

BEFORE THE SECRETARY OF HUMAN RESOURCES
OF THE STATE OF KANSAS

U.S.D. 434 - CARBONDALE,)
KANSAS,)
Complainant,)
vs.)
SANTA FE TRAIL EDUCATION)
ASSOCIATION,)
Respondent.)

CASE NO. 72-CAEO-2-1987

Comes now on this 20th day of March, 1987, the above captioned complaint for consideration by the Secretary of the Department of Human Resources. Mr. Jerry Powell has been appointed by the Secretary to act in the capacity of his designee for the purpose of carrying out the provisions of K.S.A. 72-5413 et. seq. This complaint comes before the Secretary under the signature of Fred W. Rausch, Jr., Attorney at Law acting in behalf of the Board of Education of U.S.D. 434. The Board alleges that certain actions of the Association constitute violations of K.S.A. 72-5430 (c) (1) and (3) including the violation of K.S.A. 72-5421.

APPEARANCES

For the Respondent, Mr. Steve Lopes, UniServ Director of Sunflower UniServ District, Box 409, 116½ South Main, Ottawa, Kansas 66067.

For the Complainant, Mr. Fred W. Rausch, Jr., Attorney at Law, Suite 202, Ambassador Building, 220 Southwest 33rd Street, Topeka, Kansas 66611.

PROCEEDINGS BEFORE THE SECRETARY

- 1) Complaint filed January 21, 1987.
- 2) Response to complaint and counterclaims received January 26, 1987 as attachments to a cover letter under the signature of Steve Lopes, Director of Sunflower UniServ acting in behalf of the Santa Fe Trail Education Association.

- 3) Notice of hearing sent to parties on February 3, 1987.
- 4) Hearing conducted on February 17, 1987.
- 5) Brief of Complainant and Respondent received on March 2, 1987.

FINDINGS OF FACT

1) That counsel for the complaining party orally moved at the outset of the hearing for the case to be summarily dismissed by the Secretary's designee. This motion was based upon the argument that a proper answer had not been filed within the time limitations prescribed by law. Counsel for Complainant argued that the union's answer which was submitted by the Secretary's office to the Complainant, contained no heading indicating the name of the complaint or docket number. Further, this "answer" was not signed and, thus, Complainant had no idea from whom the authority to file the answer came. The Secretary's designee then reviewed the file, the applicable portion of the Professional Negotiations Act and the Kansas Administrative Regulations promulgated to effectuate the provisions of that Act, and ruled that, in fact, a timely answer was filed by Mr. Steven Lopes on behalf of the Santa Fe Trail Education Association. (T-5, 6, 7 and 8)

2) That the matter is properly and timely before the Secretary.

3) That Mr. Steve Johnson is the principal of the Santa Fe Trail High School. (T-13)

4) That Mr. Johnson received a request from either Peggy Chrisman or Jan Boggs to use the band room at the high school on January 14, 1987 for a meeting of the Santa Fe Trail Education Association. The request that Mr. Johnson received was to use the room after school. (T-13)

5) That Mr. Johnson observed that the meeting conducted on January 14, 1987 appeared to be breaking up at approximately 4:45 p.m. (T-14)

6) That Dr. Clarence Hickman is currently employed as superintendent of U.S.D. 434. (T-15)

7) That U.S.D. 434 is the sponsoring school district of the special education cooperative known as the "Three Lakes Special Education Cooperative". It is the functional duty of U.S.D. 434, therefore, to employ the special education teachers. As the sponsoring district, the Board of Education of U.S.D. 434 is directly responsible for the salaries and working conditions of the special education teachers. (T-16)

8) That special education teachers are assigned to teach not only in buildings operated by U.S.D. 434, but also in several other districts in the cooperative. Those districts are West Franklin, Lyndon, Osage City, Burlingame, Lebo, Waverly, Burlington and LeRoy Gritley. (T-17)

9) That there are approximately one hundred twenty-seven (127) teachers employed by U.S.D. 434. Of that number, approximately forty-three (43) are special education teachers. (T-18)

10) That based upon the mileage and driving time between the various cities in which the special education teachers teach, it would have been impossible for all of those special education teachers to have attended a meeting at the Santa Fe Trail High School if that meeting was to take place at the close of classes at Santa Fe Trail High School. In some cases, it would have been 4:30 p.m. or 5:00 p.m. before the special education teachers could have arrived at the Santa Fe Trail High School building. (T-23)

