

BEFORE THE SECRETARY OF THE
KANSAS DEPARTMENT OF HUMAN RESOURCES

Garden City Educators' Association,)
Complainant)

v.)

Board of Education,)
Unified School District No. 457,)
Garden City, Kansas)
Respondent)

Case No. 72-CAE-4-1989

Pursuant to
K.S.A. 72-5413 et seq.

**Findings of Fact, Conclusions of Law,
and Order**

This matter is before the Secretary to determine the merits of a prohibited practice complaint filed by the Garden City Educators' Association ("GCEA") against the Board of Education of Unified School District No. 457, Garden City, Kansas ("the school board").

The parties have submitted the matter for decision on briefs, as there is no dispute concerning the relevant facts.

Issues Presented

1. Did the U.S.D. 457 school board have the right under its contracts with teachers for the 1988-1989 school year to demand a cash settlement from teachers who desired a late release from their contracts?
2. When the board asked for cash settlements from certain teachers as a condition of release from their teaching contracts, did the board commit a prohibited practice under K.S.A. 72-5430(b)(5) and(b)(6) by making a unilateral change in the contract, or was the board merely enforcing its existing contract rights?

Proceedings Before the Secretary

1. August 26, 1988 - The Garden City Educators' Association filed a complaint against the Board of Education of U.S.D. 457, Garden City, Kansas pursuant to K.S.A. 72-5430a. The GCEA claimed the school board acted improperly when it demanded cash settlements from resigning teachers who failed to give timely notice of their intent to resign. The GCEA claimed the school board was collecting liquidated damages in a manner that was identical to a board proposal that had been considered and rejected by teachers during collective bargaining. The GCEA contended the board's actions amounted to an unlawful unilateral change in the bargained contract. GCEA asked the Secretary to remedy the alleged prohibited practice by entering an order prohibiting the board from collecting liquidated damages from resigning teachers.

2. August 29, 1988 - The GCEA's complaint was mailed to the school board for reply.

3. September 22, 1988 - The board filed its answer to the GCEA's complaint. The board stated its negotiations with individual teachers for liquidated damages were consistent with Article VII of the collective bargaining agreement that had been hammered out between the GCEA and the school board for the 1988-1989 school year. The board conceded it had noticed up the subject of liquidated damages for collective bargaining, but denied its power to negotiate with individual teachers for liquidated damages was in any way limited because of the failure to reach a collective

agreement on liquidated damages for all teachers in the district. The board contended it was completely within its contractual rights to negotiate for and receive a cash settlement from teachers who desired to break their teaching contracts with the board.

4. December 20, 1988 - The parties prepared, signed, and filed seven pages of factual stipulations setting out the essential facts of their dispute.

5. January 19, 1989 - The GCEA filed a memorandum brief setting out arguments and authorities in support of its complaint.

6. February 6, 1989 - The school board filed its brief setting out its arguments and authorities.

7. March 15, 1989 - The case was assigned to Don Doesken, an attorney on the Secretary's staff, to prepare an order deciding the merits of the complaint.

The Secretary's designee, having fully considered the briefs of the parties, the stipulations of fact, and the applicable law, now makes and issues the following: '

Findings of Fact

1. The contract between teachers and the school board for the 1987-1988 school year included a provision for the release from teacher contracts, which reads in pertinent part as follows:

Any teacher who is under contract with the District will be released from that contract only by formal action of the Board of Education. The teacher requesting the release shall make application therefor in writing to the Superintendent of Schools stating the specific reasons

for the requested release. Each such request will be judged on its own merits ...

Any teacher who is not released from his/her contract by Board action shall fulfill the terms of such contract, and any action by the teacher resulting in a failure to fulfill the terms of the contract shall amount to a breach of the contract and will subject the teacher to any and all legal remedies available. ...

(Article VII of the contract, Stipulation Exh. A.)

2. The school board's action of negotiating with teachers who desired to break their contract was consistent with Article VII of the teacher contract for the 1987-88 school year.

3. The school board did not unilaterally change the contract when it demanded damages from teachers who desired to break their contracts, but was entirely within its rights under the contract to make such demands, because the contract specifically states that

"... any action by the teacher resulting in a failure to fulfill the terms of the contract shall amount to a breach of the contract and will subject the teacher to **any and all legal remedies available.**" (Emphasis added).

4. The school board's attempts to negotiate a payment of damages with each teacher was nothing more nor less than an attempt to reach a cash settlement of the teacher's liability to the board for breach of contract.

Conclusions of Law

1. "Legal remedies" for breach of contract as used in Article VII of the collective bargain between GCEA and the school board includes the right of the board to be reimbursed for its incidental and consequential damages in the event a teacher chooses not to

fulfill his or her teaching contract.

2. The board did not make a unilateral change in the existing teacher contract when it demanded damages from teachers for breach of contract, but was simply exercising its existing rights set out in Article VII of the contract.

3. The U.S.D. 457 school board did not commit a prohibited practice by enforcing its existing rights under the contract.

4. Although the GCEA and the school board negotiated and failed to reach agreement about the subject of liquidated damages for all teachers, the failure to reach agreement on the subject in collective bargaining did not result in any loss by the school board of its rights to seek damages for breach of contract against individual teachers.

Order

The prohibited practice complaint of the Garden City Educators' Association is hereby determined to be without merit, and the GCEA's request for an order voiding the school board's negotiations with individual teachers over liquidated damages is hereby denied.

The parties are advised this order is final and will become enforceable thirty days from this date unless appealed to the district court within that time in accordance with the provisions of the Act for Judicial Review and Civil Enforcement of Agency Action K.S.A. 77-601 et seq.

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Entered in Topeka, Kansas this 24th day of July, 1989.

Kansas Department of Human Resources

By Don Doesken
Don Doesken, Secretary's Designee

Certificate of Mailing

I, Sharon Tunstall, Secretary III in the Division of Employment Standards and Labor Relations of the Department of Human Resources of the State of Kansas, do hereby certify that the above and foregoing is a true and correct copy of the order entered by the Secretary's designee in this matter, as the same is recorded within the files of the Kansas Department of Human Resources.

I further certify that on the 28th day of July, 1989, true and correct copies of the same were deposited in the U.S. mail, postage prepaid, addressed to:

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