

BEFORE THE SECRETARY OF HUMAN RESOURCES  
STATE OF KANSAS

COLBY COMMUNITY COLLEGE FACULTY  
ALLIANCE,

Petitioner,

vs.

COLBY COMMUNITY COLLEGE,  
COLBY, KANSAS,

Respondent,

Case No. 72-UCA-4-1992

**INITIAL ORDER**

ON the 11th day of November, 1992, the above-captioned matter came on for hearing pursuant to K.S.A. 72-5417(a) and K.S.A. 77-523 before presiding officer Monty R. Bertelli.

**APPEARANCES**

PETITIONER:      Appeared by Bruce Lindskog, Director  
Northwest Kansas UniServ  
P.O. Box 449  
Colby, Kansas 67701

RESPONDENT:      Appeared by H. David Starkey, Attorney  
Lowe, Starkey & Gatz  
P.O. Box 346  
Colby, Kansas 67701

**ISSUES PRESENTED FOR REVIEW**

1. WHETHER THE APPROPRIATE BARGAINING UNIT FOR THE FACULTY AT COLBY COMMUNITY COLLEGE SHOULD REMAIN AS PRESENTLY COMPRISED OR SHOULD BE AMENDED TO PROVIDE CRITERIA THAT WILL ALLOW INCLUSION OF MORE PART-TIME FACULTY.

72-UCA-4-1992

2. WHETHER THE POSITIONS OF DIRECTOR OF ATHLETICS, SPORTS INFORMATION DIRECTOR, WOMEN'S BASKETBALL COACH, LIVING CENTER NORTH COORDINATOR, INTRAMURAL DIRECTOR, WOMEN'S SOFTBALL COACH, AND FITNESS LAB INSTRUCTOR, STEP AEROBICS INSTRUCTOR, PIANO INSTRUCTOR AND ACCOMPANIST, SUNFLOWER SINGERS ACCOMPANIST, AND HUMANITIES INSTRUCTOR SHOULD BE INCLUDED IN THE UNIT DETERMINED TO BE APPROPRIATE FOR FACULTY AT COLBY COMMUNITY COLLEGE.
3. WHETHER MELODYE DUELL AND JEANNE COX SHOULD BE INCLUDED IN THE UNIT DETERMINED TO BE APPROPRIATE FOR FACULTY AT COLBY COMMUNITY COLLEGE.

### **SYLLABUS**

1. **PROFESSIONAL EMPLOYEE** - *Definitions - Professional, educational and institutional.* "Professional," "educational," and "instructional" are not technical words and have no specially defined meaning in the Professional Negotiations Act. However, these words do have an accepted, definite, and clear meaning in the English language and should be construed according to the context and approved use of the language.
2. **PROFESSIONAL EMPLOYEE** - *Definitions - "Professional" definition adopted.* The term "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 section, 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 by a board of registration or other public body established for such purposes under the laws of this state.
3. **PROFESSIONAL EMPLOYEE** - *Definitions - "Instructional" definition adopted.* "Instructional capacity" means role of teacher; to furnish with knowledge; teach. It refers to a structured form of learning in the traditional classroom setting wherein the teacher is lecturing on a specific subject, and the students

are listening and responding to questions. However, it can also encompass one-on-one methods of instruction.

4. **PROFESSIONAL EMPLOYEE** - *Definitions - "Educational" definition adopted.* "Educational" is a broad and comprehensive term embracing mental, moral and physical education. Education is not limited to knowledge acquired in the classroom, and includes bodily as well as mental training. To educate means "to draw out" a person's talents as opposed to putting in knowledge or instruction.
5. **UNIT DETERMINATION** - *Test to be Employed - Community of Interest.* The primary concern of any bargaining unit determination is to group together only those employees who have substantial mutual interests in wages, hours and other conditions of employment. Commonly referred to as the community of interests doctrine, it stands for the proposition that in making a unit determination, the Secretary will weigh the similarities and differences with respect to wages, hours and other conditions of employment among the members of the proposed unit, rather than relying solely on traditional job classifications.
6. **UNIT DETERMINATION** - *Regular Part-time Professional Employees - Community of Interest - Four-to-one rule adopted.* All part-time professional employees, whose teaching load (measured in terms of credit hours taught or contact hours in an educational or instructional capacity or a combination of both) is at least one-fourth of the teaching load of their full-time counterparts, are "regular" part-time professional employees, and should be included in the same bargaining unit.

### ***FINDINGS OF FACT<sup>1</sup>***

1. The Colby Community College Faculty Alliance ("Alliance") is the exclusive bargaining representative for certain professional employees of Colby Community College, Colby, Kansas ("College"). (Petition and Answer).

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<sup>1</sup> "Failure of an administrative law judge to detail completely all conflicts in evidence does not mean . . . that this conflicting evidence was not considered. Further, the absence of a statement of resolution of a conflict in specific testimony, or of an analysis of such testimony, does not mean that such did not occur." Stanley Oil Company, Inc., 213 NLRB 219, 221, 87 LRRM 1668 (1974). At the Supreme Court stated in NLRB v. Pittsburg Steamship Company, 337 U.S. 656, 659, 24 LRRM 2177 (1949), "[Total] rejection of an opposed view cannot of itself impugn the integrity or competence of a trier of fact."

2. Colby Community College is a community college established pursuant to K.S.A. 71-120 et seq., and its board of trustees is a "Board of Education" as defined in K.S.A. 72-5413(b).
3. On the date the Petition for Unit Clarification and Amendment was filed, May 29, 1992, there was a Memorandum of Agreement in effect. (Petition, Answer, Joint Ex. 1). The Memorandum of Agreement defined the unit appropriate for professional negotiations as follows:

*"This agreement shall pertain only to Professional Employees as defined in K.S.A. 72-5413(c) employed on a full-time basis and regular part-time Professional Employees employed at Colby Community College main campus and the Norton Annex who: (a) teach 18 or more but less than 30 credit hours for the school year or are employed by semester to teach at least 9 credit hours for such semester; or (b) are employed in an educational or instructional capacity at least 24 hours per week for two consecutive semesters." (Joint Ex. 1).*

4. The Petition seeks to amend the definition of the appropriate unit to read as follows:

*"The bargaining unit for Colby Community College shall be defined as employees whose combined teaching and/or supervision of other student related activities; equals or exceeds a minimum of 9 contact hours per week. Student-related activities shall include but are not limited to activities such as sports, program-related groups, labs, clinics, vocational work study, newspaper, yearbook, individual study classes, library, personal counseling and career counseling." (Petition).*

5. Article X of the Agreement sets forth the work load and/or campus hours for full-time and part-time professional employees. Section A(1) provides as follows:

*"Normal Professional Workload. The normal instructor workload for full-time Professional Employees shall consist of fifteen (15) credit hours or twenty (20) contact hours per semester, or thirty (30) credit hours or their equivalent per year. The normal instructor workload for regular part-time Professional Employees within the Negotiating Unit shall consist of at least nine (9) credit hours per semester, or at least eighteen (18) credit hours or their equivalent per year. Classes comprising the workload may be taught on or off campus. In some cases, the workload may include duties combined with instruction." (Joint Ex. 1).*