11) That the superintendent of schools, U.S.D. 434, testified that plans were in progress to eliminate the sponsoring district cooperative and to change the special education teachers of the various district to an interlocal employer-employee relationship. Therefore, the special education cooperative teachers would not fall under the 1987-88 contract between U.S.D. 434 and the Santa Fe Trail Education Association. (T-36)

12) That Mr. Robert Day is currently employed in U.S.D. 434 as a business teacher at Santa Fe Trail High School. Mr. Day attended the meeting called by the Santa Fe Trail Education Association on January 14, 1987. Mr. Day was present for the entire meeting. (T-39)

13) That Mr. Day recalls that during the meeting held in the band room on January 14, 1987, a vote was taken to determine whether or not the teachers desired to reject all the proposals as they had been put forth by the Board, or to accept all such proposals. Mr. Day recalls that the vote for rejecting the proposals was approximately thirty (30) some to reject as opposed to sixteen (16) to accept. (T-40)

14) That Mr. Day recalls considerable discussion of the proposals by the teachers at the January 14, 1987 meeting. Further, Mr. Day was satisfied with the conduct of the balloting at the meeting. (T-42)

15) That Mr. Stanley Birkbeck is employed by U.S.D. 434 as a special education teacher. Mr. Birkbeck primarily teaches special education classes at Burlington. However, Mr. Birkbeck does have students and classes other than within the Burlington district. (T-44)

16) That Mr. Birkbeck does not recall receiving a notification of the January 14, 1987 meeting, however, he feels confident that he must have received such notice. Mr. Birkbeck did not attend the January 14, 1987 meeting. (T-45)

17) That Barbara Schlobohn is employed in U.S.D. 434 as a special education learning disability teacher. Ms. Scholbohn conducts classes at Waverly. (T-47)

18) That Ms. Schlobohn received a notice of the January 14, 1987 meeting. That notice was a letter with an attachment that explained the three proposals from the Board. Ms. Schlobohn did not attend the January 14, 1987 meeting. Ms. Schlobohn testified that she did not attend the meeting because of the distance involved and because she pays her dues and considers that the NEA is capable of doing the negotiating on her behalf. (T-48)

19) That Pamela Toburen is employed by Three Lakes Cooperative, as administered by U.S.D. 434 as a special education teacher in Pomona. All of Ms. Toburen's classes are at Pomona. (T-49)

20) That although Ms. Toburen is aware that her work day theoretically ends at 3:45 p.m., she testified that she seldom left the building before 4:00 or 4:30 p.m. Ms. Toburen did not attend the January 14, 1987 meeting. (T-50)

21) That Ms. Toburen testified that she did not attend the January 14, 1987 meeting because time would have been a factor, but also that she was not sure that she would have attended even if time had not been a factor. (T-50)

22) That Jo Ann Price is employed by U.S.D. 434 as a special education teacher at Burlingame, Kansas. Ms. Price is aware that her work day ends at approximately 4:00 p.m. (T-52)

23) That Ms. Price did receive notice of the January 14, 1987 meeting. (T-53)

24) That Avelyn Green is employed through U.S.D. 434 by the Three Lakes Special Education Cooperative. Ms. Green is a special education teacher of learning disabilities at the Melvern Attendance Center. Ms. Green is aware that her duty day ends at approximately 3:30 p.m. (T-54)

25) That Ms. Green did not attend the January 14, 1987 meeting at Santa Fe Trail High School. Ms. Green testified that she did not attend the meeting because of the time factor of travel to the meeting and, also, at that time, she was helping with the high school basketball program. (T-55)

26) That Sylvia Plot is employed by U.S.D. 434 through the Three Lakes Special Education Cooperative to teach learning disabilities at Lyndon, Kansas. (T-56)

27) That Ms. Plot did receive notice of the meeting on January 14, 1987. However, Ms. Plot did not attend that meeting. Ms. Plot testified that as a KNEA dues paying member, she felt that the Association was representing her in the matter. (T-56)

28) That Ms. Plot is not aware that the meeting was called for the purposes of voting on the acceptance or rejection of a particular salary schedule. Ms. Plot recalls that the notice of the meeting from Peg Chrisman did not contain a specific salary schedule, rather, she recalls that the notice contained the options available. (T-57)

29) That Ms. Plot testified that it was her understanding that the January 14, 1987 meeting was not for the purpose of conducting a ratification vote. That opinion was at least in part, as a result of the fact that she did not receive a ballot upon which to vote. Ms. Plot recalls that in past years, she received a ballot upon which to vote for ratification, and in fact, recalls that one year everyone in her car pool received such a ballot. (T-59)

