

2. September 11, 1989 - The complaint was reviewed by Monty Bertelli, Acting Senior Labor Conciliator in the Division of Employment Standard and Labor Relations and was mailed to Dr. John Hetlinger, Superintendent of U.S.D. 329, with a letter requesting and answer to the complaint.

3. October 4, 1989 - The U.S.D. 329 School Board filed an Answer to the Complaint signed by Norman D. Wilks, attorney for the Kansas Association of School Boards. In his answer, Mr. Wilks denied the U.S.D. 329 school board or its agents had committed any prohibited practice, and he moved for dismissal of the complaint for failure to state a claim on which relief could be granted.

4. October 4, 1989 - Mr. Bertelli mailed the school board's answer to the teachers' association and sent the parties a letter advising them a meeting would be scheduled in the near future to discuss the complaint.

5. November 2, 1989 - Mr. Wilks notified the agency his license to practice law had been suspended and that he was therefore withdrawing as counsel for the school board.

6. November - December, 1989 - The parties met with each other several times in attempts to settle the matter.

7. January 5, 1990 - Mr. Bertelli issued a prehearing order in the matter. The order informed the parties that Mr. Bertelli had been appointed as the presiding officer in the matter, and that in accordance with the wishes of the parties, there would be no formal prehearing conference.

Mr. Bertelli's prehearing order defined the issue to be tried and set out deadlines for the parties to complete discovery, exchange witness lists and documents, and request subpoenas. The order also advised the parties a hearing would be held on February 8 and 9, 1990 at the Maple Hill Elementary School.

8. January 31, 1990 - A notice of hearing was mailed to the parties by Don Doesken, an attorney on the Secretary's staff. The notice of hearing advised the parties that Mr. Bertelli had become unavailable to preside over the hearing and that Mr. Doesken would be the substitute presiding officer.

9. February 6, 1990 - Presiding officer Doesken conducted a telephone conference with both parties to inquire whether they were prepared for the hearing and to determine whether Mr. Marchello could represent the teachers' association at the hearing without being licensed to practice law in Kansas.

10. February 8 and 9, 1990 - The hearing was held at the Mill Valley Elementary School before Don Doesken, presiding officer, and a record of the hearing was kept by a certified shorthand reporter.

11. February 9, 1990 - At the close of the complainant's evidence, the Board moved to dismiss the claim for failure to present a prima facia case on which relief could be granted, and the presiding officer granted the motion.

WHEREFORE, the presiding officer now makes and issues the following:

FINDINGS OF FACT

1. In the spring of 1989, the U.S.D. 329 School Board and the Mill Valley-NEA teachers association bargained successfully with each other to modify their existing contract for the 1989-1990 school year. A tentative agreement was reached at the bargaining table on May 9, 1989, the agreement was ratified by teachers at a ratification meeting on May 24, 1989, and the ratified agreement was approved by the school board on June 12, 1989 at the board's regular meeting.

2. In preparation for the bargaining, the Mill Creek Valley-NEA polled the teachers in U.S.D. 329 about their concerns and held meetings to decide on their bargaining goals.

In due course, the association decided its goals for 1989-90 should include a raise in the base salary for all teachers plus increases in supplemental pay for teachers in several specific categories.

3. The school board also prepared a strategy for its side of the bargaining. The board decided it would agree to salary and benefit increases in certain categories, including teacher base salary, but that it would resist increases in certain supplemental contracts, where salaries were already thought to be above average in comparison to other school districts.

4. One of the goals of the teachers association was to obtain additional money in the supplemental contracts for high school athletic director and for cheerleader coach, while one of the goals of the school board was to resist increases in the supplementals for those positions.

5. During their last bargaining session on May 9, 1989, the school board's bargaining team made a final offer to the teacher team

which included a raise in base salary for all teachers, plus raises in the supplemental contracts for all but two of the supplementals under negotiation. The board's final offer did not include the increases desired by the teachers association for athletic director or cheerleader coach.

6. When the teachers association balked at the board's final offer, the board's bargaining team advised the teacher's team the teachers could adjust the allocation of money, if they desired, within the total package, but the board was not going to put any more money on the table.

7. The teachers' team then caucused and returned with a counterproposal. The teachers' team announced it would not accept any package that did not include increases in all the supplementals on the table, including those for athletic director and cheerleader coach. However, the teacher team indicated it would agree to a slightly lower dollar value for base salary in order to fund the two remaining supplementals.

