

5. Notice of Pre-hearing conference sent to parties on August 23, 1989.
6. Pre-hearing conference held September 1, 1989.
7. Pre-hearing conference order sent to parties on September 15, 1989.
8. Notice of hearing sent to parties on September 27, 1989.
9. Hearing held on October 6, 1989.
10. Proposed finding of fact, conclusions of law and briefs were filed by Petitioner on October 31, 1989 and by Respondent on November 9, 1989.

FINDINGS OF FACT

1. The Respondent, University of Kansas Medical Center, is a Board of Regents institution located in Kansas City, Kansas.
2. The Respondent employs registered and licensed practical nurses to provide medical services to patients at the University of Kansas Medical Center.
3. The Petitioner, Kansas University Nurses Association, is composed of registered and licensed practical nurses seeking a ruling on the definition of the appropriate employee unit pursuant to K.S.A. 75-4327(c) for purposes of seeking formal recognition by the Respondent pursuant to K.S.A. 75-4327(d) for all registered and licensed practical nurses employed by the Respondent, other than nurses classified as supervisory or confidential employees.

4. The parties are in agreement that all full-time registered and licensed practical nurses should be included in the employee unit with the exception of clinical nurse specialists (MCN III's) whose inclusion is disputed.

5. The parties are in agreement that all registered and licensed practical nurses who are appointed at .5 FTE (full-time equivalent) or greater should be included in the employee unit.

6. Petitioner seeks to include all registered and licensed practical nurses who are appointed at less than .5 FTE (.05% pool nurses) and all MCN III's in that employee unit. Respondent objects that the unit is inappropriate for inclusion of those nursing positions.

7. There are approximately 640 registered and licensed practical nurses employed by Respondent. Approximately 113 are appointed at .5 FTE or less and approximately 8-10 are appointed to unclassified MCN III positions.

8. A comparison of terms and conditions of employment of full-time registered and licensed practical nurses and nurses appointed at .5 FTE or greater to nurses appointed at less than .5 FTE reveals:

TERMS & CONDITIONS	50% OR MORE	LESS THAN 50%
salaries/wages	same	same
hours of work	- required to work weekends - required to work 4 holidays (2 summer & 2 winter) - rotation required	- 5% no weekend requirement - 5% - 1 major holiday requirement/yr - choice of hours available so long as work % appointed
vacation	in accordance with Civil Service Rules: < than 5 yrs - 8 hrs/pay period 5 yrs but < 10 yrs - 10 hrs/pay period 10 years - 10 hrs/pay period 10 years but < 15 years - 12 hrs/pay period 15 years and over - 14 hrs/pay period	20 days per year
sick leave		prorated
retirement	KPERS	not eligible
health insurance	state provides full cost 100% part paid 50-99%	not eligible
life insurance	available	not eligible
legal service	na	na
premium for O.T.	time and one half	some, but unlikely to apply due to FTE unit
shift differential	same	same
jury duty	same	same
grievance procedure	same	same

9. A comparison of terms and conditions of employment of nurses in classified positions to nurses in the unclassified MCN III positions reveals:

University of Kansas Medical Center

75-UD-1-1989

Page 5

TERMS & CONDITIONS

MCN I, II, & III

UNCLASSIFIED MCN III

salaries/wages	<ul style="list-style-type: none"> -base salary tied to matrix -strict rules on starting salary and movement through matrix -no merit -longevity dictates movement -subject to legislative and state administrative determination 	<ul style="list-style-type: none"> -no matrix -flexibility for hiring and for salary increase determination -merit consideration in salary establishment -legislature determines total unclassified salary base but not individual salary increases
hours of work	<ul style="list-style-type: none"> -set as scheduled. <li style="padding-left: 40px;">50% or more -required to work weekends -required to work 4 holidays (2 summer & 2 winter) -rotation required <li style="padding-left: 40px;">Less than 50% -5% - no weekend requirement -5% - 1 major holiday requirement/yr -choice of hours available so long as work % appointed 	<ul style="list-style-type: none"> -some rotate, some don't -some work weekends, some don't -some required to work holidays, some are not
longevity bonus	<ul style="list-style-type: none"> -receive longevity bonus based on service 	<ul style="list-style-type: none"> -not eligible for longevity bonus
nature of work	<ul style="list-style-type: none"> -generalized nursing care -some specific assignments vary based upon areas of assignment 	<ul style="list-style-type: none"> -some duties similar to classified employees -some duties very different from classified employees
vacation	<ul style="list-style-type: none"> -in accordance with Civil Service Rules & Regulations: <li style="padding-left: 20px;">< than 5 yrs - 8 hrs/month <li style="padding-left: 20px;">5 yrs but < 10 yrs - 10 hrs/pay period <li style="padding-left: 20px;">10 years - 10 hrs/pay period <li style="padding-left: 20px;">10 years but < 15 years - 12 hrs/pay period <li style="padding-left: 20px;">15 years and over - 14 hrs/pay period 	<ul style="list-style-type: none"> -22 days per year
sick leave	<ul style="list-style-type: none"> -in accordance with Civil Service Rules & Regulations 	<ul style="list-style-type: none"> same
holiday	<ul style="list-style-type: none"> -10 holidays plus 1 discretionary day guaranteed 	<ul style="list-style-type: none"> -8 holidays guaranteed with 2 holidays determined by work assignments
retirement	<p style="text-align: center;">KIPERS</p> <ul style="list-style-type: none"> -set by state -employer contributes 2.5% -employee contributes 4% -total contribution 6.5% 	<ul style="list-style-type: none"> -four company choices -program determined by the Board of Regents with state review and approval -employee contributes 5% -employer contributes 8% -total contribution 13%

health insurance	-state provides full cost 100% -part-time pay 50-99%	same
life insurance	-available	-available
legal service	na	na
overtime	-eligible	-not eligible
on call/call in	-eligible for on call pay and stand-by pay	-not eligible
shift differential	-eligible	-not eligible
jury duty	same	same
grievance procedure	-state defined with final appeal to State Civil Service Board appointed by governor	-institution defined with final appeal to the Executive Vice Chancellor of the institution
termination	-termination only for cause with strict rules and regulations provided in state civil service system	-termination at end of appointment, no cause required, or termination for cause at any other time
term of appointment	-continuous	-annual

10. Respondent concedes the fundamental nature of "bedside" nursing remains unchanged whether the nurse is part-time or full-time and that nurses share professional concerns regarding quality of patient care, occupational stress, morale and commitment.

11. The following elements of commonality exist between full-time and .5 FTE and greater nurses and less than .5 FTE (.05% pool) nurses:

- a. The same educational requirements are applicable to all nurses within a position;
- b. The code of ethics of the American Nurses' Association covers all nurses;
- c. .05% pool nurses are fully integrated into staffing requirements of the medical center and are called upon to perform all the functions of the full-time and .5 FTE and greater staff nurse;
- d. No administrative distinction in the way full-time and .5 FTE and greater nurses and less than .5 FTE (.05% pool) nurses are utilized by the medical center;
- e. No distinction made between full-time and .5 FTE and greater nurses and less than .5 FTE (.05% pool) nurses for assignment to work on a particular unit;
- f. No difference between full-time and .5 FTE and greater nurses and less .5 FTE nurses in quality of professional care provided or job performance; and
- g. Common supervision of all nurses in a unit.

12. The following elements of commonality exist between the classified registered and licensed practical nurses and the unclassified MCN III nurses:

- a. The same minimum educational, training and licensing requirements apply to both classified and unclassified nurses.

b. The code of ethics of the American Nurses' Association covers both classified and unclassified nurses.

c. Common supervision of both classified and unclassified nurses.

d. The unclassified nurses may be called upon to perform the same duties as the classified nurses.

