

BEFORE THE SECRETARY OF THE DEPARTMENT OF HUMAN RESOURCES

STATE OF KANSAS

K-NEA 101,)
Complainant,)
vs.) Case No. 72-CAE-10-1986
C.U.S.D. 101, Erie, Kansas,)
Respondent.)

ORDER

Comes now on this 24th day of October, 1986, the above captioned matter for consideration by Jerry Powell. This matter comes on petition of K-NEA 101 alleging violations of K.S.A. 72-5413 et seq. The matter came on for hearing on August 20, 1986 and the Secretary designee after having considered the testimony of witnesses, evidence presented at the hearing, and arguments of counsel, makes the following Findings of Fact, Conclusion of Law and Order.

PROCEEDINGS BEFORE THE SECRETARY

- 1) Petition filed under the signature of Mr. Douglas L. Hawkins, spokesperson on behalf of K-NEA 101 negotiating team. Petition filed June 9, 1986.
- 2) Answer to complaint filed with the Department of Human Resources on June 11, 1986 under the signature of Arvid V. Jacobson on behalf of Consolidated Unified School District 101, Neosho County, Kansas.
- 3) Motion filed with the Department of Human Resources on July 14, 1986 under the signature of Arvid V. Jacobson acting on behalf of Consolidated Unified School District 101, Neosho County, Kansas. This motion requested the Secretary of the Department of Human Resources to enter an order dismissing the complaint of K-NEA 101 on the grounds that the relief sought is no longer available and that the complaint is moot.

4) Answer to Motion to Dismiss received by the Department of Human Resources on July 23, 1986 under the signature of David M. Schauner, attorney for complainant, K-NEA 101.

5) Motion to Dismiss denied within a letter mailed to the parties dated August 8, 1986 under the signature of Jerry Powell, Labor and Employment Standards Administrator.

6) Memorandum mailed to both parties dated August 11, 1986 under the signature of Jerry Powell, stating the procedure under which the parties will proceed in resolving the prohibited practice charge.

7) Notice of Hearing mailed to both parties on August 14, 1986.

8) Hearing conducted in the Erie Public Library, Erie, Kansas on August 20, 1986.

9) Memorandum mailed to parties on September 11, 1986 under the signature of Jerry Powell notifying both parties that the negotiations session tapes had been transcribed.

10) Brief of Respondent received September 22, 1986 under the signature of Arvid V. Jacobson, attorney for Consolidated Unified School District 101, Neosho County, Kansas.

11) Seven day extension of time to file brief granted to David M. Schauner by Jerry Powell, Hearing Examiner, during a telephone conversation on Friday, September 19, 1986.

12) A letter was received within the Department of Human Resources on September 23, 1986 under the signature of David M. Schauner setting out in writing the reason for the request of an extension.

13) Letter mailed to Mr. Arvid V. Jacobson on September 23, 1986 under the signature of Jerry Powell, Labor and Employment Standards Administrator, granting an additional three days upon receipt of Mr. Schauner's brief for Mr. Jacobson to file any rebuttal.

14) Brief of Complainant received within the Department of Human Resources on September 29, 1986 under the signature of David M. Schauner, attorney for K-NEA 101.

15) Brief of Respondent in rebuttal received within the Department of Human Resources on October 2, 1986 under the signature of Mr. Arvid V. Jacobson, attorney for Consolidated Unified School District 101, Neosho County, Kansas.

APPEARANCES

Complainant, K-NEA 101, appears by and through its Chief Counsel, Mr. David M. Schauner, Kansas National Education Association (KNEA), 715 West Tenth Street, Topeka, Kansas, and Mr. Robert Medford, Uni-Serv Director, Southeast Uni-Serv District Unit 10, P.O. Box 424, Pittsburg, Kansas.

Respondent, C.U.S.D. 101, appears by and through Mr. Arvid V. Jacobson, Jacobson and Jacobson, Attorneys at Law, 526 West Sixth Street, Junction City, Kansas.

FINDINGS OF FACT

1) That the pending matter is properly and timely filed before the Secretary for consideration.

2) That there was a two year agreement covering 1985-1986 and 1986-1987 school year. (T-13, Joint Exhibit #1)

3) That the 1985-86 and 1986-87 contract contained a reopener on salary and fringe. (T-13, Joint Exhibit #1)

4) That Allene Hensley wrote a letter to the Board of Education of C.U.S.D. 101, asking to reopen negotiations on salary schedule and fringe benefits. (T-13, Joint Exhibit #2)

5) That a date for the first meeting of the parties to negotiate was suggested in the letter from Ms. Hensley to the Board of Education of C.U.S.D. 101. That suggested date was February 19, 1986. (T-4, Joint Exhibit #2)

