

STATE OF KANSAS  
BEFORE THE SECRETARY OF HUMAN RESOURCES

Fort Larned-NEA,

Complainant,

vs.

Board of Education of U.S.D.  
495-Fort Larned, Kansas,

Respondent.

Case Number 72-CAE-1-1981

O R D E R

Comes now this 11th day of August 1980, the above-captioned matter for determination by the Secretary of the Department of Human Resources.

PROCEEDINGS BEFORE THE SECRETARY

1. Complaint against employer, U.S.D. 495, filed by Fort Larned Teachers Association-KNEA affiliate on August 11, 1980.
2. Complaint submitted to employer for answer on August 12, 1980.
3. Answer from employer received on August 29, 1980.

FINDINGS OF FACT

1. That Fort Larned NEA is a professional employees organization within the meaning of the act.
2. That the Board of Education of U.S.D. 495, Pawnee County Kansas is the appropriate employer for the purposes of this case.
3. That Fort Larned NEA was granted recognition as the representative of all the certified professional employees of U.S.D. 495 on May 4, 1970.
4. That contract negotiations have transpired between the professional employees organization and the Board of Education for several months.
5. That amendments have been made to the Professional Negotiations Act and said amendments became effective on July 1, 1980.
6. That the Board of Education has refused to negotiate on the subjects of evaluation, assignment-transfer, supplemental salaries, reduction in force, and indemnity provisions.

72-CAE-1-1981

DISCUSSION - CONCLUSIONS OF LAW - ORDER

In the instant case, two distinct questions arise; first, does the Secretary of Human Resources possess the jurisdiction to properly hear and rule in this matter and second, do certain actions performed by the employer constitute a failure to negotiate in good faith.

The question of jurisdiction comes before the Secretary in respondent's answer to the charge of failure to negotiate in good faith. Respondent arrives at his conclusion of lack of jurisdiction based upon language from a July 27, 1980 decision, rendered by the Honorable C. Phillip Aldrich, Judge of the District Court, 24th Judicial District, and entitled Unified School District No. 495, Pawnee County, Kansas vs. Fort Larned KNEA. In that case Judge Aldrich ruled that the court did have jurisdiction in matters resulting from negotiations which commenced prior to the effective date of the 1980 amendments to the Professional Negotiations Act. A similar case was heard by the Ellis County District Court, the Honorable Stephen P. Flood, presiding in July of 1977, Case Number 77C-110. Judge Flood held,

"that the entire new act is effective only on July 1 of 1977," that (negotiations) "had to be over with by July 1," and that he could not . . . "enjoin the School Board on the basis of bad faith before the act became effective, and the School Board is not required to negotiate further at this point."

Another similar case came before the Honorable Charles M. Warren, Bourbon County District Court Judge, in August of 1977, Case Number 77C-160. Judge Warren's ruling reflected nearly identical findings to the Ellis decision. In both rulings, Judges Flood and Warren found themselves unable to rule on the existence of impasse when there existed no such condition as "impasse" prior to the effective date of the amendments. Both judges, however, affirmed that the amendments became effective on a date certain. In both rulings, a critical element of each decision rendered was the legal termination of negotiations prior to July 1, which was the effective date of the amendments. This date was established in the case of National Education Association vs. Board of Education, 212 Kan 741, a decision which was subsequently overturned in the Supreme Court Case, In re Garden City Educators' Association vs. The Honorable Bert J. Vance and the Board of Education, U.S.D. 457 Finney Co. Kansas, in 1978. Certainly neither Judge Flood nor Judge Warren had any authority to make findings in regard to a condition which was not defined prior to the effective date of the amendments. Negotiations were required to cease prior to July 1 of that year and impasse procedures became a part of the law after July 1, of that year. In the instant case, however, the law set out certain acts to be prohibited practices prior

to July 1, 1980, the effective date of the amendments and such acts remained prohibited practices after July 1, 1980. The change in the law merely affected remedies and/or procedures for the resolution of prohibited practices charges brought by the parties. The 1980 amendments also charged the Secretary with the responsibility of declaring impasse. The Secretary agrees with Judge Aldrich's position that the 1980 amendments to the Professional Negotiations Act "operate prospectively and not retroactively." The Secretary disagrees, however, with his position that jurisdiction lies within the courts. The Secretary finds affirmation of this position in the case of In re Estate of Laue, 225 Kan. 177, 187, 225 Kan. 177, 188, which states,

"The general rule often stated is that a statute operates prospectively unless the language of the statute clearly shows that it is the intention of the legislature that it operate retrospectively." "It is also the rule that when a change of law merely affects the remedy or law of procedure, all rights of action will be enforceable under the new procedure without regard to whether they accrued before or after such change of law and without regard to whether suit has been instituted or not, unless there is a saving clause as to existing litigation."

