

STATE OF KANSAS
BEFORE THE SECRETARY OF HUMAN RESOURCES

Unified School District 366 -
Yates Center, Kansas

Complainant,

vs.

Teachers Association of District 366,

Respondent.

CASE NO: 72-CAEO-3-1982

ORDER

Comes now this 17th day of June, 1982, the above captioned matter for consideration by the Secretary of Human Resources.

A P P E A R A N C E S

The complainant, Unified School District 366 (U.S.D. 366), appears by and through its counsel, Mr. William N. Lacy, Attorney at Law, 111 South State Street, Yates Center, Kansas 66783.

The respondent, Teachers Association of District 366, appears by and through its counsel, Mr. Paul Harrison, Director, Kansas-National Education Association, Sunflower UniServ, 422 South Main, Box 409, Ottawa, Kansas 66067.

PROCEEDINGS BEFORE THE SECRETARY

1. Complaint 72-CAEO-3-1982 filed by the Board of Education of school district 366 with the Secretary of Human Resources on August 5, 1981.
 2. Complaint submitted to respondent for answer on August 5, 1981.
 3. Answer submitted by respondent on August 24, 1981.
 4. Answer of respondent submitted to complainant on August 28, 1981.
 5. Pre-hearing conference with complainant and respondent scheduled for and conducted on October 7, 1981. Notice sent September 25, 1981. Parties to attempt to arrive at stipulations of fact.
 6. Pre-hearing scheduled for March 10, 1982. Formal hearing scheduled for March 11, 1982. Notice sent February 12, 1982.
 7. Pre-hearing rescheduled for March 24, 1982. Formal hearing rescheduled for March 25, 1982. Notice sent March 3, 1982.
 8. Formal hearing rescheduled for April 15, 1982. Notice sent March 25, 1982.
 9. Formal hearing conducted in Woodson County Courthouse on April 15, 1982.
- All parties in attendance.

72-CAEO-3-1982

FINDINGS OF FACT

Upon review of the transcript of the hearing held on April 15, 1982, the Secretary finds that:

1. U.S.D. 366 is the appropriate Board of Education in this matter and, therefore, has standing on which to file this complaint.
2. TAD 366 is the duly recognized representative of the professional employees of Unified School District 366, pursuant to K.S.A. 72-5413 et seq.
3. On April 6, 1981, Ms. Dawn Moews was a teacher in the high school, a member of TAD 366 and a member of the TAD 366 negotiating team.
4. On April 6, 1981, Mr. Glen Weston was president and chairman of the Board of Education of U.S.D. 366 and served as the chief negotiator for the Board.
5. On April 6, 1981, Ms. Dawn Moews read the letter marked "Joint Exhibit 1" to the Board of Education at their regularly scheduled meeting.
6. The letter marked "Joint Exhibit 1" was submitted to The Yates Center News bearing the signatures of forty-four of the forty-eight teachers employed by U.S.D. 366.
7. The letter marked "Joint Exhibit 1" discusses the position of teachers on salary issues.
8. The letter marked "Joint Exhibit 1" refers to a previous letter authored by Mr. Weston and published in The Yates Center News. The contents of the letter by Mr. Weston were found, by previous order of the Secretary, 72-CAE-7-1981, to constitute a prohibited practice in its attempt to circumvent the exclusive representation rights of TAD 366.
9. The letter marked "Joint Exhibit 1" referenced the actions of Mr. Weston in his previous letter as "at best poor judgment and at worst irresponsible behavior".
10. Neither the Board as a whole, or any member of the Board, objected to the reading of the letter by Ms. Moews at the meeting of April 6, 1981.
11. In July 23, 1981 issue of The Yates Center News, Faye Neussen, Chief Negotiator for TAD 366, was quoted as saying "The Associations's team had offered to drop the complaint if the Board made an acceptable offer to the teachers".

CONCLUSIONS OF LAW

During the course of the hearing on April 15, 1982, a motion to dismiss was made by the respondent. The motion (T-5) was for the dismissal of the complaint on the basis that the activities of TAD 366 are protected under K.S.A. 72-5450 (sic)*. It is the duty of the Secretary to examine the activities of the respondent in order to determine whether such activities are protected by the provisions of the Act. The content of this order is a fulfillment of that duty. Therefore, a

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*The Secretary has identified that the transcript contains a technical error. The statutory cite should be K.S.A. 72-5414

ruling on the motion will be made by the Secretary in the final order in this matter.