6) That Mr. Arvid Jacobson wrote a letter to Ms. Hensley stating that he and Mr. Paul Bingle would be negotiating on behalf of C.U.S.D. 101. Further, he stated that he would be unavailable for a meeting on February 19, 1986 and he suggested three alternative dates: February 24, February 25, and March 4. (T-14, Joint Exhibit #3)

7) That the teacher team notified Mr. Jacobson that the March 4 date would be best of the three dates for them to meet. (T-16)

8) That the teacher team caused a survey to be taken concerning the amount of time consumed by supplemental duties. (T-17)

9) That the C.U.S.D. 101 administration approved the survey discussed in Findings of Fact #7 and the final survey was to come back to the Association through the building principals. (T-18)

10) That the Association made a proposal to the C.U.S.D. 101 bargaining team concerning the salary schedule at the March 4 meeting. The schedule represented a five and one-half percent (5.5%) increase in the base salary. (T-18, Joint Exhibit #6A)

11) That the salary schedule discussed in Findings of Fact #9 was later amended. (T-18, Joint Exhibit #6B)

12) That the March 4 meeting lasted approximately two and one-half hours. (T-19)

13) That the Association opened the March 4, 1986 negotiations session by stating, "We have come to negotiate salary, supplemental pay and fringe benefits. We would at this time like to know the Board's position on these areas of concern." (Transcript of negotiations March 4, 1986)

14) That the Board had no proposals for the Association at the March 4, 1986 negotiations session. (T-20) (Transcript of negotiations March 4, 1986)

15) That the Association presented a salary schedule proposal to the Board at the March 4, 1986 meeting, but declined to present any proposal on supplemental salary or fringe benefit. (Transcript of negotiations March 4, 1986)

16) That discussion was had between the parties relative to the salary schedule proposal made by the Association.

17) That the Board stated during the March 4 meeting that they would not be in position to make a salary proposal until after the Kansas Legislature and the Governor had acted on school finance. (Transcript of negotiations March 4, 1986)

18) That the Board, at the March 4 meeting, stated that they would be glad to meet with the Association prior to legislative action on school finance if the Association desired to meet. Further, the Board representatives asked the Association to give proposals on all three issues for their consideration. (Transcript of negotiations March 4, 1986)

19) That there was much discussion concerning the next meeting of the parties at the March 4 meeting but neither party suggested meeting prior to May. (Transcript of negotiations March 4, 1986)

20) That there was a great deal of discussion at the March 4 meeting between the parties concerning the process of negotiations. It appears that the Association wanted a proposal/counterproposal position on salary schedule prior to making presentations on other economic issues. The Board desired to have a total package of economic proposals prior to making a proposal/counterproposal or taking a position. (Transcript of negotiations March 4, 1986)

21) That the parties, at the March 4, 1986 meeting, tentatively scheduled a meeting for May 6, 1986. (Transcript of negotiations March 4, 1986)

22) That the Association teams sent a letter dated April 26 to Mr. Bingle of the Board team asking him to check off four acceptable dates for meetings. The Association suggested eight dates for meeting in this letter. (T-24, Joint Exhibit #9)

23) That Mr. Douglas Hawkins, negotiator for the teacher team, spoke with Mr. Paul Bingle, negotiator for the Board team, on the telephone concerning the proposed meeting dates referenced in the previous Findings of Fact. It is the unrefuted testimony

of Mr. Hawkins that Mr. Bingle stated that the Board did not desire to meet more than one time with the Association and further, that it was finally agreed between these two parties that the next meeting would occur on May 19, 1986. (T-25)

24) That there was a negotiations session held between the parties on May 19 at the Board office in which Mr. Jacobson and Mr. Bingle and the teacher team were present. (T-26)

25) That the negotiations session, on May 19, 1986, commenced with the teacher team asking the Board to give them some proposals. The Board then, through their spokesman, Mr. Arvid Jacobson, proceeded to analyze the teacher salary schedule proposal and then to provide a salary schedule proposal from the Board to the teachers. (See Transcript of Negotiations Session May 19, 1986)

26) That after some discussion, during the May 19, 1986 meeting on the Board's salary schedule proposal, the teacher team stated that they would like to caucus. After the caucus, the teacher team offered a counterproposal which consisted of a salary schedule, a supplementary schedule, fringe benefits and high school and elementary duty sheet for the Board's consideration. (See Transcript of Negotiations Session May 19, 1986)

27) That after considerable discussion of the teacher's proposal referenced in the previous Findings of Fact, the Board team asked for a caucus. After the caucus, the Board team informed the Association team that they were "rejecting your proposals". When asked by the teacher team why they were rejecting the proposals, the Board team stated, "We are rejecting your proposal because the Board of Education does not want to spend the amount of money that's involved in your proposals on teacher salaries." (See Transcript of Negotiations May 19, 1986)