6. The term "contact hour" refers to an hour of direct instruction contact between a student and the instructor. (Tr.p. 192). Contact hours have been used at CCC as an alternative method of calculating an instructor's full-time status. The purpose for using contact hours is to give credit to instructors for time spent in laboratory and activity classes such as agriculture practical classes and sports. Contact hours have been primarily used to fill in the schedules of faculty members to meet the total number of hours they have been contracted to teach. (Tr.p. 181). Historically, CCC has been willing to substitute contact hours for classroom activities to fill out a faculty member's schedule. (Tr.p. 191). The use of contact hours in filling out teacher contracts is provided for in Article X of the master agreement. (Joint Ex. 1). Many of the activities that both parties agree constitute contact hours do not require a course syllabus. (Tr.p. 182).
7. Patricia Ann Erickson has been employed by CCC as Director of the Physical Therapist Assistant program for four years. She was President of the Faculty Association during the 1991-92 school year. (Tr.p. 8).
8. Rick Groetzinger is employed by CCC as Director of the Drama Program and teaches all drama courses. (Tr.p. 171). He also teaches speech and interpersonal communication classes, and serves as Director of the Northwest Kansas Cultural Arts Center. (Tr.p. 171). Mr. Groetzinger is President of the Faculty Association for the 1992-93 school year, and has served on the Faculty Alliance bargaining team and various other committees. (Tr.p. 171).
9. Roger Hale is an instructor of Psychology and the Division Chair for the Behavioral Sciences Division. (Tr.p. 19).
10. Ken Johnson is the Dean of Finance. (Tr.p. 19).
11. Larry Koon is an instructor in Psychology and Sociology. (Tr.p. 19).
12. Gracemary Melvin is the Dean of Instruction at Colby Community College. Prior to accepting that position in July, 1991, she was an instructor in the Business Department for 21 years. (Tr.p. 211).

13. Fred Miller is employed by CCC in the print shop and is teaching a Beginning Photography class. He has taught classes in printing, photography and journalism. (Tr.p. 18-19).
14. Frank Vacca is Director of the print shop and a part-time instructor for various printing classes. (Tr.p. 18).

**Carl Adams**

15. Carl Adams is employed by CCC for the 1992-93 school year as Living Center North Coordinator, Intramural Director, and Women's Softball Coach under three separate contracts. (Tr.p. 20; Pet.Ex. 1).

*Living Center Coordinator*

16. Adams has served as the Living Center North Coordinator for 7 1/2 years. (Tr.p. 20). He is employed on a nine-month contract corresponding to the school year. It is a full-time position paying \$12,971, paid in equal monthly installments. (Tr.p. 21, 25, 31, 48; Pet.Ex. 1). Additional compensation is received in the form of free lodging. (Tr.p. 25).
17. As the Living Center North Coordinator, Adams has the same retirement, vacation, health insurance and cafeteria plan as the full-time faculty and interacts with the faculty on matters concerning students living in the dorm or who are participating on the women's softball team. (Tr.p. 36, 37, 38, 48; Pet.Ex. 1).
18. The major responsibilities of the Living Center North Coordinator are as follows:

*"I. Living Center Operational Procedures*

- A. Select resident assistants
- B. Be responsible for the discipline of the living center in conjunction with the judicial board.
- C. Promote the activities of the living center to enhance the mission of the college.
- D. Assign and reassign living quarters.
- E. Develop and refine housing questionnaire.
- F. Develop and refine housing brochure.
- G. Conduct monthly housing council meetings.

II. *Employer Relationships*

- A. *Select, train and orient student resident assistants.*
- B. *Provide for the selection of the living center council.*
- C. *Provide for the selection and implementation of the judiciary council.*

III. *Faculty/Staff/Community Relations*

- A. *Attend faculty and staff meetings when appropriate*
- B. *Recommend to the Director of Buildings and Grounds any renovation or repair of living center equipment and facilities.*
- C. *Maintain relationship with students and faculty and strive to establish a cooperative relationship." (Pet.Ex. 2).*

There are no special education or certification requirements for one to serve as the Living Center North Coordinator. (Tr.p. 38).

19. Adams has four student resident assistants under his supervision. He is responsible for selecting them and supervising them. Along with Dean Schultz he is responsible for their discipline as required. (Tr.p. 28, 35). Pursuant to the chain of command, the Living Center North Coordinator reports directly to the Dean of Student Services, and the student resident assistants report directly to the Living Center North Coordinator (Pet.Ex. 2).

*Women's Softball Coach*

20. Adams also serves as Head Women's Softball Coach. (Tr.p. 21). This is classified as a part-time position. (Pet.Ex. 1). Softball is a varsity sport at Colby Community College. (Tr.p. 21). Women's Softball is considered a P.E. course, and the students on the softball team receive credit equivalent to one hour of Physical Education each semester for participating in the sport. (Tr.p. 22, 27). As Head Women's Softball Coach, Mr. Adams is responsible for submitting grades for the students on the softball team and developing the course syllabus. (Tr.p. 22, 27). His duties as softball coach require 15 to 25 hours per week of direct contact with Colby Community College students through on-the-field instruction. (Tr.p. 23, 27, 43). The Women's Softball Coach is supervised by the Dean of Student Services. (Tr.p. 28).

21. For serving as Women's Softball Coach, Mr. Adams receives a salary of \$2,000.00 per year, paid in three installments per year, and receives no other benefits. (Tr.p. 26, 30, 49). Women's Softball Coach duties include recruiting and getting the team members prepared to play softball for Colby Community College. (Tr.p. 22). Students participating in the softball program receive one hour of college credit. (Tr.p. 22). The position of Women's Softball Coach does not require a degree or special education, but Mr. Adams has specialized training through courses in recreation and physical education. (Tr.p. 38, 44).

*Intramural Director*

22. Carl Adams additionally serves as Intramural Director. (Tr.p. 22). Intramural Director is a part-time position with current compensation of \$700.00 divided into two installments paid in November and March. The contract provides for no other benefits. (Pet.Ex. 1). The Intramural Director organizes numerous student recreational activities. (Tr.p. 22, 23). Different intramural sports are scheduled throughout the school year. These include volleyball, basketball, and bowling. Also special tournaments are scheduled on week-ends, e.g. pool and card tournaments. (Tr.p. 23-24). The Intramural Director does not provide instruction on the sports offered. He supervises the activities and keeps things under control. (Tr.p. 52). Students do not receive credit for participating in intramural activities. (Tr.p. 28). The position requires no special education or certification. (Tr.p. 44). The Intramural Director reports to the Dean of Students. (Tr.p. 42).
23. Mr. Adams is assisted with the intramural program by work-study students, whom he hires. (Tr.p. 39-40). As Intramural Director he has the authority to dismiss, discharge and discipline the work-study student employees. (Tr.p. 40). Mr. Adams spends approximately 7-8 hours per week on duties of the Intramural Director. The number of hours required to perform the Intramural Director's duties is increasing as students seek a wider variety of activities. (Tr.p. 23-24).