The objection by the respondent to the introduction of the Board policy for setting items for the agenda and a copy of the agenda for the meeting of April 6, 1981 was made on the basis of its relevance. The Secretary overruled the objection of the respondent. After consideration of the complainant's arguments, the Secretary concludes that it is beyond the authority of the Secretary to enforce Board policy regarding the setting of agenda items. It is the responsibility of the Board of Education of District 366 to enforce its policies. Furthermore, it is of no significance to the Secretary whether Ms. Moews had followed Board Policy for the setting of agenda items. It is also of no consequence to the Secretary whether Ms. Moews was on the agenda for the purposes of discussing the English curriculum or reading the letter marked "Joint Exhibit 1". Rather, the Secretary is concerned with the fact that the letter was read to the Board and subsequently published in The Yates Center News. Further it is relevant that the letter TAD 366 discussed its position on salary issues and expressed its opinion of Mr. Weston's behavior.

Complainant alleges:

1. That the letter marked "Joint Exhibit 1" was read to the Board of Education on April 6, 1981 for the purposes of harassing, coercing and discrediting an individual Board member.
2. That the letter marked "Joint Exhibit 1" was published in The Yates Center News for the same purpose.
3. That the complaint filed by TAD 366 against the Board regarding Mr. Weston's previous letter was intended to harass the Board and force an individual off the negotiations team. The complaint referred to is 72-CAE-7-1981.
4. That the statement by Faye Neussen, TAD 366 Chief Negotiator, that "the association team had offered to drop the complaint if the Board made an acceptable offer" was a form of "blackmail" to force a higher salary settlement from the Board.

Complainant's petition alleges that these activities are in violation of K.S.A. 72-5430 (c) (2) which states:

"(c) It shall be a prohibited practice for professional employees or professional employees' organizations or their designated representatives willfully to: . . .

(2) interfere with, restrain or coerce a board of education with respect to rights or duties which are reserved thereto under K.S.A. 72-5423 and amendments thereto, or with respect to selecting a representative for the purpose of professional negotiation or the adjustment of grievances;"

The Secretary has chosen to rule on the last two allegations first because the ruling on these issues requires little explanation. The allegation that TAD 366 filed a complaint (72-CAE-7-1981) against the Board for the purposes of harassment cannot be upheld. It is the right of either party to the negotiations to file a complaint when it believes that a violation of K.S.A. 72-5413 et seq., has occurred. If the complaint had been without merit it would have been dismissed. In that case, the complaint was meritorious and the Secretary ruled that a violation had occurred. Regardless of its outcome, however, TAD 366 was exercising a right granted by law.

Complainant in this case further alleges that the statement by Faye Neussen which referred to the possibility of "dropping TAD's complaint if the Board had made an acceptable offer" was blackmail, or as stated in complainant's brief "economic coercion". The Secretary refers to the previous ruling in which it was determined that the parties have a lawful right to file complaints pursuant to K.S.A. 72-5413 et seq. The offer to relinquish this right during the process of mediation is quite often posed by one or both parties to negotiations. This type of "give and take" is good faith negotiating. By stating the TAD 366 would drop its complaint if the Board had made an acceptable offer is not, in the opinion of the Secretary, "economic coercion" or "blackmail". Rather, it should have been interpreted as an attempt by TAD 366 to ease the hostilities between the parties. In the opinion of the Secretary this statement serves as evidence that TAD 366 sought not to intimidate or harass but rather to reach an acceptable settlement.

The Secretary feels compelled to address the complainant's brief, page three, where it refers to the case of International Longshoreman's Association v. N.L.R.B., 1960 (277 F. 2nd 681, 107 U.S. App. D.C. 329) from which the following quote was taken:

"A union cannot resort to economic pressure, including strike action, to force employers to agree to deal with representatives different from the unit certified by the Board."

It appears from the selected quotation presented in complainant's brief that this issue in the Longshoreman's case deals with economic pressure to force employers to deal with a union different from the one certified by the Board (National Labor Relations Board). This is an entirely different issue in that it is an issue of exclusive representation. It should be noted that the N.L.R.B. administers the National Labor Relations Act which provides employees with several persuasive economic tools, including the right to strike. Economic coercion under the National Labor Relations Act is not unlawful in itself. However, it may be used for unlawful purposes; i.e., to circumvent the exclusive representation rights of the certified union. Certainly the Kansas statute differs from the National Labor Relations Act in that it does not afford employees such tools as the right

to strike. But nowhere does the statute preclude employees from using what tools they lawfully possess, including the relinquishment of the right to file a particular complaint.

