerical from petitioning for unit placement at sometime in the future.

K.S.A. 75-4327 (f) states in part;

"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, . . ."

K.S.A. 75-4322 (d) defines professional employee in the following manner.

"'Professional employee' includes any employee: (1) Whose work is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; involves the consistent exercise of discretion and judgment; requires knowledge of an advanced type in a field of science or learning customarily acquired by prolonged study in an institution of higher learning; or (2) who has completed courses of prolonged study as described in paragraph (1) of this subsection, and is performing related work under the supervision of a professional person in order to qualify as a professional employee as defined

in paragraph (1) of this subsection; or (3) attorneys-at-law or any other person who is registered as a qualified professional by a board or registration or other public body established for such purposes under the laws of this state.

There appears to be little doubt that the positions of Program Coordinator, Work Release Coordinator, Coordinator Counselor, and Intensive Supervisory Probationary Officer are professional employees. This determination is based upon testimony of management and the position descriptions. While the Public Employer-Employee Relations Act (PEERA), does not exempt professionals from being placed within a non-professional unit, the Act does require a vote of the affected employees prior to inclusion. In this case the petitioner has not requested inclusion of the professional employees. The examiner shall, therefore, exclude these professional employees unless and until the professional employees request a vote to determine their inclusion.

There is little mention of the maintenance technician at the Work Release Center in the record. The examiner notes that the County and AFSCME have included the Maintenance Technician II within the appropriate bargaining unit at the Shawnee County Youth Center. It is logical to assume, therefore, that the County does not contend that the maintenance technician at the Work Release Center is either supervisory or confidential. The examiner recommends that the maintenance technician at the Work Release Center be included within the appropriate unit.

Little evidence and testimony was given about the maintenance person or the Custodial Supervisor at the jail. There appears to be no position description for either of these classifications in Respondent Exhibit #1. Subsequent request of the examiner to Department of Correction officials reveals that the Custodial Supervisor, Kim Shanks, is the maintenance person petitioned for by the Teamsters. Additionally Shanks' supervisory responsibility extends solely to inmates rather than other bargaining unit members. The examiner therefore recommends the inclusion of the Custodial Supervisor within the appropriate unit.

The Food Service Manager is alleged by the county to be a supervisory position. While the job description does not specifically state that the position supervises cooks (employees), testimony of management personnel so stated. Further testimony reveals that at least one cook was terminated by an action which was initiated by the Food Service Manager. The examiner recommends the exclusion of the Food Service Manager as a supervisor.

The remaining question before the examiner relates to the supervisory status of unit supervisors and line supervisors within the jail and the Work Release Center.

K.S.A. 75-4322 (b) defines supervisory employee 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."

Generally, a public entity vests the ultimate authority to hire and/or fire with an "appointing authority". The extent to which that authority to effectively recommend those actions is extended to a position is therefore often utilized by the PERB as a "yardstick" in making determinations of supervisory status. It should be noted that the parties may negotiate a definition of supervisory employee as an alternative to the definition contained within the statute.

It is interesting to note that the position description of the line supervisors and the unit supervisor are nearly identical. The conspicuous difference is found under the "Examples of Duties", for the Line Supervisor. The description states that a Line Supervisor "Carries out Unit Supervisor duties in the Supervisors absence". The examiner believes that it is important to view the organizational charts of the three facilities to compare staffing.

First, the jail facility has a unit supervisor in charge of all three shifts except for weekends, on holidays, during training conducted by or for unit supervisors, or in the case of illness.

The Youth Center and the Work Release Center have no unit supervisors. Rather the line supervisor appear to permanently replace the Unit Supervisors at these facilities. The examiner notes that the line supervisor has been exempted from the bargaining unit at the Youth Center. However, the parties must have recognized that a "lead person" or stand-in for the true supervisor was needed or else they would not have created the "position" of Lead Corrections Specialist". Specifically this position is defined to supervise small groups of Correctional Specialists and to serve as relief supervision.

In viewing the statutory criteria qualifying an individual as a supervisor and in the absence of testimony by a unit supervisor, the examiner enters the following observations.

Unit Supervisors:

- 1) perform different work than his subordinates.
- 2) Have no authority to hire.
- 3) Have no authority to transfer.
- 4) (a) May suspend with pay except that the term of such suspension is determined by the Deputy Director.
(b) May not suspend without pay but may initiate action.
- 5) May not layoff.
- 6) May not recall except to replace another employee.
- 7) Serves on review board for promotions.
- 8) May not discharge but may initiate such action.
- 9) May not assign except for work areas.
- 10) May issue at-a-boy letters as a form of reward.
- 11) May discipline by oral reprimand or initiate other disciplinary action.
- 12) Does direct the work of others.
- 13) May adjust grievance at level one of the procedure.