**Melodye Duell**

24. Melodye Duell is employed by Colby Community College as a Mathematics Instructor on a part-time contract requiring her to teach 15 credit hours for the 1992-93 school year. (Tr.p.



203; Pet.Ex. 10). She has an Associate's degree in mathematics and a Bachelor's degree in accounting. (Tr.p. 206). Ms. Duell is teaching Veterinary Tech Math, Basic Essentials and Basic Algebra for 9 credit hours during the 1992 Fall semester. She is actually in class about 8½ hours per week because one class is for variable credit. (Tr.p. 204). For the 1993 Spring Semester, Ms. Duell will teach 6 credit hours, including Math Essentials and Basic Algebra. (Tr.p. 206-07). Duell prepares a syllabus for each of the classes, prepares a class plan, and issues grades to the students. (Tr.p. 204-05). She is expected to be on campus 20 hours per week. (Tr.p. 207-07). When she is not in class Ms. Duell is assisting students, grading papers and preparing for class. (Tr.p. 205).

**Pat Ziegelmeier**

25. Pat Ziegelmeier is employed by Colby Community College as Piano Instructor and Choir Accompanist, Sunflower Singers Accompanist, and Humanities Instructor under three separate part-time contracts representing each of her assigned activities. (Tr.p. 148, 164; Ex. 8).

*Piano Instructor and Choir Accompanist*

26. Ms. Ziegelmeier has been the Piano Instructor and Choir Accompanist since August, 1988. This is a one-half time position. (Tr.p. 149). As the piano Instructor, Ms. Ziegelmeier is teaching a one-credit hour course in Keyboard Skills I; a one-credit hour course in Keyboard Skills III; and a one-credit hour course in Applied Music Piano I. She gives piano lessons to students who enroll in the classes, and assigns each a grade. (Tr.p. 150). The lessons are given by appointment and are one-half hour per week per student. She has 22 students enrolled in the classes. (Tr.p. 158-59, 162).
27. Ms. Ziegelmeier spends 19 hours per week in piano instruction, 5-10 hours per week on accompaniment, and 10 hours per week for preparation and office hours. During office hours Ms. Ziegelmeier assists students with problems they may be having with assigned music lessons or homework assignments. (Tr.p. 152).

*Humanities Instructor*

28. Ms. Ziegelmeier has held the position of Humanities Instructor since August, 1989. (Tr.p. 149). The Humanities course she teaches is Classical Cultures, a three-credit hour course. (Tr.p. 160). She prepares a syllabus for the humanities course and issues grades to the students. (Tr.p. 149).

*Sunflower Singer Accompanist*

29. Ms. Ziegelmeier has been the Sunflower Singer Accompanist since October, 1989. (Tr.p. 148). She testified her responsibilities with the Sunflower Singers include serving as accompanist during rehearsal; serving as assistant vocal director when the group divides into individual vocal sections to work on notes, pronunciations and rhythm; assisting in the section of musical numbers; working on choreography to accompany those musical numbers; selecting wearing apparel; and accompanying the group during musical programs. (Tr.p. 150, 151, 165-66).

*Choir Accompanist*

30. The Choir differs from the Sunflower Singers in that the Choir is larger, involving approximately 50 students. Ms. Ziegelmeier's responsibilities as Choir Accompanist are essentially the same as her responsibilities with the Sunflower Singers, with the exception that the Choir has fewer public performances. (Tr.p. 151).
31. Ms. Ziegelmeier is paid a salary of \$2,538.00 as the Sunflower Singers Accompanist, \$10,268.00 as Piano Instructor and Accompanist, and \$990 as Humanities Instructor. (Pet.Ex. 10). She receives the same holidays as the faculty. (Tr.p. 167).

**Jeanne Cox**

*Visual Arts Instructor*

32. Jeanne Cox is employed by Colby Community College for the 1992-93 school year as a visual arts instructor in the Art Department on a part-time contract at a salary of \$10,000.00. (Tr.p. 132-133; Pet.Ex. 7). Ms. Cox has a college B.A. degree in Art. (Tr.p. 139).

33. As the part-time Visual Arts Instructor, Ms. Cox is employed to teach 15 credit hours for the 1992-93 academic year. (Tr.p. 143; Pet.Ex. 7). During the 1992 Fall semester, she taught Ceramics I and II simultaneously on Tuesday evenings from 7:00 to 10:00 P.M. Students enrolled in Ceramics I receive 3 hours of credit, and students enrolled in Ceramics II receive 3 hours of credit. (Tr.p. 137-38, 143-44, 215). In addition, Ms. Cox taught Fundamentals of Design during the Fall semester. That class met on Tuesday, Thursday and every other Friday from 9:10 a.m. to 12:15 p.m. for 3 credit hours. (Tr.p. 139, 143-44, 215). For the 1993 Spring semester, she will teach Ceramics II for 3 credit hours and Elementary Art Methods for 3 credit hours. (Tr.p. 144, 215-16). Ms. Cox maintains office hours from 9:00 a.m. to 11:30 a.m. on Tuesday and Thursdays which is the same time that the Design class meets. (Tr.p. 134). As the Ceramics Instructor, Ms. Cox is required to give grades to students and submit a course syllabus for each course. (Tr.p. 134).
34. Jeanne Cox maintains on-campus office hours and is on campus an average of six hours per day. (Tr.p. 134). She is actively involved in the student recruiting process through art shows and workshops for students, and will be going to high schools to assist in recruiting students to Colby Community College. (Tr.p. 135, 142). She attends faculty and division meetings, and can participate in the KACC conferences. (Tr.p. 136). She is under the supervision of the Chairman of the Art Department. (Tr.p. 139). Ms. Cox has no advisees, serves on no committees, does not assist with the selecting and hiring of other faculty, and does not assist with student registration. (Tr.p. 139-42). Her immediate supervisor is Kathy Gordon, Chairperson of the Art Department. (Tr.p. 139).

**Molly Smith**  
*Fitness Lab Instructor*

35. Molly Smith is employed by Colby Community College as Fitness Lab Instructor and Step Aerobics Instructor under two separate part-time contracts representing each of her assigned activities. (Tr.p. 96; Pet.Ex. 5). She has held the position since May of 1991. (Tr.p. 96-99). There is no professional certification required prior to being an instructor but the position description for the Fitness Lab Instructor indicates a preference for a person with a P.E. or nursing degree. Ms.

Smith has a Bachelors degree in Recreation Administration.  
(Tr.p. 99).

