

STATE OF KANSAS
BEFORE THE SECRETARY OF HUMAN RESOURCES

Unified School District 501 -
Topeka, Kansas

Complainant,

vs.

NEA-Topeka,

Respondent.

CASE NO: 72-CAEO-4-1981

ORDER

Comes now this 24th day of May, 1982, the above captioned matter for consideration by the Secretary of Human Resources.

APPEARANCES

The Complainant, Unified School District 501 (U.S.D. 501), appears by and through its counsel, Mr. William G. Haynes, Attorney at Law, 1300 Merchants National Bank Building, Topeka, Kansas.

The respondent, National Education Association-Topeka (NEA-Topeka), appears by and through its counsel, Mr. David M. Schauner, Attorney at Law, Kansas - National Education Association, 715 West 10th, C-170, Topeka, Kansas.

PROCEEDINGS BEFORE THE SECRETARY

1. Complaint filed by Joe Douglas, Jr., President, U.S.D. 501 on June 16, 1981.
2. Complaint submitted by Secretary designee to respondent for answer on June 23, 1981.
3. Answer received by Secretary designee on July 16, 1981.
4. Answer submitted to complainant on July 28, 1981.
5. Pre-hearing conducted by Jerry Powell on December 4, 1981. All parties in attendance.
6. Formal hearing scheduled for January 4th and 5th, 1982, before Jerry Powell as hearing examiner. Parties so notified December 7, 1981.
7. Formal hearing rescheduled for January 20th and 21st, 1982, before Jerry Powell as hearing examiner. Parties so notified January 5, 1982.
8. Formal hearing conducted January 20, 1982.
9. Transcript received March 2, 1982.

FINDINGS OF FACT

1. That NEA-Topeka is the certified representative of the professional employees of U.S.D. 501 for purposes of K.S.A. 72-5413 et seq.

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2. That the U.S.D. 501 Board of Education is the appropriate employer-board for purposes of K.S.A. 72-5413 et seq.

3. Negotiations meetings were conducted on May 11th and 14th, 1981. (T - 40)

4. That the meetings of May 11th and 14th, 1981, were conducted at the Topeka Education Center located at 1900 Hope, Topeka, Kansas. (T - 61, 63, 81, 103)

5. That the meetings of May 11th and 14th, 1981, were attended by audiences of from seventy-five (75) to one hundred seventy-five (175) individuals. (T - 8, 61, 76, 104)

6. That the majority of the audience attendees at the meetings of May 11th and 14th, 1981, were recognized to be professional employees of U.S.D. 501. (T - 7, 60, 71, 76, 96, 113, 144)

7. That the professional negotiations taking place on May 11th and 14th, 1981, were interrupted on various occasions by booing, applause, whistling, and/or shouting engaged in by the audience. (T - 8, 58, 70, 112, 124, 150)

8. That specific members of the audience were recognized as professional employees of U.S.D. 501. (T - 23, 58, 89, 97, 114, 126)

9. That the chief spokesperson for NEA-Topeka declined to be a party to censorship of the audience. (T - 75, 88, 96, 116, 127)

10. That NEA-Topeka encouraged attendance at the negotiations sessions by use of a Code-A-Phone and association publications. (T - 20, 25, 78, 83, 109, 111, 145, 148)

11. That Jeff Springer, a professional employee of U.S.D. 501, was identified by one witness as a "one time" participant in the disruptive activity which emanated from the audience. (T - 89)

12. That nowhere within the record is an agent, representative, or member of NEA-Topeka identified as one instigating, leading, or encouraging disruptive conduct occurring at the negotiations meetings of May 11th and 14th, 1981.

13. That on one occasion Don Larscheid made gestures to the audience which indicated support for the activities of the NEA team at the table. (T - 97)

14. That the president of NEA-Topeka, Priscilla Callison, wrote and circulated a document to the audience at the bargaining sessions. (T - 141, Complainant's Exhibit #4)

15. That the document referenced in Finding of Fact number fourteen (14) contained the statement, "Exercise decorum unless we have an organized effort to show disapproval". (Complainant's Exhibit #4)

16. That the document referenced in Finding of Fact number fourteen (14) was subsequently changed by Ms. Callison to eliminate the words, "unless we have an organized effort to show disapproval". (Complainant's Exhibit #6)

CONCLUSIONS OF LAW - DISCUSSION

This matter comes before the Secretary of Human Resources on petition of Mr. Joe Douglas, President, Board of Education, Unified School District 501, Topeka, Kansas. Within his complaint Mr. Douglas alleges violations of K.S.A. 72-5430 (c), (1), (2) and (3), and more specifically submitted the following as the basis of the complaint:

"The Association, by and through its officers, agents and representatives, since February 1, 1981, induced and encouraged certain individuals to attend negotiation sessions and to individually as well as concertedly to engage in conduct which tended to interfere with conducting the negotiations sessions in an orderly manner. Said conduct included jeering, shouting, and other such conduct which tended to intimidate and harrass members of the School Board's negotiating team.

Said conduct tended to impede the progress of the negotiations and designed and intended to disrupt and interfere with the negotiation process."

This then presents the Secretary with a preliminary question which must be answered, i.e., "Is such conduct, if prompted or engaged in by the organization, a violation of the statute?". In answer to that question let us review the statutory definition of professional negotiation as found at K.S.A. 72-5413 (g) which states:

"(g) 'Professional negotiation' means meeting, conferring, consulting and discussing in a good faith effort by both parties to reach agreement with respect to the terms and conditions of professional service."