Further the above listed functions require the use of independent judgment. Based upon the authority given to unit supervisors at the jail the examiner must recommend the exclusion of unit supervisors from the appropriate unit.

As was previously noted the position description of line supervisors equate with the position description of unit supervisors and the line supervisors at the Work Release Center appear to serve full-time in lieu of unit supervisors. However, testimony of the line supervisors at the jail and of management at the jail shows that the line supervisors "authority" as a true supervisor is exercised only when the line supervisor is serving as a "shift supervisor." The examiner notes that management testified that line supervisors were in charge of the jail facility approximately forty percent (40%) of the time. Testimony then revealed that under normal circumstances someone in management was "on call" at all times. Line Supervisors are hourly employees while unit supervisors are exempt employees. Further testimony of the line supervisors revealed that for a majority of their time they either perform work similar to that of correctional specialists or work of a clerical nature. The exception is, of course, that period of time when the unit supervisor is not present and the line supervisor is serving as "shift supervisor".

In looking at Respondent Exhibit #10, duty roster, it appears that a line supervisor on day and evening shift, is in charge only one shift per weekend. The exception is the night shift where only one lead supervisor is employed. There are also certain days during the week when the unit supervisor is engaged in training. On those occasions the line supervisors must somehow share the "shift supervision position" if both are on duty. There can be little doubt that the line supervisor in the jail is a supervisor within the meaning of K.S.A. 75-4322 (b) during the times he is serving as a "shift supervisor". However the line supervisor appears to be more of a Lead Correctional Specialists during those times a Unit Supervisor is on duty. That is, the true decision maker or person in authority is the Unit Supervisor. The record is quite clear regarding the chain of command and actual practice of the line supervisors role of reporting to the unit supervisor when one is on duty. Further the Shawnee County Adult Detention Division Policies and Procedure manual makes it abundantly clear that authority to act is vested in the Shift Supervisor. Thus during the time a unit supervisor is on duty no or very little

authority is vested in a line supervisor.

The examiner cannot recommend the exclusion of a job classification because it is "sometimes" called upon to fill in for a supervisor. To make such a recommendation could serve to remove bargaining rights from employees who seldom have supervisory authority. Logic dictates that to qualify as a supervisor one must act in that capacity a majority of the time with occasional moves into the ranks of labor. The record reflects that the converse is true in the instant case. That is, line supervisors serve as labor a majority of their time and occasionally move to the ranks of management (shift supervisors).

As previously stated this occasional management or supervisory status does not appear to apply to line supervisors at the Youth Center or the Work Release Center. While the examiner hesitates to "split" a job classification within the same bargaining unit, such action is not without precedent under the PEERA. Certainly an employer may elect to reclassify certain employees to provide uniformity of job classifications within a unit. Based upon the information within the record the examiner must recommend the inclusion of line supervisors at the jail within the appropriate unit. Further the examiner recommends the exclusion of line supervisor at the Work Release Center from the appropriate unit.

The examiner therefore recommends that the appropriate unit as petitioned for by Teamsters Local 696 be determined as follows:

Detention Division and Work Release Center unit include:

- Line Supervisors (Jail)
- Corrections Specialists
- Custodial Supervisor
- Cook
- Maintenance Technician

Exclude:


- Director of Corrections
- Deputy Director(s) of Corrections
- Food Service Manager
- Division Manager(s)
- Unit Supervisor
- Community Coordinator
- Line Supervisors (Work Release Center)
- Clerical
- All other employees of the Department of Corrections

Provided that; the following classifications are herein determined to be within the definition of professional employees as specified at K.S.A. 75-4322 (d) and as such may petition the PERB for a separate unit or an election to determine whether a majority of such professionals desire to be included within the appropriate bargaining unit determined herein.

Professional employees:

- A) Intensive Supervisory Probationary Officers
- B) Program Coordinator
- C) Work Release Coordinator
- D) Coordinator Counselor

IT IS SO RECOMMENDED THIS 6th DAY OF March, 1986.


Jerry Powell, Hearing Examiner
512 West Sixth Street
Topeka, Kansas 66603-3150

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 1st DAY OF April, 1986, BY THE PUBLIC EMPLOYEE RELATIONS BOARD.

James J. Mangan
James J. Mangan, Chairman, PERB
Agreement with result with exceptions to be filed within 10 days.