8. The board's team then accepted the counteroffer from the teachers' team, and the parties issued a press release advising the public they had reached a tentative agreement. (Board Exhibit #6).

The bargaining teams then took the agreement back to their constituents to encourage them to ratify it for the 1989-1990 school year.

9. During the bargaining, the superintendent of schools sat in at the bargaining table as a financial consultant to the board's team, and he actively encouraged the board's team to make concessions to reach an agreement. The superintendent also actively supported the tentative agreement once it was reached.

10. As part of his effort to sell the school board on the tentative agreement, the superintendent sent a memo to the board members explaining what had happened at the last bargaining session. (Association Exhibit #1). The superintendent correctly advised the board in his memo that the teacher team had insisted on supplemental increases for the athletic director and cheerleader, and that the increases would not cost the board any more money because the teachers had agreed to fund those two supplementals by accepting a smaller increase in their base salary.

11. On May 10, 1989, the day after the tentative agreement was reached, the principal of Mill Valley Elementary School was in Alma on other school business, and he dropped in on the superintendent to find out about the tentative agreement. During their conversation, the superintendent truthfully advised the principal

that the teachers' team had insisted on increases in the supplementals for the athletic director and the cheerleader coach, and that they had lowered the board's base salary offer by about \$20 in order to fund those supplementals.

12. Later the same day, the principal returned to his elementary school in Mill Valley, and he inquired of the Mill Valley-NEA building representative whether it was true the teachers' union had agreed to lower their new base salary by \$20 to fund increases in supplementals for the athletic director and the coach.

13. When she heard her principal's statement, the building representative for Mill Valley-NEA became angry and contacted the union leadership for an explanation. However, her union representatives refused to give her a straightforward answer to her questions about the bargaining. As a result, on May 19, 1989 she distributed a flyer to all teachers in the district urging them to come to the ratification meeting on May 24th, 1989 to find out exactly what the bargaining team had done. (Association Exhibit # 2).

14. After the flyer was distributed, the cheerleader coach and the athletic director were upset, and they came to the superintendent at his office to express their dismay that the proposed increases in their supplementals were being criticized.

As a result of that meeting, the superintendent included in his weekly memo to board members a paragraph stating that problems had arisen with ratification of the tentative agreement. (Association Exhibit #3).

15. Copies of both of the superintendent's memos were included in a package of information sent by the board administrative office to Keen Umbehr, a candidate for board membership who had just been elected to the board and who was scheduled to be sworn in at the next board meeting.

When Mr. Umbehr received the superintendent's memos, he was not familiar with board policies on confidentiality and he was not aware the memos were intended to be kept confidential.

As a result, he shared the memos with James Marchello of Capital Uniserv and with Jack Messer, President of the Mill Valley-NEA, and they were upset by the superintendent's characterization of the final bargaining session. They interpreted the paragraphs in the memos to be an intentional slur on their competence and on their motives.

16. The superintendent's memos to the board members were never intended to be communicated to teachers or their representatives, but were intended by the superintendent to be kept private and

confidential. The memos were frank "backstage" communication between the superintendent and the board, and were not written to create dissent or dissatisfaction among teachers.

17. At the teacher's ratification meeting on May 24, 1989, teachers received an explanation for the first time from their bargaining team about what had happened at the bargaining session. The team explained they had held the line on their entire package of supplementals and that it was important to obtain increases in the supplementals for the athletic director and cheerleader coach, because of the recent changes in their responsibilities.

Most of the teachers were then satisfied with the explanation, and they ratified the tentative agreement.

18. Immediately after the ratification, Mr. Marchello encouraged the members of Mill Valley-NEA to file a prohibited practice complaint, on the theory that the controversy over the final bargaining session was a result of a campaign of misinformation orchestrated by the superintendent of schools.

19. Teachers at the Mill Valley elementary school who distributed the flyer attended the prohibited practice vote and vigorously denied their flyer had been the result of any misinformation campaign. However, those teachers were ignored and a prohibited practice complaint was filed over their protest.

DISCUSSION

This complaint is a classic example of a frivolous claim. In the view of the presiding officer, the claim is nothing more than an attempt by the Mill Valley-NEA leadership to avoid the very real political responsibilities that accompany their representation of employees with divergent needs and wants. The reality of union representation is that bargaining activities have to be explained and, even when explained, may be misunderstood or criticized by some of the members in the bargaining unit. The leadership of Mill Valley-NEA needs to take seriously its responsibilities to communicate with teachers about their actions. They should not expect the State of Kansas to insulate them from criticism.