13. There is a nursing shortage nationally and in the metropolitan area around the medical center resulting in problems with recruitment and retention of nurses. The ".05% pool nurse" concept was developed to deal with the critical need to maintain the delivery of nursing services. Respondent concedes the present level of nursing services could not be maintained without utilizing part-time nurses including the .05% pool nurses.

14. The title of .05% pool nurse refers to the minimum amount of time a nurse must commit to the medical center and equates to a .05 FTE. The designation is used for budgeting purposes only, and a nurse appointed to the .05 FTE may in reality work from .05 to 1.0 FTE. For example, of the 102 nurses in the .05% nurse pool working in pay period 26, seventy-six or 74.5% worked beyond the .05 FTE appointment.

15. Petitioner association is composed of full-time, .5 and greater FTE and .05% pool nurses. The association council has 12 members, 3 of which are .05% pool nurses.

16. With one exception the witnesses who testified for both Petitioner and Respondent stated a preference for a single unit composed of all nurses regardless of FTE appointment.

CONCLUSIONS OF LAW AND DISCUSSION

Respondent, a Board of Regents institution, is an agency of the State of Kansas covered by the Public Employer-Employee Relations Act (PEERA) K.S.A. 75-4321 et seq. Also, as a Board of Regents institution, is an "employer" in accordance with K.S.A. 75-4322(f). A nurse is a "public employee" as defined by K.S.A. 75-4322(a), and Petitioner would qualify as an "employee organization". K.S.A. 75-4322(i).

Petitioner petitions the Public Employee Relations Board (PERB) to determine "an appropriate unit" for purposes of meet and confer on grievances and conditions of employment. Or, stated another way, which nursing positions should be included in the employee unit. The Public Employee Relations Board (PERB) has jurisdiction over the parties. The petition is properly before the Board, and the Board has the statutory authority to determine the appropriate unit.

At the outset it should be noted that K.S.A. 75-4327(c) speaks only to the designation by the Board of an "appropriate unit." The statutory language does not require the Board define the only appropriate unit or the most appropriate unit. PEERA requires only that the unit be "appropriate".

The Public Employee Relations Board is vested with very wide discretion to determine what positions should be included in an appropriate employee unit for purposes of meet and confer. The U.S. Supreme Court has given great weight to the unit determinations made by the NLRB in the private sector:

"The issue as to what unit is appropriate for bargaining is one for which no absolute rule of law is laid down by statute, and none should be by decision. It involves of necessity a large measure of informed discretion, and the decision of the Board, if not final, is rarely to be disturbed." Packard Motor Car Co. v. NLRB, 330 U.S. 485, 491 (1947).

Despite the fact that the Kansas Public Employer-Employee Relations Act contains more specific criteria to consider in unit determinations than the NLRA, "it is rare that a PERB unit determination is found to be so unreasonable and arbitrary that a court will reverse it." Rhyne and Drummer, The Law of Municipal Labor Relations, p. 36 (1979).

In the instant case, Petitioner maintains the appropriate unit includes all registered and licensed practical nurses, whether in a classified or unclassified position, and without regard to appointed percentage of FTE. Respondent contends nurses appointed to less than .5 FTE and all unclassified MCN III appointments are inappropriate for inclusion in the unit proposed by Petitioner.

As a guide to the Public Employee Relations Board in determining the "appropriate unit", i.e. which employee positions should be included in the unit, K.S.A. 75-4327 (c) provides:

"...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 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." (Emphasis added)

Additional guidance is found in K.A.R. 84-2-6(a):

"(1) Any unit may consist of all of the employees of the public employer, or any department, division, section or area, or part or combination thereof, if found to be appropriate by the board, except as otherwise provided in the act or these rules.