36. As the Part-time Fitness Lab Instructor Ms. Smith is employed to work not to exceed 1,370 hours for the period July 1, 1992 to June 30, 1993 at \$8.62 per hour, and she is required to keep a time card. (Tr.p. 118; Pet.Ex. 5). Ms. Smith is eligible to participate in the Colby Community College cafeteria plan, and has the same holidays as the full-time faculty. (Tr.p. 127, 128). (Tr.p. 121). She teaches two fitness lab courses, and she is supervised by the Director of the Physical Therapist Assistant program. (Tr.p. 114).
37. The Fitness Lab is a recognized class at Colby Community College that satisfies part of the Life Style course requirement for graduation. (Tr.p. 101). The Life Style course is a combination of classroom lecture and work in the Fitness Lab. The Fitness Lab Instructor does not teach the lecture classes. (Tr.p. 108). The Fitness Lab is a one credit-hour course and the students are graded. (Tr.p. 111). A grade is given for both components. (Tr.p. 129). Non-student community members also enroll in the class for general physical exercise. (Tr.p. 109). Ms. Smith has prepared a syllabus for the Fitness Lab course. (Tr.p. 97-98).
38. The Fitness Lab is a Universal Super Circuit which has stationary bikes, Universal weight equipment, and other aerobic equipment. There is not a set lab time but the lab is open 35-40 hours per week during which students can do their lab time. (Tr.p. 122). The Fitness Lab would be comparable to a P.E. class with the students required to go through orientation and testing. (Tr.p. 108). The orientation takes place at the beginning of each semester in a traditional classroom setting. (Tr.p. 111).
39. The Fitness Lab Instructor's responsibilities include instructing students on the dynamics of fitness and the general physiology of exercise, performing physical fitness testing four times each year, having direct supervision of the lab, and seeing that the fitness lab equipment is properly used and maintained. (Tr.p. 100-01, 116). Ms. Smith is present in the Fitness Lab to instruct students on correct use of equipment, instruct students in areas of warm up and cool down, monitor the student's fitness level and intensity of work-out. (Tr.p. 116). She teaches the dynamics of fitness, does fitness testing, and then structures a personal fitness

program to improve each student's physical persona. (Tr.p. 122-23). Ms. Smith maintains office hours on Tuesday, Thursday and Friday from 11:30 a.m. to 1:30 p.m. (Tr.p. 102).

40. The Fitness Lab Instructor hires, and supervises the Assistant Fitness Lab Instructor and four work study students, and can have them reassigned if they do not perform properly, and would be responsible for adjusting any problem they have while employed. (Tr.p. 116, 124-25). Neither the work-study student or lab assistant are in the teacher's bargaining unit. (Tr.p. 125-26).
41. Ms. Smith does not serve on college committees, has no advisees, has no extra office hours, does not recruit students, and does not participate in commencement. (Tr.p. 110-19). She does participate in the college's benefits plan and in KPERS, and she has the same holidays off as the other full-time faculty at Colby Community College (Tr.p. 103, 128).

*Step Aerobics Instructor*

42. Ms. Smith's Step Aerobics contract covers one semester, and the position is not included in her main contract; rather it is included in a supplemental contract. (Tr.p. 96, 100, 107, 113).
43. The Step Aerobics course can be used to fulfil the lab portion of a Life Style course requirement. (Tr.p. 101). The class is a one credit-hour course which meets three times a week for one hour per session. (Tr.p. 113-14, 102).
44. The duties required of the Step Aerobics Instructor include instruction of the class, preparation for the class, evaluation of students, teaching particular activities and supervising the students. (Tr.p. 102). As the step aerobics instructor, Ms. Smith must draft a syllabus and grade her students. (Tr.p. 98, 99).
45. The fitness Lab Instructor and Step Aerobics instructor have duties similar to the duties of other physical education instructors and to the duties of lab instructors in other departments. (Tr.p. 104). Ms. Smith is regularly asked to perform duties that are required of other faculty members in the bargaining unit; duties for which she is not compensated. (Tr.p. 104). She has been asked to participate on faculty

committees and to attend Kansas Association of Community Colleges conferences. (Tr.p. 105).

**Jason Nuss**  
*Athletic Director*

46. Jason Nuss is employed full-time by Colby Community College for the 1992-93 school year as Athletic Director, Women's Basketball Coach and Sports Information Director. (Tr.p. 53; Pet.Ex. 3). His duties are contained in a single contract. (Tr.p. 89). He is supervised by the Dean of Students. (Tr.p. 67).
47. Mr. Nuss is in his 4th year as the Athletic Director. (Tr.p. 66). The Athletic Director coordinates the entire athletic program insofar as scheduling competition, scheduling officials and facilities, fund raising, promoting athletic events, providing support to the coaches and athletes, and approving scholarships, athletic trips and equipment purchase requests. (Tr.p. 56, 75, 79). In addition, the Athletic Director helps to develop a budget and oversee all expenditures, and selects the insurance company that carries the Athletic Department's insurance. (Tr.p. 56, 82). As the Athletic Director Nuss represents Colby Community College at Regional 6 Junior College Athletic Association meetings. (Tr.p. 74).
48. The Athletic Director has overall supervision and administration of the athletic program. (Tr.p. 67). All coaches in the athletic department report to the Athletic Department, and he is responsible for resolving any problem that develops in the athletic department involving coaches or athletes. (Tr.p. 67-68). The Athletic Director also supervises a secretary assigned to the Athletic Department. (Tr.p. 73).
49. There are seven Head Coaches supervised by the Athletic Director:
  - Kirk Hunter - Head Cross Country Coach
  - Joe Giarratuno - Head Men's Baseball Coach
  - Joan Jilka - Head Women's Volleyball Coach
  - Jim Morris - Head Men's Basketball Coach
  - Jason Nuss - Head Women's Basketball Coach
  - Carl Adams - Head Women's Softball Coach
  - Steve Lampe - Head Wrestling Coach (Tr.p. 213).

All the head coaches have half-time coaching contracts and half-time instructional contracts, except for Nuss and Adams. (Tr.p. 213). The head coaches teach 15 credit hours per year and the other half of their contract is devoted to coaching responsibilities. (Tr.p. 213). If a coach is unable to meet the 15 credit-hours per year teaching requirement, other duties are assigned. These may be class assignments or non-class assignments such as recruiting. (Tr.p. 214-15).

50. The Athletic Director does not have the authority to hire or fire the coaches. (Tr.p. 56, 62, 68, 69, 70, 73). Generally, hiring and firing decisions are made by the college president, upon recommendation of the dean of students (Tr.p. 57, 58). The Athletic Director makes recommendations on hiring head coaches and their dismissal. Such recommendations are not always followed but Mr. Nuss believes they influence the decisions made by the administration. (Tr.p. 56-59, 60, 62, 87, 94). The Athletic Director does not determine the coach's salary, salary increases, or eligibility to participate in the health insurance program but the Athletic Director can determine the rate of pay for assistant coaches. (Tr.p. 85, 92). The Athletic Director does evaluate the coaches, usually on an annual basis, and has the authority to discipline a coach. (Tr.p. 70, 71, 85, 87).
51. Student contact with the Athletic Director is limited to determination of eligibility for participation in a sport and reviewing compliance with the school's drug policy. (Tr.p. 64).

*Women's Basketball Coach*

52. The only class Mr. Nuss teaches is through his position as the Head Women's Basketball Coach. As the coach, Mr. Nuss is responsible for drafting a course description, course syllabus, grading the students, and recruiting new student-athletes. (Tr.p. 55, 56, 80). Students are given a grade for participation in the women's basketball program and earn one hour of college credit. (Tr.p. 55, 79). The Head Women's Basketball Coach is also responsible for hiring, supervising, promoting, and disciplining the assistant coach. (Tr.p. 91). He is directly responsible to the Dean of Students. (Tr.p. 55).