28) That the Board, after having rejected the Association proposal as outlined in the previous finding proceeded to discuss

two salary schedules that they were proposing to the teacher Association. Discussion of the two salary schedules followed their presentation. The discussion related to the amount of money and how it would be spread on the salary schedule and the number of employees within the District. (See Transcript of Negotiations Session May 19, 1986)

29) That the two salary proposals presented by the Board to the Association at the May 19 meeting proposed no change on fringe benefits and no change on supplementary salary, except as a percent of change pursuant to the current contract or indexing system of supplemental salaries. (See Transcript of Negotiations Session May 19, 1986)

30) That after considerable discussion of the salary proposals as outlined in the previous finding, the Board representative told the teachers that the Board would be willing to agree to the Association's proposal in high school and elementary duties if, in fact, the teacher team was to agree to accept any one of the two or three proffered salary schedules. (See Transcript of Negotiations Session May 19, 1986, p. 29)

31) That the teacher representative, when given the proposal listed in the previous Findings of Fact, stated, "What you're saying is we would reject our own offer". (See Transcript of Negotiations Session May 19, 1986, p. 29)

32) That after the proffer as mentioned in the previous two Findings of Facts, the teacher team asked for a caucus. After the caucus, the teacher team stated, "We would be more willing to follow through on possibly one of these if we can get more of a consideration on an equitable salary, or a supplemental schedule". (See Transcript of Negotiations Session May 19, 1986, p. 30)

33) That after discussion of extra duty, the teacher team made an additional proposal which consisted of a five percent (5%) increase in base and the previously submitted fringe benefit

and extra duty sheet. The teacher representative then stated, "We are committed not to budge from this proposal. We would like you to take this package and consider it for our next meeting on Tuesday, May 27th at eight a.m." (See Transcript of Negotiations Session May 19, 1986, p. 44).

34) That upon hearing the teachers' proposal as outlined in the previous Findings of Fact, the Board spokesman stated, "At this time, the Board would reject your proposal and we would...we propose, repropose as our final offer either the Sixteen Hundred Eight-Fifty (16,850) salary schedule with the changes in the steps and increments or the Seventeen Thousand (17,000) base. That is the Board's final offer. We would reject your supplemental salary schedule. And, we are not interested in scheduling another negotiations session". (See Transcript of Negotiations Session May 19, 1986, p. 44)

35) That after the Board's statement contained within the previous Findings of Fact, caucusses were held. The teacher team then informed the Board that they would like to schedule another meeting for next week. The Board team then stated, "Can't do it. We will not agree to another meeting. If you reject the proposals that are on the table, as far as we're concerned, we are at impasse. . ." (See Transcript of Negotiations Session May 19, 1986, p. 46)

36) That the teacher team costed all their proposals based upon eighty-nine (89) certified employees within the district in the coming school year. It was the teacher team's belief that the Board costed their proposal based upon ninety-four (94) certified people within the District for the following year. (T-34)

37) That the difference in the number of certified staff members for the coming school year, as discussed in the previous Findings of Fact, was based upon the Board's decision to close the Stark Attendance Center and to RIF five "non-tenured" teachers. (T-35)

38) That the teacher team had in their possession on the night of March 4, 1986, proposals relating to supplemental salary schedules and fringe benefits. (T-58, 59, 92, 93)

39) That the teacher team did not want to present everything "in a package like the Board had requested". The teacher team perceived that the Board team wanted an entire package so that they could look at everything in one block and either accept or reject. The teacher team believed that there were certain items under each of the categories that could be negotiated separately. (T-60)

40) That at least one member of the teacher bargaining team recalls Mr. Arvid Jacobson, the Board representative, stating that his team needed to see the entire package of proposals by the teacher team in order to be able to give any response to any one proposal. (T-62)

41) That a protest to the closing of Stark Elementary was filed by patrons of the district. As a result of this protest, an election was scheduled or required to be held by C.U.S.D. 101 on the question of the Stark Attendance Center being closed. That election was scheduled for either August 7th or August 5th. (T-67)

42) That Board representatives stated to teacher representatives that in the event that the Stark Center was not closed, it would have to be restaffed and therefore, they needed to calculate the cost of their proposals based upon more than eighty-nine (89) certified staff members. (T-68)

43) That pursuant to the memorandum agreement existing between the teachers and the Board at the time of the negotiations in question, supplemental salaries are keyed or indexed to base salaries. As a result, when the base salary increases or decreases, supplemental salaries increase or decrease proportionately. (T-71)

44) That as a result of the Board's offer during negotiations to increase the base salary, the supplemental salaries also increased. (T-72)

45) That the counsel for the Board stipulated that at no point during the negotiations process did the Board tell the Association that they could not afford any of the teacher's proposals. Affordability was not an issue raised to the Board's negotiating team. (T-85)

46) That although Teacher's Exhibit #1 was commenced in February and completed in April, the information contained within that exhibit was never shared with the Board in the negotiations session. (T-91)