(2) In considering whether a unit is appropriate, the board shall consider the provisions of K.S.A. 75-4327 (e) and whether the proposed unit of the public employees is a distinct and homogeneous group, with significant problems which can be adjusted without regard to the other public employees of the public employer, and it may consider the relationship of the proposed unit to the total organizational pattern of the public employer. Neither the extent to which public employees have been organized by an employee organization nor the desires of a particular group of public employees to be represented separately or by a particular employee organization shall be controlling on the question of whether a proposed unit is appropriate."

The Public Employee Relations Board's basic function in determining the appropriateness of an employee unit is to group together, for purposes of meeting and conferring with respect to grievances and conditions of employment, employees who share a common interest. Petitioner would urge the Board adopt as the standard for determining the appropriate unit "whether there is an adequate common interest in the conditions of employment, as

defined by K.S.A. 75-4322 (t), among the group proposed."

"Conditions of employment" is so defined as:

"salaries, wages, hours of work, vacation allowances, sick and injury leave, number of holidays, retirement benefits, wearing apparel, premium pay for overtime, shift differential pay, jury duty and grievance procedures..."

Apparently, Respondent would restrict Board consideration to only those factors enumerated in the laundry list set forth above. Such a standard is too narrow.

In Kansas Bd. of Regents v. Pittsburg State University Chap. of K-NEA, 233 KAN. 801, 819 (1983), The Kansas Supreme Court was likewise asked to adopt a narrow reading of K.S.A. 75-4322 (f) for determination of mandatory subjects of meet and confer. Therein the court concluded:

"the legislature did not intend that the laundry list of conditions of employment as set forth in K.S.A. 75-4322 (t) be viewed narrowly with the object of limiting and restricting the subjects for discussion between employer and employee. To the contrary, the legislature targets all subjects relating to conditions of employment."

The list of conditions of employment is not to be read literally or exclusively. A subject, though not listed in K.S.A. 75-4322 (t) would still be a subject for mandatory bargaining if the subject is "significantly related" to a condition of employment.

Since K.S.A. 75-4322 (t) cannot be given a narrow reading for purposes of determining what constitutes a condition of employment for meet and confer, neither should such narrow reading apply in

determining an appropriate unit or even the existence of a community of interest.

Additional support for this position is found in the language of K.S.A. 75-4327 (e) and K.A.R. 84-2-6 (c). Excluding community of interest, none of the six remaining factor required to be considered by 75-4327 (e) or two factors set forth in K.A.R. 84-2-6(c) relate to items on the K.S.A. 75-4322 (t) laundry list. Further, K.S.A. 75-4322 (t) requires the Board to consider "other relevant factors".

While applicable statute and regulation enumerate specific factors to be considered in making the unit determination, the weight to be assigned to each factor is within the sole discretion of the Public Employee Relations Board.

The less than .5 FTE (.05% pool nurses) and the MCN III appointments will be considered separately.

.05% Pool Nurses

The Principle of Efficient Administration of Government

Respondent has an interest in having the employee unit coincide with its organizational or administrative structure. The employees sought to be grouped are all nurses. Whether one unit is established or two, the affect upon the organizational or administrative structure, if any, will not change.

While Respondent argues the administration of the medical center would be better served by not including the less than .5 FTE

appointments in the proposed employee unit, the record is silent on evidence to support such position. However, Respondent's own witness, Mary Ann Eisenbise, Director of Nursing Services, who has represented the medical center in meet and confer on contracts with other units and presumably would participate in such negotiations with a nurse's unit, stated a preference for having to negotiate with but a single unit containing all nurses.

The History and Extent of Employee Organization

The Petitioner is a relatively new employee organization. Its membership and governing council are composed of full-time, part-time and .05% pool nurses.

While there is little history concerning the proposed nurses unit, the record does contain testimony of Barbara Berry concerning negotiations between the medical center and the employee unit composed of hospital attendants and service aides. Such indicates both that employee groups with common and diverse interests have been included in units for purposes of meet and confer with the medical center, and that the employee organization and the medical center have been able to successfully fulfil their responsibilities through meet and confer as they relate to this employee unit.