*Sports Information Director*

53. The Sports Information Director is responsible for the public relations program of the Athletic Department. Mr. Nuss' duties as Sports Information Director include promoting and publicizing upcoming athletic events, and reporting on what happened at past events. (Tr.p. 63, 77). This includes preparation of an athletic brochure for each sport season and news releases. (Tr.p. 77). The Sports Information Director does not supervise any employees. (Tr.p. 89).
54. The Sports Information Director's contact with students is limited to interviews to obtain information relating to athletic activities. (Tr.p. 63). His primary contact is with the coaches; the main source of information required to publicize or report on athletic events and athletes. (Tr.p. 64).

*Miscellaneous*

55. The 1992-93 Colby Community College catalog lists Jason Nuss under the heading "Administration." Fred Miller, Molly Smith, Frank Vacca and Pat Ziegelmeier are listed as "Academic Faculty." Carl Adams appears under the heading "Living Center Staff." Neither Melodye Duell nor Jeanne Cox is listed under any heading.

**CONCLUSIONS OF LAW AND DISCUSSION**

**ISSUE 1**

WHETHER THE APPROPRIATE BARGAINING UNIT FOR THE FACULTY AT COLBY COMMUNITY COLLEGE SHOULD REMAIN AS PRESENTLY COMPRISED OR SHOULD BE AMENDED TO PROVIDE CRITERIA THAT WILL ALLOW INCLUSION OF MORE PART-TIME FACULTY.

**ISSUE 2**

WHETHER THE POSITIONS OF DIRECTOR OF ATHLETICS, SPORTS INFORMATION DIRECTOR, WOMEN'S BASKETBALL COACH, LIVING CENTER NORTH COORDINATOR, INTRAMURAL DIRECTOR, WOMEN'S SOFTBALL COACH, AND FITNESS LAB INSTRUCTOR, STEP AEROBICS INSTRUCTOR, PIANO INSTRUCTOR AND ACCOMPANIST,



**SUNFLOWER SINGERS ACCOMPANIST, AND HUMANITIES INSTRUCTOR  
SHOULD BE INCLUDED IN THE UNIT DETERMINED TO BE  
APPROPRIATE FOR FACULTY AT COLBY COMMUNITY COLLEGE.**

*Unit Determination*

A bargaining unit is a group of employees who may properly be grouped together for the purposes of participating in a Professional Negotiation Act ("PNA") election and for meeting and conferring relative to terms and conditions of employment. The Secretary's role in determining the appropriateness of a unit arises only when there is an unresolved disagreement over the proposed unit or when such a unit is contrary to the policies of the PNA. It is the Secretary's duty to determine whether the unit set out in a petition for unit determination or clarification and amendment is "appropriate." It has been a long-standing rule that there is nothing which requires the bargaining unit approved by the Secretary be the only appropriate unit, or even the most appropriate unit; it is only required that the unit be an appropriate unit. Cf. Friendly Ice Cream Corp., 110 LRRM 1401 (1982), enforced, 705 F.2d 570 (1st Cir. 1983).

The source of the Secretary's authority to determine the scope of the proper unit is founded in K.S.A. 72-5420. Because of the number of factual considerations that must be taken into account in deciding upon an appropriate bargaining unit, the Secretary has not

found it possible to enunciate a clear test. The legislature has provided some guidance in K.S.A. 72-5420;

"In each case where the question is in issue, the secretary shall determine, on the basis of the community of interest between and among professional employees of the board of education, the wishes of the professional employees and/or the established practices among the professional employees including, among other things, the extent to which such professional employees have joined a professional employees organization, whether the unit appropriate for the purposes of professional negotiation shall consist of all persons employed by the board of education who are engaged in teaching or performing other duties of an educational nature, or some subdivision thereof, except that a unit including classroom teachers shall not be appropriate unless it includes all such teachers employed by the board of education."

Unit determinations are made based on all relevant factors on a case-by-case basis:

"In determining whether a group of employees constitutes an appropriate bargaining unit, the NLRB is not bound to follow any rigid rule. Since each unit determination is dependent on factual variations, the Board is free to decide each case on an ad-hoc basis." Cf. Friendly Ice Cream Corp., 110 LRRM 1401 (1982), enforced, 705 F.2d 570 (1st Cir. 1983).

While the applicable statute and regulations enumerate specific factors to be considered in making the unit determination, the list is not exclusive, and the weight to be assigned each factor is within the sole discretion of the Secretary. Cf. Kansas Association of Public Employees v. Depart. of S.R.S., Rainbow Mental Health Facility, Case No. 75-UCA-6-1990 (February 4, 1991).

*Definition of "Professional Employee"*

To resolve the issue of whether the positions of Director of Athletics, Sports Information Director, Women's Basketball Coach, Living Center North Coordinator, Intramural Director, Women's Softball Coach, Fitness Lab Instructor, Step Aerobics Instructor, Piano Instructor and Accompanist, Sunflower Singers Accompanist, and Humanities Instructor should be included in the existing bargaining unit involves a two stage process. First it must be determined whether the employees in those positions are "Professional employees" as defined in K.S.A. 72-5413(c). If not, the inquiry need go no further. If they are found to be "Professional employees" then it must be determined whether each of the positions has a sufficient community of interest with the other positions in the existing unit to warrant inclusion.

K.S.A. 72-5413(c) defines "Professional Employee" to mean:

*"any person employed by a board of education in a position which requires a certificate issued by the state board of education or employed by a board of education in a professional, educational or instructional capacity, but shall not mean any such person who is an administrative employee."*

"Board of Education" is defined to include "the board of trustees of any community junior college." K.S.A. 72-5413(b).

As is apparent, K.S.A. 72-5413(c) sets forth two alternative means by which an individual may qualify as a "Professional employee" for purposes of the Professional Negotiations Act; first,

certification by the state board of education, and second by employment in a professional, educational or instructional capacity.<sup>2</sup> The first alternative is not applicable in this case. It refers to those individuals typically identified as primary and secondary education "teachers" in public and private school systems. Pursuant to K.S.A. 72-1393 no such certification is required as a condition of employment to teach at a community junior college.

Of concern here is the second alternative; employment in a professional, educational, or instructional capacity at the community junior college. Since this portion of the statute is written in the disjunctive, it must be construed that the legislature viewed each "capacity" as having a separate and distinct meaning, with performance within any one being sufficient to confer the status of "Professional employee." Unfortunately, the legislature failed to define "professional," "educational," or "instructional" to provide guidance as to what activities might fall within each term.

Under K.S.A. 77-201, *Second*, the following rule is provided for statutory interpretation:

*"Words and phrases shall be construed according to the context and the approved usage of the language; but technical words and phrases,*

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<sup>2</sup> There is no question in this case that the individuals in question have met the requirement of being employed by a board of education.