Based upon these cases it is the finding of the Secretary that jurisdiction to rule on prohibited practice charges transferred to the Secretary as a procedural and/or remedial amendment on July 1, 1980. As such, jurisdiction is properly placed with, and such cases will be determined by the Secretary.

The second question, i.e., the commission of a prohibited practice by the employer, comes before the Secretary without benefit of formal hearing due to the fact that respondent admits complainant's allegation ". . . that it has not negotiated on the subject matters of evaluation, assignment and transfer, supplemental salaries, reduction in force and an indemnity provision." Respondent, rather, denies that the actions taken by it constitute prohibited practices.

The Secretary recognizes the changes made to K.S.A. 72-5413 et seq., in regard to the definition of "terms and conditions of professional service." Other legislative amendments were passed which help to define a negotiations "season" and to add a degree of finality to the process. Prior to the 1980 legislative amendments a negotiations "season", while not as clearly defined, was nonetheless recognized informally. Negotiations were commenced in December and usually culminated by September 1st when school reconvened. The concept of a negotiations "season" is an issue of primary importance in this case. The legislature has seen fit to further define and clarify that season. The 1980 amendments to the act do not, however, dictate a date certain on which negotiations must commence. Chapter 220 Section 8 (a) of the 1980 Session Laws of Kansas states in part,

"The board of education and the professional employee's organization shall enter into professional negotiations on request of either party at any time during the school year prior to issuance or renewal of the annual teacher's contracts." (Emphasis added)

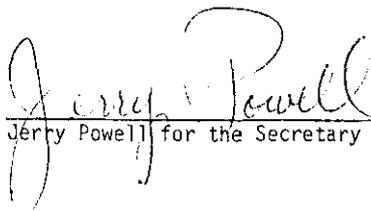
That amendment to the law also establishes a final date by which a notice to negotiate must be filed. The specific date is February 1. The amendments similarly do not dictate a date certain on which negotiations must cease. The amendments do establish a statutory impasse date of June 1 on which impasse resolution procedures must be commenced, but clearly allow the parties to voluntarily continue negotiations "during the course, or at the conclusion, of impasse resolution proceedings." While the 1980 amendments do not establish an absolute "season", the concept is certainly recognized and the element of finality is clearly introduced.

It can be argued that there is an economic cost attached to each and every "term and condition" of employment raised during any negotiations. In order for negotiations to be meaningful it is imperative that both parties clearly understand the number of pieces into which the "economic pie" must be divided. Prior to the 1980 amendments to the law the legislature set December 1 as the date on which issues to be negotiated were to be exchanged. It makes little difference at this point in time whether the issues in question were noticed at that time or not. If they were not noticed they were dead issues. If they were noticed, they arrived at the table as other than mandatory subjects and were rejected by the respondent as subjects to be discussed. If complainant was of the opinion that these subjects were mandatory items at that time and that the employer's rejection was improper, appropriate action should have been filed at that time. The Secretary has not been asked to rule on the negotiability of the specific subjects listed in the complaint. Therefore, for purposes of this discussion, the Secretary will assume that the 1980 amendments to the act made all such listed subjects mandatorily negotiable issues on July 1, 1980. At least seven months of negotiations have transpired during the the "season." The parameters within which those negotiations transpired were established on December 1, 1979. If the secretary was to rule that negotiations must now be commenced on several new issues, that ruling would establish new negotiations parameters which could negate at least seven and as much as ten months of effort expended by both parties. A case could be made for the withdrawal of any tentative agreements reached thus far, and an undue hardship would be worked upon both the employer and the employees. The Secretary adheres to the opinion that the legislature enacted amendments to the act to resolve and not to cause problems for the parties. The Secretary is further of the opinion that the legislature acted with the intent that amendments to the act operate prospectively and not retroactively.

Recognizing the concepts of a negotiations "season" and prospective application, the amendments regarding "terms and conditions" of employment would apply to negotiations commenced subsequent to July 1, 1980. The Secretary finds it impossible to believe that the legislature would have enacted rule changes in the "fourth quarter" which, if applied, could disrupt and destroy a process which commenced some ten months ago. While the current negotiations process in U.S.D. 495 could conceivably continue for some time to come, the subjects to be discussed in that process were established concretely in accordance with the statute not later than December 1, 1979. The Secretary is of the opinion that to expand that list of subjects at this time would be a retroactive application of the amendments and contrary to legislative intent.

For the above stated reasons the Secretary finds no violation of K.S.A. 72-5430 (b) (5) by respondent's refusal to negotiate issues which were other than mandatorily negotiable as of December 1, 1979. Therefore, the Secretary hereby dismisses the complaint against employer, Case Number 72-CAE-1-1981.

IT IS SO ORDERED, this 23<sup>rd</sup> day of October, 1980.

  
Jerry Powell for the Secretary