Geographic Location

The proposed unit is located wholly at the University of Kansas Medical Center in Kansas City, Kansas. There is no segregation of nurses by percentage of FTE at different locations or in different units within the medical center.

The Effects of Overfragmentation and
the Splintering of a Work Organization

Fragmentation is the unwieldy multiplication of employee units. Werne, Public Employment Labor Relations, Vol. 1, p. 81 (1974). This factor relates directly with the requirement that the Board consider the efficient administration of government. Efficient administration presumably requires a minimum number of employee units. Rhyne and Drummer, The Law of Municipal Relations, p. 33 (1979). The statutory requirement to consider overfragmentation indicates a legislative concern about a proliferation of small employee units and an intent to have the largest employee unit possible consistent with the community of interest of the members.

The chief consideration in this factor is whether the larger unit can adequately represent the interests of a smaller included unit. Here the issue is whether the proposed unit composed of an 80% majority of .5 FTE and greater nurses can adequately represent the interest of the .05% pool nurses. No evidence was presented by Respondent to show inadequate representation. Testimony of Petitioner's witnesses who were .05% pool nurses indicated a belief that adequate representation was possible.

The Provisions of K.S.A. 75-4325

There is nothing in the record indicating which or the number of nurses by percent of FTE are supervisory.

The Recommendations of the Parties Involved

The effectiveness of the meet and confer process depends in large part on the coherence of the employees in the unit. Where there are two or more groups which may be combined or left separate in determining the appropriate unit or units, the desires of the employees must be considered. While Respondent is correct that K.A.R. 84-2-6(a)(2) prohibits the desires of a particular group from being "controlling" on the question of appropriate unit composition, the regulation does not prohibit it from being a factor for consideration. In fact, K.S.A. 75-4327(c)(7) requires the Board to consider such desires. Rather than being "irrelevant" as argued by Respondent, this factor must be considered but was not "controlling" upon the final determination.

With the exception of Jackie McClain, KUMC Personnel Director, witnesses for both Petitioner and Respondent expressed a belief that only one unit be established which would include the nurses appointed to less than .5 FTE; the .05% pool nurses. It must be noted that should the .05% pool nurses desire not be included in unit procedures are available after the unit determination to address that concern. At the election stage these nurses can campaign and vote against certification of Petitioner. After the election, whether successful or not, an amendment to the unit determination may be sought pursuant to procedures set forth in statute and regulation.

Other Relevant Factors

In addition to the factors discussed above the following evidence is relevant to the unit determination. There is no difference between .5 FTE and great nurses and less than .5 FTE nurses (.05% pool nurses) in the quality of professional care provided or job performance. All nurses are governed by the same of code of ethics and share professional concerns regarding quality of patient care, occupational stress, morale and commitment.

The Existence of a Community of Interest Among Employees

Probably the most important factor to consider in unit determination is "the community of interest of the employees, which includes similarity of job duties, wages, common supervision and common skills, educational requirements, job location, and common bargaining history." 1967 Exec. Comm., National Governor's Conference (Pub. Personnel Ass'n 1967), Report of Task Force on State and Local Government Labor Relations, p. 12. Community of interest has also been defined as a means "to group together employees who have substantial mutual interests in wages, hours and other conditions of employment." 1950 NLRB Ann. Rep. 39 (1951).

In determining if a community of interest exists, the following factors are considered:

1. The employees all work at a common site;
2. The employees have common supervision at the work site;
3. The employees have common skill, training or education requirements;

4. The employees are part of an integrated work process;
5. The employees have similar working conditions and the same types of grievances; and
6. The employees have substantially similar conditions of employment.

The record reveals no differentiation in wages or salary between full time and .5 FTE and greater nurses and the .05% pool nurses. Both groups receive the same shift differential pay and premium for overtime.

All nurses within a classification must meet the same educational and/or training requirements and have the same skills whether full-time, .5 FTE or greater or .05% pool nurse.