*and such others as may have acquired a peculiar and appropriate meaning in law, shall be construed according to such peculiar and appropriate meaning."*

"Professional," "educational," and "instructional" are not technical words and have no specially defined meaning in the Professional Negotiations Act. However, these words do have an accepted, definite, and clear meaning in the English language and should be construed according to the context and approved use of the language. State ex rel., v. Minneola Hospital District, 177 Kan. 238, 244 (1954). As explained by the court in State v. Personnet, 114 Kan. 680, 688 (1923) that would indicate "one ought to be able to turn to his dictionary, encyclopedia or to reported cases defining the term."

We need not look beyond the statutes of the State of Kansas to find an acceptable definition for the term "professional." K.S.A. 75-4322(d) defines "Professional employee" to include 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 section, 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 by a board of registration or other public body established for such purposes under the laws of this state."*

This definition from the Kansas Public Employer-Employee Relations Act provides a comprehensive test to determine whether one is

employed in a "Professional" capacity, and is hereby adopted for use under the Professional Negotiations Act.

[3] "Instructional capacity" means role of teacher. Riddel v. Department of Employment Sec., 436 A.2d 1086, 1088 (1981). "Instruct" means "To furnish with Knowledge: Teach." Webster's II New Riverside University Dictionary, 1984, p. 633. Clearly this refers to a more structured form of learning in the traditional classroom setting, wherein the teacher is lecturing on a specific subject, and the students are listening and responding to questions. However, it can also encompass one-on-one methods of instruction. As noted in Claim of Dailey, 454 N.Y.S.2d 348, 349 (1982), a school social worker whose services consisted of counseling students regarding school-related problems which interfered with the learning process, generally pursuant to referrals by school personnel, was rendering services which were "instructional."

[4] By contrast, "educational" is a broad and comprehensive term embracing mental, moral and physical education. Board of Trustees of Leland Stanford Jr. University v. Santa Clara County, 150 Cal.Rptr 109, 112 (1978); Zorach v. Clauson, 99 N.Y.S.2d 339, 343 (1950); Harbor Schools, Inc. v. Board of Appeals of Haverhill, 366 N.E.2d 764, 767 (1977); First Nat. Bank & Trust Co. v. Falligant, 67 S.E.2d 473, 475 (19 ). Education is not limited to

knowledge acquired in the classroom, Wilhoit v. Fite, 341 S.W.2d 806, 816 (1960), and includes bodily as well as mental training. McNair v. School dist. No. 1 of Cascade County, 288 P. 188, 190 (1930). It has often been said that to educate means "to draw out" a person's talents as opposed to putting in knowledge or instruction. Webster's II New Riverside University Dictionary, 1984, p. 418. Against these definitions of "professional," "educational," and "instructional" the activities of each of the positions in question must be compared to determine if the individual is a "professional employee."

*Fitness Lab Instructor and Step Aerobics Instructor*

Looking first to the positions of Fitness Lab Instructor and Step Aerobics Instructor, the evidence shows the Fitness Lab and Step Aerobics are integral parts of Life Style courses for which students are graded, receive credit, and are required to complete for graduation. Students receive instruction on the dynamics of fitness, the physiology of exercise, and the correct use of equipment. As Ms. Smith testified, the courses are comparable to a Physical Education course. It is of interest that according to the Colby Community College catalog, the teaching responsibilities of athletic coaches Giarratuno, Jilka, and Morris, who are considered professional employees, are in the area of physical education.

As the court concluded in Summit School v. Neugent, 442 N.Y.S.2d 73, 79 (1981), supervised physical training and instruction by competent personnel is "educational" because it trains the body as well as the mind. Accordingly it must be concluded that the Fitness Lab Instructor and the Step Aerobics Instructor are employed by Colby Community College in an "educational capacity," and therefore are "professional employee" positions.

*Women's Basketball Coach and Women's Softball Coach*

Women's basketball and women's softball are considered physical education courses for which student-athletes are graded and receive one hour of credit each semester. A course syllabus is prepared by the Head Coach. The students receive on-the-field instruction at practice and during the games. "Instruction" in its common, ordinary meaning clearly describes the function of a coach. Chiodo v. Board of Ed. of Special School Dist. No. 1, 215 N.W.2d 806, 808 (1974); see also Matter of Curto, 517 N.Y.S.2d 107, 108 (1987) (Part-time college soccer coach was employed in an "instructional capacity."). Having been employed by Colby Community College in an "instructional capacity," the positions of Women's Basketball Coach and Women's Softball Coach must be considered "professional employee" positions.



*Humanities Instructor and Piano Instructor*

The Humanities Instructor teaches a class in Classical Cultures, a three-credit hour course for which students are graded. It must be assumed, since there is no evidence in the record to the contrary, that this course is taught in the traditional classroom setting. The Piano Instructor's Keyboard Skills I and III, and Applied Music Piano I courses are conducted during one-on-one weekly lesson sessions. There can be no question but that these are positions of an "instructional capacity" and as such are "professional employee" positions.

*Sunflower Singer Accompanist and Choir Accompanist*

Webster's New Riverside University Dictionary, 1984, p. 71 defines "accompanist" as "A performer, as a pianist, who plays an accompaniment." Under this limited definition, it cannot be said that an accompanist would be serving in a "professional, educational or instructional capacity," and so would not qualify as a "professional employee." However, the uncontradicted testimony of Ms. Ziegelmeier reveals that she does considerably more than simply accompany the Sunflower Singers and the Choir.<sup>3</sup> She serves as assistant vocal director when the choirs divide into individual

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<sup>3</sup> While there is some indication in the record that the college considered Ms. Ziegelmeier to be voluntarily providing services not required in her contract as a Choir or Sunflower Singer accompanist, the part-time contracts required her to "perform the services prescribed by the Board or its authorized representatives." It must be inferred, since she is working under the direction of the Choir Director and has been providing these services for numerous years, that these services are "prescribed" for her position.

vocal sections to work on notes, pronunciations and rhythm; assists in the selection of musical numbers; works on choreography to accompany the musical numbers; and assists in selecting the wearing apparel of the choirs. Through these responsibilities Ms. Ziegelmeier is working in an "educational,"<sup>4</sup> and possibly also an "instructional", capacity, and qualifies as a "professional employee."

*Director of Athletics*

The record shows that the entire work efforts of the Director of Athletics is directed toward the administrative function of supervising and coordinating the Athletic Department. No teaching function is included among the Director of Athletics duties, and student contact is limited to determination of eligibility for participation in a sport and reviewing compliance with the school's drug policy. In addition, there is no showing that the Director of Athletics is required to have knowledge of an advanced type or learning customarily acquired by prolonged study in an institution of higher learning. The record does not reveal any special education required for one employed in this position. None of the duties of the Director of Athletics appear to be of a "professional, educational or instructional capacity" to qualify as

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<sup>4</sup> Certainly, through the services she performs, Ms. Ziegelmeier can be said to be drawing out the talents of those participating in the choirs.

a "professional employee." Even if it were found that the Director of Athletics was employed in a "professional, educational or instructional capacity," given the nature of his supervisory responsibility over the head coaches, who are members of the bargaining unit, he most probably would not qualify as a "professional employee" under the "administrative employee" exclusion section of K.S.A. 72-5413(c).