Complainant further alleges that the appearance before the Board by Ms. Dawn Moews for the purposes of reading the letter marked "Joint Exhibit 1" and the submission of said letter to a public newspaper, The Yates Center News, was an attempt to "harass, coerce and discredit an individual Board member".

Complainant alleges that such activities are a prohibited practice as provided at K.S.A. 72-5430 (c) (2) which states:

"(c) It shall be a prohibited practice for professional employees or professional employees' organizations or their designated representatives willfully to: . . .

(2) interfere with, restrain or coerce a board of education with respect to rights or duties which are reserved thereto under K.S.A. 72-5423 and amendments thereto, or with respect to selecting a representative for the purpose of professional negotiation or the adjustment of grievances;" (Emphasis added)

As stated in this provision, any attempt to persuade the Board to replace Mr. Weston as Chief Negotiator is an interference with the Board's rights to freely select a representative, thus a prohibited practice. It is necessary for the Secretary to analyze the contents of the letter to determine whether a prohibited practice has been committed. The initial paragraphs of the letter by TAD 366 indict Mr. Weston for disseminating false or misleading information and omitting other information. The teachers in later paragraphs express their "grave concern" that Mr. Weston was attempting to deny rights to the teachers that are basic to all citizens. The teachers conclude the letter with the following statement:

"Releasing figures in what can only be a misleading form after only one meeting between the board and association teams seems at best poor judgement and at worst irresponsible behavior." (Emphasis added)

In the opinion of the Secretary, it makes no difference whether such statements are true. Mr. Weston is the designated representative of the Board of Education of District 366 and is responsible only to the Board so long as his behavior did not violate the law. The proper avenue for determining whether Mr. Weston's letter was unlawful is to file a complaint with the Secretary. TAD 366 did file a complaint and was awarded a favorable judgment. According to law, TAD 366 had exhausted their legal remedies with a favorable judgment by the Secretary on that complaint and restitution has been accomplished. Because TAD 366 had effectuated restitution via provisions of K.S.A. 72-5413 et seq., the Secretary can only conclude that the reading of the letter to the Board of Education was intended to persuade the Board to replace Mr. Weston. Further evidence of the intent of TAD 366 can be found in the subsequent act of publishing the letter in The Yates Center News. The Secretary

is cognizant of the fact that the finding of a prohibited practice against Mr. Weston was published in The Yates Center News. Because the Secretary's orders are a matter of public record, the publication of the order was lawful. However, TAD 366 chose to go beyond lawful remedies in the submission of their letter to The Yates Center News. The political ramifications of publishing such a letter are easily predictable. The teachers are undoubtedly aware that the members of the Board of Education are elected public officials. Certainly the most salient method for coercing the Board to replace Mr. Weston would be to arouse the public. In the opinion of the Secretary, the discrediting statements contained in the letter read and submitted by TAD 366 were intended to coerce the Board to accomplish that end.

Therefore, the Secretary rules as follows:

1. That the reading of the letter marked "Joint Exhibit 1" by TAD 366 to the Board of Education of District 366 was an attempt to coerce the Board of Education to replace Mr. Weston, thereby violating K.S.A. 72-5430 (c) (2).
2. That the submission of the letter marked "Joint Exhibit 1" by TAD 366 to The Yates Center News was an attempt to coerce the Board of Education to replace Mr. Weston via the public, thereby violating K.S.A. 72-5430 (c) (2).
3. That the complaint filed by TAD 366 against the Board regarding Mr. Weston's previous letter was an exercise of their lawful rights and not a violation of K.S.A. 72-5430 (c) (2).
4. That the offer by Faye Neussen, TAD 366 Chief Negotiator to drop the complaint against the Board in exchange for an acceptable offer was not a violation of K.S.A. 72-5430 (c) (2) but rather constitutes good faith negotiations.

The Secretary hereby orders TAD 366 to cease and desist those activities which have been found in violation of K.S.A. 72-5413 et seq.

IT IS SO ORDERED THIS 17th DAY OF June, 1982.


Jerry Powell, Employment Relations Administrator
(Designee for the Secretary of Human Resources)
Labor Relations Section
512 West Sixth Street
Topeka, Kansas 66603-3178