The same supervisors that supervise the full-time and .5 FTE or greater nurses also supervise the .05% pool nurses.

All nurses work at the medical center in Kansas City and in the same designated hospital units therefore experiencing similar working conditions.

As to job duties, no administrative distinction exists in the way full-time, .5 FTE or greater and .05% pool nurses are utilized by the medical center or when calling upon nurses to work on a particular hospital unit. The .05% pool nurses are fully integrated into the staffing requirements of the medical center and called upon to perform all the functions of a full-time nurse.

Nurses receive shift assignments and work the same hours per shift without regard to percentage of FTE appointment.

Policies regarding jury duty and grievance procedures apply equally to all nurses. Presumably, since all the employees are nurses and employed under like working conditions, the types of grievances would be similar.

The .05% pool nurses are not required to work weekends while all other nurses must work week-ends. In addition the .05% pool nurses only have to work one holiday per year while the other nurses must work four (4) holidays.

The .05% pool nurses are not eligible for KPERS, health insurance, or life insurance as are other nurses.

The .05% pool nurses receive vacation and sick and injury leave prorated to the percentage of hours worked in the pay period.

K.A.R. 84-2-6(a) Factors

Considering the factors set forth in K.A.R. 84-2-6(a) reveals that the proposed unit is a distinct and homogenous group (i.e. nurses) with distinct problems from other employees of the Respondent. There is no evidence in the record to indicate the proposed unit would affect the organizational pattern of the Respondent.

CONCLUSION

The differences in interest in retirement, health insurance and life insurance benefits are not so substantial as to outweigh the mutual interest in the other factors considered. The .05% pool nurses, those nurses working less than .5 FTE, possess sufficient

community of interests with the full-time and .5 FTE and greater nurses to be included in the same employee unit for purposes of meeting and conferring as to grievances and conditions of employment.

MCN III Nurses

Unfortunately, the record on the MCN III nurses is not as complete, detailed or comprehensive as on the .05% pool nurses, making the task of determination more difficult. On some factors, no evidence was produced. Had a more complete record been made at the hearing a different determination may have been possible. However, a determination must be based solely upon the evidence in the record.

The Principle of Efficient Administration of Government

No evidence was introduced at the hearing to specifically show the inclusion of MCN III nurses in the proposed unit would or would not affect the efficiency of the administration of the medical center. The reasoning advanced concerning the .05% pool nurses could arguably be applicable here if we were examining simply a higher nursing classification. However, here not only a higher classification is involved but the positions in question are unclassified rather than classified. Since there is no evidence in the record consideration of this factor could be based only upon speculation. Such is not appropriate.

The History and Extent of Employee Organization

Again, the record indicates Petitioner is a relatively new organization. There is no evidence as to the number, if any, MCN III nurses are members of the association or serve upon the association council. Likewise, there is nothing in the record showing inclusion of unclassified positions in other employee units for purposes of meet and confer.

Geographic Location

The proposed unit is located wholly at the University of Kansas Medical Center in Kansas City, Kansas.

The Effects of Overfragmentation and
the Splintering of a Work Organization

The reasons set forth above for having one large unit including all classified nurses and against excluding the .05% pool nurses is applicable to the unclassified nurses. This seems particularly true where the number of nurses involved, 8-10, is relatively small in comparison to the number of nurses in the proposed unit, 640.

As to whether a unit composed of approximately 95% classified nurses can adequately represent the 5% of unclassified nurses, no evidence appears either pro or con in the record.

The Provisions of K.S.A. 75-4325

There is nothing in the record indicating which or the number of unclassified MCN III nurses are supervisory.

The Recommendations of the Parties

Respondent's witness testified that MCN III's should not be included. No currently employed MCN III testified for Petitioner,

on behalf of the MCN III's or personally as to preference for inclusion in the proposed employee unit. A former MCN III who is now a .05% pool nurse did testify that MCN III's should be included.