30) That Mr. Gary White is employed by U.S.D. 434 as a special education teacher. Mr. White is employed at Burlingame and Osage City. His normal dismissal time at Osage City is roughly 3:40 p.m. (T-62)

31) That Mr. White did not attend the January 14, 1987 meeting at the Santa Fe Trail High School. Mr. White testified that he did not attend the meeting because he has a latchkey child and he normally doesn't leave town. (T-63)

32) That Mr. White testified that he did receive notice of the meeting, and he understood from the letter that the teachers did have the option of voting on the proposals put forth by the Board. (T-64)

33) That Ms. Jan Boggs is employed in U.S.D. 434 in the Carbondale Center as a kindergarten teacher. Ms. Boggs serves as the chief negotiator for the Santa Fe Trail Education Association in contract negotiations with the U.S.D. 434 Board of Education. Further, Ms. Boggs was acting in that capacity during the negotiations for the 1986-87 contract. (T-66)

34) That Ms. Boggs believes that a ratification vote would have been necessary even if a majority of the teachers present at the January 14, 1987 meeting had voted to accept one of the two offers that the Board had proffered. (T-68)

35) That Ms. Boggs believes that if the representatives at the table had tentatively agreed upon one proposal or package, the Association would then have taken that agreement back to the teachers for a ratification vote. (T-73)

36) That Ms. Boggs recalls that at the January 14, 1987 meeting, there was a vote in which a majority of those present voted in favor of not accepting any of the three separate proposals before them. (T-76)

37) That Ms. Boggs recalls that none of the three offers made by the Board which were discussed at the January 14, 1987 meeting were congruent with the Association's final position in bargaining. (T-79)

38) That Ms. Boggs feels that it is the officers of the Association that are responsible for sending out ballots for ratification of an agreement. Further, that a ratification election would be conducted by Ms. Chrisman. (T-80)

39) That numerous documents, designed as negotiations updates, were sent by the Association to all certified staff including special education staff. These documents were sent to staff between the time of May 21, 1986 and January 14, 1987. These updates were sent to both KNEA members and non-members. (T-86)

40) That Ms. Boggs testified that the Association has conducted no negotiation meetings nor have reports been given that were open only to members of KNEA. (T-86)

41) That although the petition for assistance at impasse was filed by Dr. Hickman, the Association did not object to the filing of that document. (T-88)

42) That Peg Chrisman is employed by U.S.D. 434 at the Carbondale Attendance Center. Ms. Chrisman is currently president of the Association. (T-91)

43) That Ms. Chrisman was responsible for a letter dated January 11, 1987 informing all staff members of the district that a meeting was being called for the following week. This letter included the three offers that Ms. Chrisman had received on behalf of the Association from the school board. (T-92)

44) That Ms. Chrisman recalls that in the past, notices of ratification elections have included all of the items that had been tentatively agreed upon by the two negotiating teams. This information has been sent as a package agreement along with a cover letter, indicating that the package was the tentatively agreed upon contract for the following year. Further, that either a meeting was scheduled for a ratification election and/or that a ballot was sent with the package of information. (T-94)

45) That Ms. Chrisman feels that as of January 14, 1987, the Association did not have a tentative agreement with the Board of Education. (T-94)

46) That Ms. Chrisman believes that the Association is not prepared at the current time to conduct a ratification vote on any of the proposals put forth by the Board. Only after a single offer on all items had been discussed and tentative agreement was reached would she be willing to submit the package to the teachers for a ratification vote. (T-95)

47) That Ms. Chrisman believes that only a tentative agreement would have resulted if one of the three proposals had been voted upon and accepted by the teachers at the January 14, 1987 meeting. Ms. Chrisman believes that the complete package of proposals with exact language would then have been presented to all teachers within the district for a ratification vote. (T-99)

48) That Wanda Wilhite is currently employed at the Scranton and Carbondale Centers. Further, Ms. Wilhite is a member of the Association bargaining team. (T-102)

49) That Ms. Wilhite was responsible during the 1986-87 negotiations, for providing communication to the teachers who were employed through the Three Lakes Cooperative. (T-103)

50) That in a letter dated January 11, 1987, under the signature of Peg Chrisman, the following statement is found: "A meeting of teachers is being called on Wednesday, January 14, at 3:40 p.m. in the high school music room to discuss this letter. Come prepared to ask questions and take any appropriate action." The letter referenced in this statement is a letter directed to Mr. David Schauner, under the signature of Mr. Fred Rausch, Jr., in which three offers are presented from the Board of Education to the Teacher's Association. (See Defendant's Exhibit #7)