Mayverdis R. Jamison
Mayverdis R. Jamison, Member, PERB

Lee Ruggles
Lee Ruggles, Member, PERB

Art J. Veach
Art J. Veach, Member, PERB

Robert L. Kennedy
Robert L. Kennedy, Member, PERB

BEFORE THE PUBLIC EMPLOYEE RELATIONS BOARD
OF THE STATE OF KANSAS

IN THE MATTER OF THE PETITION
FILED BY:

Teamsters Local 696, International
Brotherhood of Chauffeurs, Warehouse-
men and Helpers of America for Unit
Determination and Certification of
Certain Employees of the Shawnee
County Jail, Topeka, Kansas, A Divi-
sion of the Shawnee County Department
of Corrections.

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CASE NOS: 75-UC-1-1986
75-UC-1a-1986

CONCURRING OPINION WITH EXCEPTIONS

I concur in the result of the Order rendered by the Board in the above-entitled matters on the 1st day of April, 1986. However, I take exceptions to specific portions of the CONCLUSION OF LAW AND DISCUSSION contained in the order as follows:

I

On Page 34 of the Order, the following provision of K.S.A. 75-4327 (d) was interpreted. "Any petition calling for an election in accordance with this section shall be dismissed by the Board without determining the questions raised therein if such petition is filed more than 150 days or less than 90 days prior to the expiration date of an existing memorandum of agreement which governs the terms and conditions of employment of the employees within the appropriate unit." The Order then went on to state:

IT FOLLOWS THEN THAT NEITHER THE EMPLOYER NOR THE EMPLOYEES (Union) CAN BRING ABOUT AN ELECTION AT ANY TIME OTHER THAN FOR THE PERIOD OF 60 DAYS PRECEDING THE 90 DAYS PRIOR TO THE EXPIRATION OF A MEMORANDUM OF AGREEMENT. EVEN IF A MEMORANDUM OF AGREEMENT HAD EXPIRED THE STATUTE WOULD BAR AN ELECTION UNLESS THE CERTIFIED REPRESENTATIVE, ACTING IN BAD FAITH, MADE NO EFFORT TO NEGOTIATE A SUCCESSOR AGREEMENT. AN EMPLOYER OR GROUP OF EMPLOYEES COULD THEN BRING A PROHIBITED PRACTICE CHARGE TO THE PERB ALLEGING THAT THE ORGANIZATION WAS FAILING TO REPRESENT THE EMPLOYEES (making no attempt to negotiate an agreement) AND ASKING THE PERB FOR A DECERTIFICATION ELECTION. IN THE ABSENCE OF SUCH ALLEGATIONS, HOWEVER, THE PERB CANNOT ON ITS OWN VOLITION BRING ABOUT AN ELECTION BY THE ALTERATION OF THE APPROPRIATE UNIT.

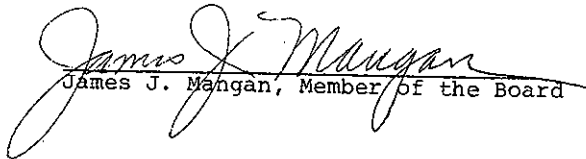
K.S.A. 75-4333 (Prohibited Practices), states in (c)3 that it is a prohibited practice for an employee organization to refuse to meet and confer in good faith with a public employer. Now, let's assume that the Memorandum of Agreement has expired and the employee organization is meeting and conferring in good faith. Then, the employees come to the conclusion that the employee organization is simply incompetent or that they believe that some other organization could do a better job. Are the employees barred from requesting and getting an election? Under K.S.A. 75-4327 (d) the Board is authorized to hold elections to determine whether an employee organization should replace another employee organization as the formal representative of employees in a unit or whether a recognized employee organization should be decertified. In my opinion, there are many circumstances in which employees would like to get rid of an employee organization even though that organization is not committing a prohibited practice act.

In my opinion, the Amendment to K.S.A. 75-4327(d) enacted in 1981, which created the sixty-day window period for filing a petition for an election, was intended to promote tranquility and stability during the period covered by the Memorandum of Agreement. If discord arose prior to the sixty-day period, then the parties involved during the sixty-day period could petition for a change in representation, and then negotiations could continue with the employees being represented by an organization of their choice. If such a petition was not filed, then the recognized employee organization could start negotiations for a new Memorandum of Agreement. However, this would not mean that the employee organization would continue in its representative capacity unless it committed a prohibited practice act. Such an interpretation could promote discord.

II.

It's unfortunate that AFSCME was drawn into this controversy. Apparently, it is trying to negotiate a contract for the Youth Center. There is no question in my mind but that the jail and the Work Release Center should be part of a unit. It could very well be that the Youth Center should also be part of this unit. However, there are not sufficient facts in the record to warrant such an inclusion at this time. Perhaps in the future the situation will develop so that the Shawnee County Department of Corrections will constitute one unit. Frankly, I am a strong believer that the effects of overfragmentation and the splintering of a work organization is detrimental to both employer and employee.

Respectfully submitted this 5th day of April, 1986.


James J. Mangan, Member of the Board