Other Relevant Factors

Another factor relevant to the determination of whether the appropriate employee unit should include the MCN III nurses is that they are covered by the same code of ethics.

The Existence of a Community of Interest Among Employees

It is on this factor that the record is most complete and given the lack of evidence in the record relating to the other factors that must be considered, controlling in this determination.

The wages of unclassified MCN III nurses are not set by the pay matrix while the base salary of classified nurses are tied to the pay matrix. Likewise, pay increases are not tied to the matrix. Unclassified MCN III nurses are not eligible for overtime or shift differential pay, or longevity bonus.

All nurses must meet minimum educational, training and licensing requirements to be employed by the medical center but the MCN III position requires advanced training or years of experience in the particular specialty to qualify.

All nurses are within the Division of Nursing Services and accordingly would have common top-level supervision. MCN III nurses assigned to special care units receive supervision from

physicians more often than from a head nurse or nursing services supervisor.

All nurses, both classified and unclassified, work at the medical center in Kansas City.

Policies regarding jury duty, sick leave, health insurance, and life insurance are the same whether in a classified or unclassified nursing position.

MCN III nurses receive a set number of vacation days each year while unclassified nurses accumulate vacation based upon the hours worked in each pay period.

MCN III nurses receive eight (8) holidays guaranteed plus two (2) holidays depending upon work assignments while classified nurses receive ten (10) holidays and one (1) discretionary day guaranteed.

Retirement benefits for classified nurses in through KPERS. MCN III nurses have a choice of four (4) retirement programs.

Shift assignments, holiday and week-end assignments differ between classified and unclassified nurses.

The types of grievances would cover similar subject areas but while classified nurses can appeal through Civil Service system, unclassified nurses are limited to procedure established by the medical center.

MCN III nurses may be terminated at the end of their appointment. Classified nurses may be terminated only for cause.

K.A.R. 84-2-6(a) Factors

Considering the factors set forth in K.A.R. 84-2-6(a) reveals that the proposed unit is a distinct and homogenous group (i.e. nurses) with distinct problems from other employees of the Respondent. There is no evidence in the record to indicate the proposed unit would affect the organizational pattern of the Respondent.

CONCLUSION

While there are a number of factors which would support the inclusion of the unclassified MCN III nurses in the proposed employee unit, there are an almost equal number which support exclusion. Those factors which support exclusion are so substantial as to outweigh the mutual interest in the other factors. The unclassified MCN III nurses do not possess sufficient community of interests with the classified nurses to be included in the same employee unit for purposes of meeting and conferring as to grievances and conditions of employment.

ORDER

It is the initial order of the presiding officer that the appropriate employee unit in the above captioned matter shall be as follows:

INCLUDE: All employees with the title Medical Center Nurse I, Medical Center Nurse II and Licensed Practical

Nurse in the Department of Nursing Services regardless of their percentage of F.T.E. appointment.

EXCLUDE: All employees with the title Medical Center Nurse III, all managers and supervisors, and all temporary, conditional or intermittent employees in the Department of Nursing Services.

It is so ordered this 18th day of December, 1989.

This is an initial order of a presiding officer. It will become a final order fifteen (15) days after service unless a petition for review is filed with the Public Employee Relations Board in accordance with K.S.A. 77-527.



Monty R. Bertelli
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CERTIFICATE OF SERVICE

I, Sharon L. Tunstall, Secretary III for the Department of Human Resources, hereby certify that on the 19th day of December, 1989, a true and correct copy of the above and foregoing Recommended Decision and Order was deposited in the U.S. Mail, first class, postage prepaid, addressed to:

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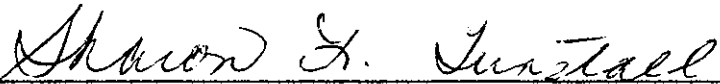
University of Kansas Medical Center
75-UD-1-1989
Page 26

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