CONCLUSIONS OF LAW

This case comes before the Secretary alleging "That respondent has committed a prohibited practice by its failure and refusal to submit to the members of the bargaining unit the board's proposals as required by K.S.A. 72-5421, for failing and refusing to properly inform members of the bargaining unit of the contents of the board's proposals and by failure or refusal of Respondent to schedule an election on said proposals at a time when the majority of the members of the bargaining unit could be present to vote at said election." These allegations are argued to be in violation of K.S.A. 72-5430 (c) (1) and (3) including the violation of K.S.A. 72-5421.

K.S.A. 72-5421 states in part:

"A board of education and an exclusive representative selected or designated under the provisions of this act, or the act of which this section is amendatory, may enter into an agreement covering terms and conditions of professional service. The agreement becomes binding when ratified by a majority of the members of the board of education and a majority of the professional employees in the applicable negotiating unit who vote on the question of ratification of the agreement at an election conducted by the exclusive representative if at least a majority of the professional employees in the negotiating unit vote."

The statute then goes on to provide a process for absentee ballots. In affect this statute requires that certain procedures be followed before an agreement becomes binding on both parties. Failure of an Association to follow the procedure as outlined within this statute would result in an agreement which would not be binding on the parties. Failure of the Association would not in and of itself constitute a violation of the prohibited practice section of the Professional Negotiations Act. However, failure of an organization to provide an absentee ballot to an individual employee upon demand could, on a charge of prohibited practice by that employee, result in a violation of K.S.A. 72-5430 (b) (1). There are numerous other examples of such violations which could be cited by the Secretary's designee but

he need not consider all such possibilities since the allegations within the charge are specific.

It appears that the charge of the Board must fall into one of two categories. Either 1) the Association was somehow required to submit the Board's proposal to its membership for ratification but refused to do so, or 2) if the Association did schedule a ratification election such election was scheduled at a time when a majority of the bargaining unit members could not be present and that the Association either failed or refused to properly inform bargaining unit members of the Board's proposals. The Secretary's designee must, therefore, look at the record to determine whether the Association scheduled a ratification vote and then answer the legal question concerning the circumstances under which an organization must call for a ratification election.

The facts in this case and a companion case 72-CAE-6-1987 show that no tentative agreement was reached between representatives of the Board and representatives of the Association subsequent to meeting with the mediator. Rather attempts or offers were made by the Board for settling the existing dispute. Three separate offers to the Association were made by letter dated January 7, 1987 under the signature of Mr. Fred Rausch. These offers were made to Mr. David Schauner and passed along to the Association officers. Ms. Peg Chrisman then passed these offers along to the teachers by way of attachments to a letter, under her signature, which was dated January 11, 1987. Testimony shows that the January 11, 1987 letter was mailed January 12th to all regular and special education teachers within the district. Testimony further shows that at least some special education teachers received this correspondence. There is no evidence to indicate that the Association was selective in mailing out the January 11th letter.

The January 11, 1987 letter did not contain a specific salary schedule but did contain the three offers calling for three different base salaries. In this letter Ms. Chrisman called a meeting of all teachers for January 14, 1987 at 3:40 p.m. in the Santa Fe Trail High School music room. A specific

excerpt from that letter advised the teachers to; "Come prepared to ask question (sic) and take any appropriate action."

It should be noted, at this point, that in previous years the Santa Fe Trail Education Association specifically labeled ratification elections as such and that they provided ballots to teachers. The January 11, 1987 letter makes no mention of a ratification vote or for that matter of a vote for any purpose. Approximately 59 of the 127 teachers within the district gathered in the music room on January 14, 1987. During that meeting the teachers present voted to proceed with fact-finding rather than to consider any one of the Board's offers. The vote to proceed with fact-finding was approximately 42 to 17.

There can be no doubt that some of the special education teachers could not have attended the January 14, 1987 meeting called for 3:40 p.m. without making special arrangements to leave work early. There is no testimony or evidence in the record, however, to indicate that any special education teacher was upset over this problem. Testimony of the superintendent indicates that the Board is seriously considering desolving the special education cooperative thus negotiations for the agreement may not have been an important issue to special education teachers.