*Sports Information Director*

As with the Director of Athletics, the responsibilities of the Sports Information Director are administrative in nature, i.e. the public relations program of the Athletic Department. No teaching function is included among the Sports Information Director's duties, and student contact is limited to gathering information for brochures and news releases. No special education was shown to be required of one employed in this position. None of the duties of the Sports Information Director appear to be of a "professional, educational or instructional capacity" to qualify as a "professional employee."

*Intramural Director*

The responsibilities of the Intramural Director are to organize and supervise student recreational activities during the school year. These activities take the form of intramural sports, e.g. volleyball, basketball and bowling, and special tournaments

such as pool and cards. The Intramural Director provides no instruction, participation is not a requirement for graduation, and the students receive no grades or class credit. As noted above, the purpose for these activities is recreation, not education. No special education is required to hold the position of Intramural Director. None of the duties of the Intramural Director appear to be of a "professional, educational or instructional capacity" to qualify as a "professional employee."

*Living Center North Coordinator*

While the record reveals that there is considerable student contact by the Living Center North Coordinator, the position is essentially a combination of apartment building superintendent, parent, cop, baby sitter and best friend. No special education is required to hold the position. The Living Center North Coordinator is not involved in any formal instruction, and any "education" which the student residents may obtain from contact with the Living Center North Coordinator would be incidental through one of his administrative functions. The evidence shows the Living Center North Coordinator's responsibilities to be primarily administrative, rather than of a "professional, educational or instructional capacity" such that it does not qualify as a "professional employee."

*Community of Interest*

[5] The primary concern of any bargaining unit determination is to group together only those employees who have substantial mutual interests in wages, hours and other conditions of employment. Commonly referred to as the community of interests doctrine, it stands for the proposition that in making a unit determination, the Secretary will weigh the similarities and differences with respect to wages, hours and other conditions of employment among the members of the proposed unit, rather than relying solely on traditional job classifications.<sup>5</sup> See Speedway Petroleum, 116 LRRM 1101 (1984),

While it is not necessary that all of the following elements be present, they are the "touchstones" frequently considered in determining whether inclusion of a classification in a unit is appropriate: functional integration; common supervision; skills and job functions; interchangeability and contact among employees; work situations (where members of the proposed unit work in the same physical area, the Secretary is more likely to find a community of interests); working conditions (this criteria refers to the degree of similarity in working conditions of the members of

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<sup>5</sup> Note that it is the employees' rather than the employer's community of interests that is controlling. Thus, in General Dynamics Corp., 87 LRRM 1705 (1974), the Board's determination was based on the functions of the employees rather than their project assignments or the operations as a whole.

the proposed unit as where employees are paid at an hourly rate, had the same starting time, punched the same time clocks, were subject to the same rules of conduct and disciplinary procedures were considered to have substantially the same conditions of employment); wages (a great disparity in wages between different job classifications may lead to a finding of separate interests); payment of wages (the frequency and manner of payment); fringe benefits (if all the members of the proposed unit receive the same fringe benefits, such as vacations, holiday pay, life insurance, hospitalization and medical insurance, and profit sharing benefits, there is a greater likelihood of a finding of common interests); geographical proximity (closely related to the concepts of work sites and interchangeability or contact among employees is the actual distance between the work facilities); history of bargaining; and employee preferences.

Fortunately, in this case it is not necessary to make a determination of whether professional employees hired under part-time contracts have a community of interest sufficient for inclusion in the established bargaining unit. The parties have agreed that they should be included. The issue that remains unresolved is at what level of employment does a part-time professional employee become so "part-time" that they no longer can

be considered "regular" or to have a community of interest with the members of the bargaining unit.

The Memorandum of Agreement defined the unit appropriate for professional negotiations as follows:

*"This agreement shall pertain only to Professional Employees as defined in K.S.A. 72-5413(c) employed on a full-time basis and regular part-time Professional Employees employed at Colby Community College main campus and the Norton Annex who: (a) teach 18 or more but less than 30 credit hours for the school year or are employed by semester to teach at least 9 credit hours for such semester; or (b) are employed in an educational or instructional capacity at least 24 hours per week for two consecutive semesters."*

The basis for the dispute here is two-fold; whether the positions were "professional employee" positions, which has been resolved above, and the test to be used to determine the minimum level of workload required to qualify one for inclusion in the unit. One apparent problem with the current definition is that, depending upon the employee's class assignments, the part-time faculty member's status relative to inclusion in the bargaining unit could change from semester to semester, or from year to year. Since the assignments are controlled by the College, the College could control whether a position will be included in the unit, and therefore covered by the Memorandum of Agreement concerning terms and conditions of employment; or will be a casual employee position with only such terms and conditions of employment as the college is willing to grant. The Alliance is seeking criteria that will

provide greater continuity in bargaining unit membership, and less employer control over membership in the bargaining unit.

An additional problem is how workload will be defined to determine whether the part-time employee is working at or above the minimum allowable level for inclusion in the unit. The Alliance seeks to use not only the class credit hours or instructional hours standard set forth in the present Memorandum of Agreement, but to also include student contact hours from combined teaching and/or supervision of other student related activities.

These same problems in determining which part-time faculty members should be included in a bargaining unit were addressed by the National Labor Relations Board ("NLRB") once it assumed jurisdiction over private institutions of higher learning. Beginning with University of New Haven, 77 LRRM 1273 (1971), and continuing with University of Detroit, 78 LRRM 1273 (1971); Manhattan College, 79 LRRM 1253 (1972); Tusculum College, 81 LRRM 1349 (1972); and Catholic University, 82 LRRM 1385 (1973), the NLRB developed, adopted, and applied a policy whereby part-time faculty members who teach at least one-quarter the normal load for full-time faculty members were considered regular part-time professional employees who must be included in the same unit as the full-time faculty, unless the parties agree to exclude them.



[6] Examining the NLRB policy, it appears to address the problems with the present Memorandum of Agreement definition, and has the added benefit of ease of application. Accordingly, the appropriate unit at the College shall be composed as follows:

" All Professional Employees as defined in K.S.A. 72-5413(c) at Colby Community College main campus and the Norton Annex employed on a full-time basis, and those regular part-time Professional Employees whose teaching load (measured in terms of credit hours taught or contact hours in an educational or instructional capacity or a combination of both) is at least one-quarter the normal for full-time faculty members, and who maintain this teaching load pursuant to written contract for at least one semester during the last three consecutive semesters, exclusive of the summer session."

With the above definitions of "educational" and "institutional," it appears unnecessary to list the non-classroom student activities which will constitute work-load for purposes of inclusion in the bargaining unit. By reviewing the purposes for the activity, the role of the activity to the overall goals of the college, and the responsibilities of the professional employee relative to that activity, the parties should be able to determine whether such activity is "educational" or "instructional" in nature.

To determine if those part-time employees in question who were found above to be professional employees qualify for inclusion in the existing bargaining unit, it will be necessary to calculate their respective teaching loads and compare that total with the

corresponding teaching load for full-time faculty. In this respect, the Memorandum of Agreement states the normal instructor workload for full-time Professional Employees shall consist of fifteen (15) credit hours or twenty (20) contact hours per semester. Under the four to one rule enunciated above, a regular part-time professional employee would be required to maintain a workload of 3.75 credit hours, or 5 contact hours, or a combination of the two, for the semester.