Clearly, the process contemplated by the legislature was in no way intended to include coercion or intimidation by either party enacted upon the other. Each party to the process must be guaranteed the right to approach the bargaining table as an equal and to deal at the table with the representative chosen by the other. At no time are activities of the type alleged by the petitioner contemplated as a proper part of the process. To find otherwise would make such a mockery of negotiations that the issue merits no further discussion in this order. The question of guilt then rests on the involvement of the employee organization in orchestrating, prompting, or participating in activities designed to infringe upon the rights of the Board of Education and/or to disrupt and/or interfere with the negotiations process.

The legislature has seen fit at K.S.A. 72-5423 (b) to subject the negotiations process to the Kansas open meetings law and, in that respect, the right to observe the process must be granted to all. The negotiations process, however, does not lend itself well to this open scrutiny. By its very nature, there is both give and take in the process with the resulting agreement serving the best interests of both the Board and the represented employees. (The ultimate interests of the public and the students are then served by the harmonious labor-management relationship which is developed via the agreement.) It is ludicrous to assume that every professional employee will be totally pleased with every provision of any negotiated agreement.

Moreover, as an employee sits in the audience of an open negotiations session, in which his or her "bread and butter" are being discussed, it is quite easy to envision that person becoming quite impassioned without prompting. While the Secretary might understand the motivation behind behavior of the type alleged, he can in no way condone its happening. A review of the record clearly shows that the negotiation sessions of May 11th and 14th were repeatedly interrupted by activities of the audience. Estimates of the crowd indicate that those meetings were attended by large audiences with attendance estimated at seventy-five (75) to one hundred seventy-five (175) individuals, the majority of whom were professional employees of U.S.D. 501. Various members of the audience were recognized and identified as representatives and/or officers of NEA-Topeka, the employee representative. Finally NEA-Topeka has admitted that they encouraged the professional employees of the district to attend the negotiations sessions. These facts, however, do absolutely nothing in the opinion of the Secretary to prove NEA-Topeka's instigation or complicity in the disruptive activities. Most witnesses in this matter repeatedly admitted that they were unable to identify by name even one individual who participated in the disruptive activities. The only exception was one audience participant who was named and at no point in the record was that individual identified as a representative, agent, officer, or even a member of the association. Irrespective of that individual's affiliation with the association, the Secretary is of the opinion that a singular occurrence of participation hardly qualifies as the commission of a prohibited practice. The Secretary in no way condones disruptive activity and further believes that such individuals should be expelled from attendance when they engage in disruptive activity. Based on the foregoing, however, the Secretary is without grounds to find that the association is guilty of a prohibited practice.

The record does reflect the occurrence of one action by a member of the respondents' negotiations team which, in the opinion of the Secretary, has no place in professional negotiations. In that occurrence, the individual "jumped to his feet, clasped his hands and raised them in the air". While it is understandable that a crowd of individuals listening to discussions directly relating to their terms and conditions of employment might become rather vocal and disruptive, certainly the designated team members owe their counterparts professional courtesy and respect. Theatrics of the type described above can only be deplored by the Secretary and serve no useful purpose in the negotiations process. Witnesses have testified, however, that the negotiations process was interrupted on as many as fifty or more occasions and therefore, the Secretary is unable to find the association guilty of inducing or encouraging disruptive behavior based upon a single individual's "one time" participation.

The record reflects considerable testimony regarding a document circulated by the individual then serving as president of NEA-Topeka which stated in part, "Exercise decorum unless we have an organized effort to show disapproval." The reader of that document might logically assume that organized disapproval was a potential action of the association. In spite of their motives or potential plans, the record is void of evidence that the association ever carried those plans to fruition.

Finally, petitioner makes it clear that no member of the association bargaining team attempted to intercede in an effort to quiet the audience. As previously stated, the Secretary believes that disruptive members of any audience should be expelled, by the proper authorities, from meetings they interrupt. Those guilty of interruption often have no idea of the damage they inflict upon the relationship. A joint effort at crowd control would be greatly beneficial in the opinion of the Secretary. While some may believe that vocal crowd support serves some useful purposes during negotiations, they are ignoring some rather basic logic. If NEA-Topeka is dealing with the board on behalf of the teachers, and the teachers are invoking the board's anger, it is ridiculous to assume that the relationship between NEA-Topeka and the board will be anything but adversely affected. NEA-Topeka should certainly recognize the destructive effect of those actions and would be the most logical candidate to attempt to quell those actions, thus preserving their bargaining relationship. To do otherwise could give the board an easily defensible reason to cease negotiations until order could be restored. The Secretary would find it quite difficult to find anyone guilty of a prohibited practice for failing to proceed in such a circus atmosphere. Some might argue that vocal crowd support serves to advise your negotiations counterpart of your solidarity or sincerity and perhaps it does. That "show" of support, however, loses value when one considers the potential detriment of those actions. A casual observer to the process could, in fact, receive a very contrary message to the one intended. That is, it might appear that the representative is reliant on audience input in order to discern constituency support. Regardless of how these interruptions were conceived or perceived, they in fact serve as the best testimonial to date for exclusion of professional negotiations from provisions of the open meetings law. The Secretary, however, is expounding theory rather than dictating legal obligations on this point of the matter. The Secretary finds, therefore, that while advisable, the association had no legal obligation to join the board representative in his effort to quell the crowd.

In summary, the examiner sympathizes with the parties for being subjected to a "circus" atmosphere in which to conduct professional negotiations but is without

grounds on which to find NEA-Topeka guilty of prohibited practice.

It is, therefore, the order of the Secretary that 72-CAEO-4-1981 be dismissed.

IT IS SO ORDERED THIS 24th DAY OF May, 1982.


Jerry Powell, Employment Relations Administrator
(Designee for the Secretary of Human Resources)
Labor Relations Section
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