In any event there is no evidence within the record to show that the January 14, 1987 meeting was intended to be ratification election. In fact, all testimony and evidence points to the contrary. That is, it appears that the January 14, 1987 meeting was called to inform teachers and to ask for guidance in the next step in negotiations. The Secretary's designee cannot find that the purpose of the January 14th meeting was intended to be a ratification election. Nor can the Secretary's designee find any requirement within the Professional Negotiations Act which obligation the Association team to conduct a meeting to inform the teachers of the negotiations progress. The only requirements set by statute relate to the manner in which the ratification election is to be conducted once the organization representatives decide to call a ratification election.

The Secretary's designee must therefore dismiss that portion of the complaint relating to a "violation of K.S.A. 72-5421 and to the allegation that the Association committed a prohibited practice by scheduling an election at a time when a majority of the teachers could not be present.

The remaining issue to be addressed is whether there is a statutory requirement for an organization to submit Board proposals to the entire bargaining unit for a ratification vote at any time other than a time when the organization representatives desire to schedule a ratification vote.

The Secretary's designee finds nothing within K.S.A. 72-5413 et seq., which speaks directly to the question raised above. However, there are a number of statutory references to impasse and agreement and how each might come about. In addition historical principals also come into play when attempting to interpret legislative intent of statutory language.

K.S.A. 72-5426 states in part;

"If in the course of professional negotiation either the board of education or the recognized professional employees' organization, or both believe that an impasse exists therein, . . ."
(Emphasis added)

K.S.A. 72-5413 (h) defines mediation as;

"'Mediation' means the effort through interpretation and advice by an impartial third party to assist in reconciling a dispute concerning terms and conditions of professional service which arose in the course of professional negotiations between a board of education or its representatives and representatives of the recognized professional employees' organization."
(Emphasis added)

K.S.A. 72-5413 (e) defines Professional employees' organizations as;

"'Professional employees' organization' means any one or more organizations, agencies, committees, councils or groups of any kind in which professional employees participate, and which exist for the purpose, in whole or part, of meeting, conferring, consulting and discussing with boards of education with respect to the terms and conditions of professional service."

K.S.A. 72-5413 (f) defines Representative as;

"'Representative' means any professional employees' organization or person it authorizes or designates to act in its behalf or any person a board of education authorizes or designates to act in its behalf." (Emphasis added)

K.S.A. 72-5421, the statute governing ratification elections, speaks to a vote of "a majority of the professional employees in the applicable negotiating unit."

These statutes leave little doubt that the legislature intended to give broad latitude to an employee organization or its representatives to act in behalf of employees once an organization has been selected to represent the employees. It is these representatives who decide whether an impasse exists or whether a tentative agreement has been reached which should be submitted to the entire bargaining unit for a ratification vote. Certainly there is nothing in the Act which would preclude representatives of an organization from submitting all proposals to the membership nor is there language to require such action.

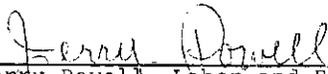
There is also this same authority within the statutes to allow a board representative to determine when and if association proposals will be presented to the full board. This legislative intent or theory is quite in keeping with historical principals in both public and private sector labor relations. Employees select representatives and charge those representatives with the responsibility, as well as the obligation to act in their behalf. The goals, objectives, and decisions of what to accept or reject of either the board or the organization is no business of the other party. In fact it is made a prohibited practice at K.S.A. 72-5430 (b) (1) and (2) and K.S.A. 72-5430 (c) (2) for either a board or an organization to interfere with the administration of the affairs of the other party.

In the instant case representatives of the professional employees' organization chose not to submit any of the offers to the teachers for a ratification vote. The record reflects that these representatives were assisted in making this decision by at least a portion of the teachers within the bargaining unit. There is no requirement in the law which mandated that the union conduct the January 14, 1987 meeting. The bargaining team for the Association could have made the decision to proceed with fact-finding without holding this meeting.

In light of the above conclusions the Secretary's designee must rule that the Association did not violate the provisions of K.S.A. 72-5430 by their actions in this matter. It is therefore the order of the Secretary that the charges be dismissed in their entirety.

The Secretary's designee notes that allegations of bad faith are made in a counterclaim contained in the Response To Complaint filed by Respondent. However this counterclaim was not urged during the formal hearing into this matter thus no facts nor willful intent was shown which would merit consideration by the Secretary's designee. The counterclaim is also ordered dismissed.

IT IS SO ORDERED THIS 20th DAY OF March, 1987.



Jerry Powell, Labor and Employment
Standards Administrator
512 West Sixth Street
Topeka, Kansas 66603-3150