

BEFORE THE SECRETARY OF HUMAN RESOURCES
OF THE STATE OF KANSAS

PRAIRIE VIEW TEACHERS
ASSOCIATION,

Petitioner

v.

BOARD OF EDUCATION OF
UNIFIED SCHOOL DISTRICT NO. 362
La Cygne, Kansas,

Respondent.

Professional Negotiations Act:
Prohibited Practice Complaint
No. 72-CAE-19-1995.

Pursuant to K.S.A. 72-5413 et seq.
and K.S.A. 77-501 et seq.

FINAL ORDER

Pursuant to K.S.A. 77-527

NOW ON THIS 11th day of October, 1996 this case comes before the Secretary of Human Resources for a review of the presiding officer's Initial Order.

In accordance with the Secretary's May 3, 1996 Order Granting Review, both parties have filed briefs. The Prairie View Teachers Association filed its brief on Thursday, May 30, 1996; and the U.S.D. 362 Board of Education filed its brief on Monday, June 3, 1996. Neither party filed a response to the other party's brief.

After reviewing the Initial Order, the Petition for Review, and the briefs filed by both parties, the Secretary now issues the following final order.

Question to be Determined

Whether the U.S.D. 362 Board of Education committed a prohibited practice in violation of K.S.A. 72-5430(b)(5), when it unilaterally issued a residency requirement for all teachers hired after February 1, 1995.

72-CAE-19-1995-F

Findings of Fact

This matter was submitted to the presiding officer on stipulated facts, without an evidentiary hearing (Initial Order, pp. 4 -5). Neither party has challenged the presiding officer's recitation of the stipulated facts.

According to the stipulated facts, the school board's residency policy was adopted by the board at a regular board meeting on Monday, January 9, 1995. The policy requires that all new teachers hired after February 1, 1995 reside within the boundaries of the school district. Teachers who fail to comply with the residency requirement within 18 months after accepting employment with the district are "subject to" non-renewal of their individual teacher contract. See Finding of Fact #6.

Prior to the adoption of the residency policy on January 9, 1995, there was no residency requirement in any negotiated agreement between the school board and the teachers association; and the school board did not include the subject of residency in its notice for professional negotiations for the 1995 - 1996 school year. See Findings of Fact #4. The teachers association warned the board before it adopted the policy, that they believed the policy was mandatorily negotiable. See Finding of Fact # 21.

Conclusions of Law

To properly resolve this case, the Secretary must determine whether the subject of teacher residency is mandatorily negotiable. Under the Professional Negotiations Act K.S.A. 72-5413 et seq. a subject is mandatorily negotiable if it is a "term and condition of professional service", as defined in K.S.A. 72-5413(1) as follows:

"(1) "Terms and conditions of professional service" means (1) salaries and wages, including pay for duties under supplemental contracts; hours and amounts of work; vacation allowance, holiday, sick, extended, sabbatical, and other leave, and number of holidays; retirement; insurance benefits; wearing apparel; pay for overtime; jury duty; grievance procedure, including binding arbitration of grievances; disciplinary procedure; resignations; *termination and nonrenewal of contracts*; reemployment of professional employees; *terms and form of the individual professional employee contract*; probationary period; professional employee appraisal procedures; *each of the foregoing being a term and condition of professional service, regardless of its impact on the employee or on the operation of the educational system; ... "*

--- K.S.A. 72-5413 (1)(1) [Italics added].

The presiding officer reasoned in his Initial Order that the question of "residency" was not subject to mandatory negotiations, because "residency" was not an enumerated item under K.S.A. 72-5413(1). However, the Petitioner contends that the presiding officer should have considered the substantial impact of the Respondent's residency policy upon the termination or non-renewal of teacher contracts, a subject which is itself mandatorily negotiable.

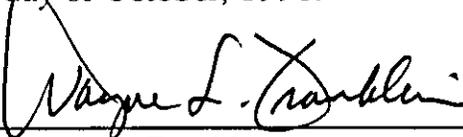
In the opinion of the Secretary, the italicized portions of K.S.A. 72-5413(1) cited

above are all that is necessary to decide this case. The subject of the teacher residency requirement appears to be mandatorily negotiable under both "termination and non-renewal of contracts" and "terms and form of the individual professional employee contract". These topics are mandatorily negotiable, regardless of their impact upon the individual professional employee or the operation of the educational system.

It should be remembered that the Professional Negotiations Act does not require that school boards "cave in" to teacher demands regarding the terms and conditions of their professional service. The Act simply requires that the school board meet and confer with teacher representatives before taking unilateral action on mandatorily negotiable subjects. In this case, it would not be burdensome for the Respondent to meet and confer about its proposed residency policy prior to implementation, and it would not impinge upon essential school board functions which are the exclusive prerogatives of management. Accordingly, the ruling of the presiding officer that no prohibited practice has been committed, must be and is hereby reversed.

The Respondent is directed to cease and desist all attempts to issue or enforce a residency policy for any of the professional employees in the bargaining unit, until such time as the Respondent has noticed that topic for professional negotiations and has completed all required meet and confer proceedings, including mediation and fact-finding, if necessary, in accordance with the provisions of K.S.A. 72-5413 et seq.

IT IS SO ORDERED this 11th day of October, 1996.



Wayne L. Franklin
Secretary of Human Resources

Notice of Right to Seek Judicial Review

This is a final order issued by the Secretary of Human Resources pursuant to K.S.A. 77-527. This order is subject to review by the district court in accordance with the Act for Judicial Review and Civil Enforcement of State Agency Actions K.S.A. 77-601 et seq.

Unless a motion for reconsideration is filed pursuant to K.S.A. 77-529, a petition for judicial review must be filed with the appropriate district court within 30 days after the Order is served upon the parties. Since this Order is being served upon the parties by mail, the parties are allowed a total of 33 days from the date on the certificate of mailing below to file their petition for judicial review. See K.S.A. 77-613 (b) and (d).

Pursuant to 1995 Supp. K.S.A. 77-527(j), K.S.A. 77-613(e), and K.S.A. 77-615 (a), any party seeking judicial review must serve a copy of its petition upon the agency's designated agent at the following address:

A.J. Kotich, Chief Counsel
KDHR - Legal
401 Topeka Blvd.
Topeka, Kansas 66603-3182

Any questions should be directed to the KDHR Legal office at (913) 296-4902.

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Certificate of Service

I, Shirley J Klein do hereby certify that on this 11th day of October, 1996 the foregoing Final Order was served upon the parties by depositing copies in the United States mail, first-class, postage pre-paid, addressed to:

Marjorie A. Blaufuss
Kansas - NEA
715 W. 10th
Topeka, Kansas 66612-1686
Attorney for Prairie View Teachers Association

Mary A. Winter-Smith
425 Main Street
P.O. Box 307
Mound City, Kansas 66056
Attorney for U.S.D. 362

Shirley J Klein
Name:
Title: *Secretary*