Head Women's Softball Coach Carl Adams, Head Women's Basketball Coach Jason Nuss, Sunflower Singer and Choir Accompanist Pat Ziegelmeier, and Fitness Lab and Step Aerobics Instructor Molly Smith are all involved in activities which account for only one or no credit hours but which require considerable amount of student contact each week to perform. For example, Mr. Adams spends 15-20 hours per week coaching softball, Ms. Smith's Fitness Lab is open 35-40 hours per week. Such would certainly constitute student contact time, however, the record is void of any evidence of how student contact hours are determined or calculated in deciding whether a full-time professional employee has met the twenty contact hours per semester requirement. Given the length of time the College has operated, it can only be assumed that some policy exists, either in written form or through past practice of the

College.<sup>6</sup> Unfortunately, without the formula it is presently impossible to determine whether these individuals qualify for inclusion in the unit based upon their contact hours. By applying the four-to-one policy set forth above to the contact hour policy of the College, the parties should be able to calculate whether each individual has reached the minimum work-load required for inclusion in the bargaining unit.

As to Ms. Ziegelmeier, in addition to her responsibilities with the Sunflower Singers and the Choir, she teaches three one-hour Keyboard classes and one three-hour humanities class. Regardless of the determination concerning contact hours as Accompanist, these six credit hours of class exceed the 3.75 credit hours needed to qualify her as a "regular part-time professional employee," and she should be included in the unit.

### ISSUE 3

**WHETHER MELODYE DUELL AND JEANNE COX SHOULD BE INCLUDED IN THE UNIT DETERMINED TO BE APPROPRIATE FOR FACULTY AT COLBY COMMUNITY COLLEGE.**

Colby Community College does not dispute that Jeanne Cox and Melodye Duell teach 15 credit hours under their contracts, or are employees of the community college, or are professional employees.

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<sup>6</sup> If either of the parties is not satisfied with the manner in which contact hours is determined, such should be a subject for negotiations and inclusion in the next memorandum of agreement.

The basis for seeking their exclusion from the bargaining unit is that they do not meet the requirements of the current unit definition. The record shows that Melodye Duell is teaching 9 credit-hours of Mathematics during the 1992 Fall Semester, and was to teach 6 credit hours in the 1993 Spring Semester. Applying the four-to-one rule for determining the new bargaining unit, Ms. Duell is to be included in the bargaining unit.

Likewise, Jeanne Cox is teaching 9 credit hours in the 1992 Fall Semester and 6 credit hours in the 1993 Spring Semester. There is some confusion as to whether Ms. Cox should be credited for three credit hours or six credit hours for instructing the Ceramics I and II courses since they meet at the same time. Whether the scheduling is for the convenience of the College or Ms. Cox, the fact remains that the College is able to offer both courses and treats both as three credit hours courses. If they were scheduled at two different times rather than together there is no question but that Ms. Cox would receive credit for both. There is nothing in the record to indicate that by scheduling the classes at the same time there is any less work for Ms. Cox in preparing or assisting students in either class. The only difference is she meets in the classroom once rather than twice each week. Such a difference does not seem sufficient to warrant reducing her credit

hours in half. Regardless, under the four-to-one rule she would still qualify for inclusion in the unit.

### ORDER

IT IS HEREBY ORDERED that the appropriate unit as amended by this order shall be composed as follows:

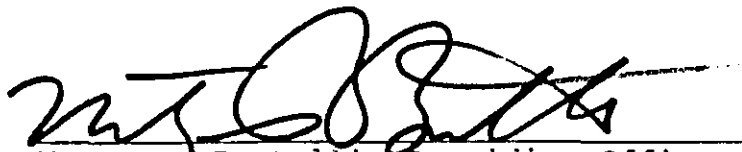
" All Professional Employees as defined in K.S.A. 72-5413(c) at Colby Community College main campus and the Norton Annex employed on a full-time basis, and those regular part-time Professional Employees whose teaching load (measured in terms of credit hours taught or contact hours in an educational or instructional capacity or a combination of both) is at least one-quarter the normal for full-time faculty members, and who maintain this teaching load pursuant to written contract in at least one semester during the last three consecutive semesters, exclusive of the summer session.

IT IS FURTHER ADJUDGED that the positions of Women's Basketball Coach, Women's Softball Coach, Fitness Lab Instructor, Step Aerobics Instructor, Piano Instructor and Accompanist, Sunflower Singers Accompanist, and Humanities Instructor are "professional employees" as defined in K.S.A. 72-5413(c) of the Professional Negotiations Act. The positions of Director of Athletics, Sports Information Director, Living Center North Coordinator, and Intramural Director are not "professional employees."

IT IS FURTHER ORDERED Pat Ziegelmeier, Melodye Duell and Pat Cox are determined to be regular part-time professional employees

and as such are included in the bargaining unit in accordance with the four-to-one rule adopted above. As for Head Women's Softball Coach Carl Adams, Head Women's Basketball Coach Jason Nuss, Sunflower Singer and Choir Accompanist Pat Ziegelmeier, and Fitness Lab and Step Aerobics Instructor Molly Smith, since the record is void of information concerning the College's policy on calculating student contact hours, that procedure is referred back to the parties to apply the four-to-one rule set forth above to the contact hour policy of the College, to calculate whether each individual has reached the minimum work-load required for inclusion in the bargaining unit. The Secretary shall retain jurisdiction over this matter should the parties encounter any problems in making the calculation.

Dated this 1st day of November, 1993



Monty R. Bertelli, Presiding Officer  
Senior Labor Conciliator  
Employment Standards & Labor Relations  
512 W. 6th Street  
Topeka, Kansas 66603  
913-296-7475

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### NOTICE OF RIGHT TO REVIEW

This Initial Order is your official notice of the presiding officer's decision in this case. The order may be reviewed by the Secretary of Human Resources, either on his own motion, or at the request of a party, pursuant to K.S.A. 77-527. Your right to petition for a review of this order will expire eighteen days after the order is mailed to you. See K.S.A. 77-531, and K.S.A. 77-612. To be considered timely, an original petition for review must be received no later than 5:00 p.m. on November 19, 1993 and should be addressed to: Secretary of Human Resources, Employment Standards and Labor Relations, 512 West 6th Avenue, Topeka, Kansas 66603.

### CERTIFICATE OF SERVICE

I, Sharon Tunstall, Office Specialist for Employment Standards and Labor Relations, of the Kansas Department of Human Resources, hereby certify that on the 1st day of November, 1993, a true and correct copy of the above and foregoing Initial Order was served upon each of the parties to this action and upon their attorneys of record, if any, in accordance with K.S.A. 77-531 by depositing a copy in the U.S. Mail, first class, postage prepaid, addressed to:

Bruce Lindskog, Director  
Northwest Kansas UniServ  
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Colby, Kansas 67701

H. David Starkey, Attorney  
Lowe, Starkey & Gatz  
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Joe Dick, Secretary  
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Sharon Tunstall