The complaint in this matter asks the Secretary to issue what would amount to a gag order prohibiting any persons from discussing bargaining negotiations, whether publicly or privately, until after a tentative agreement is ratified. This demand is wholly inconsistent with the intent of the ratification process. Ratification is the phase of bargaining which requires each bargaining team to explain its actions at the table. Each team must sell the

tentative agreement to the people who will be affected by it.

It is certainly understandable that Mill Valley-NEA officers were upset by the superintendent's memos, since each of the memos included a paragraph about the tentative agreement which put a negative spin on the teacher team's counteroffer.

It is also understandable that Mill Valley-NEA officers were upset and defensive when some teachers at Mill Valley Elementary School circulated a flyer that criticized their actions.

However, the superintendent's memos were clearly never intended to be circulated outside the board, and the flyer that was circulated was written by the Mill Valley NEA's own building representative, not by the board, and it was distributed only after the teachers tried and failed to get a straightforward explanation from their bargaining representatives of what had happened at the table.

Finally, the statements made by the principal of the Mill Valley Elementary School to a few teachers at that school appear to have been an innocent request for clarification directed by the principal to the union's building representative.

There is no evidence in this record of any willful attempt by the board or its agents to interfere in the bargaining process or to commit any violations of K.S.A. 72-4330.

ORDER

The presiding officer hereby determines the complaint of Mill Valley-NEA is without merit and that the relief requested in the complaint is not appropriate.

This order is the decision of the presiding officer, and will become the final order of the Secretary of Human Resources in accordance with K.S.A. 77-530, unless appealed to the Secretary within 15 days in accordance with K.S.A. 77-527.

Entered in Topeka, Kansas this 12th day of March, 1990.



Don Doesken, Presiding Officer

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Initial order
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CERTIFICATE OF MAILING

I, Don Doesken, staff attorney of the Kansas Department of Human Resources, and presiding officer herein, do hereby certify that the above and foregoing is a true and correct copy of my initial order in Prohibited Practice Case No. 72-CAE-2-1990 as the same now appears in the official agency records.

I do further certify that on this 12th day of March, 1990 a true and correct copy of the above and foregoing initial order was served upon the parties by depositing a copy in the United States mail, first class, postage prepaid, addressed to:

Mr. Jack Messer, President
Mill Creek Valley-NEA
P.O.Box 501
Alma, Kansas 66401

Mr. Jim Marchello, Director
Capital UniServ
715 W. 10th
Topeka, Kansas 66612

Mr. Wesley Weathers
WEATHERS AND RILEY
4848 S.W. 21st, Suite 202
P.O. Box 67209
Topeka, Kansas 66667
Attorney for U.S.D. 329

Dr. John S. Hetlinger,
Superintendent of Schools
U.S.D. 329
P.O. Box 157
Alma, Kansas 66401

I also certify that in accordance with K.S.A. 77-526(h), a true and correct copy of the above and foregoing initial order was served this 12th day of March, 1990 upon Ray D. Siehndel, Secretary of Human Resources by leaving a copy at his office at 401 Topeka Ave., Topeka, Kansas.



Don Doesken

BEFORE THE SECRETARY OF HUMAN RESOURCES
OF THE STATE OF KANSAS

IN THE MATTER OF THE PETITION FILED *
BY: *
Spearville Teacher Association *
vs. *
Unified School District 381 *
(Spearville, KS) *
_____ *

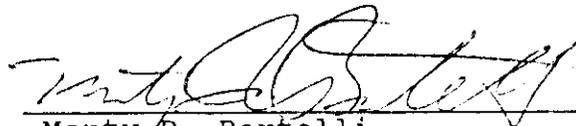
CASE NO: 72-CAE-1-1990

ORDER TO DISMISS

Comes now this 6th day of October, 1989, the
above captioned matter for consideration by the Secretary of Human
Resources.

Pursuant to the mutual agreement of the parties, and the
Secretary finding no statutory violation in the proposed action,
hereby grants his permission for the withdrawal and order the
dismissal of the complaint in this matter.

IT IS SO ORDERED THIS 12th DAY OF October, 1989 BY
THE SECRETARY OF HUMAN RESOURCES.



Monty R. Bertelli
Acting Senior Labor Conciliator
Designee of the Secretary

72-CAE-1-1990