47) That the information contained in Teacher's Exhibit #1 purportedly shows extra money available within the C.U.S.D. 101 budget. (See Teachers' Exhibit #1)

48) That Mr. Paul Bingle is a certified administrator within the employ of C.U.S.D. 101. Mr. Bingle was also a member of the negotiating team operating on behalf of the Board of Education in the past negotiations session. (T-99)

49) That within each of the last four years, line item 214, teachers salaries within the C.U.S.D. 101 budget, has been underspent. (T-107)

50) That based upon the unexpended funds within C.U.S.D. 101's budget in previous years, the district could, theoretically, afford to fund the Eighty-Three Thousand and 00/100 Dollars (\$83,000.00) increase in salaries for teachers in C.U.S.D. 101 for 1986-1987. This affordability was limited by the Board's concern about the levy. (T-109)

51) That the three salary schedules prepared by Mr. Bingle and presented to the teacher negotiating team were prepared without seeing the entire package from the teacher Association. (T-110)

52) That the Board offered the teachers approximately Eighty-Four Thousand Dollars (\$84,000) of the approximately One Hundred Thirty Thousand Dollars (\$130,000) "new" money available under the school finance bill which was sent to Governor Carlin. (Transcript of Negotiations May 19, 1986, p. 27)

CONCLUSION OF LAW

This case comes before the Secretary on petition of the KNEA negotiating team under the signature of Douglas L. Hawkins, spokesperson. The petition alleges violations of K.S.A. 72-5430 (b) (5). Specifically, the petition alleges that the Board negotiating team refused to meet often enough with an effort to reach an agreement. The "issue" is further clarified by Counsel for Complainant in his brief as;

Did C.U.S.D. 101's pattern of refusal to bargain at reasonable times and intervals and in delaying the scheduling of bargaining meetings constitute a pattern of procrastination inconsistent with its affirmative duty to bargain in good faith with K-NEA 101, all as set forth in K.S.A. 72-5430 (b) (5)."

The facts in this case indicate that the teacher team requested to reopen the negotiated agreement pursuant to the following language found on page 1 of the negotiated agreement (Joint Exhibit #1):

". . . The agreement shall become effective on July 1, 1985 and shall terminate for all purposes on June 30, 1987 provided, that either party may request to negotiate Article I, Fringe Benefits, and Article, VI Salary Schedule, for the 1986 - 87 school year by giving notice to negotiate those articles on or before February 1, 1986, pursuant to K.S.A. 72-5423."

Although the above language lists Salary Schedule as article VI, the agreement itself lists Salary Schedule as Article V. Further, the issue of supplementary salary schedule is contained within Article V. It, therefore, appears that the Association was within its rights to reopen the agreement as they requested in their January 28, 1986 letter (Joint Exhibit #2).

The Association requested to meet on February 19, 1986. Mr. Jacobson, acting in behalf of the Board, notified the district that he was unavailable to meet February 19th but that he could meet on February 24th or 25th or on March 4, 1986. The Association team then chose to meet on March 4, 1986.

The March 4th meeting commenced with the teachers asking the Board representatives to state their position on certain areas of concern. The teacher team then presented the Board with a salary schedule. When asked by the Board to present all proposals, the teacher team declined to do so. Although proposals had been prepared by the teacher team on other issues, the teacher team desired to negotiate on one proposal at a time. The teacher team believed that the Board wanted to accept or reject a total package of proposals if presented by the teacher team.

After discussion on the salary schedule presented by the teacher team, the Board team stated that they desired to see all proposals and that they needed to wait on Legislative action on school finance prior to making proposals to the teacher team. During the March 4, 1986 meeting neither party objected to not meeting again until May. The Board team stated that they would be willing to meet before May but they could not present positions before that time.

It is not totally clear how the May 6, 1986 meeting was cancelled but one witness testified that Mr. Bingle had indicated that he would be unable to meet on that date. Further, the circumstances surrounding the rejection on the April 26th letter are not clear within the record. The examiner must conclude that the Board team rejected the idea of picking four dates for meeting and that May 19th was chosen as the date to meet.

At the May 19th meeting, the Board offered three salary schedules and informed the teacher team that they did not desire to change the supplementary salary schedule. Further, the Board team informed the teacher team that if the teacher team would agree to accept one of the Board's proffered salary schedules, the Board team would accept the teacher proposal on extra duty pay.

There was considerable discussion at the negotiations sessions concerning the closing of Stark Attendance Center and whether this action resulted in saving money which had or might be

earmarked for teachers' salaries. It is clear that the teacher team believed any savings in this area should be utilized in granting increases to teachers.

After considering the Board's offer at the May meeting, the teacher team made one last proposal and stated that they could not "budge" off of that proposal. The Board team repeated their offer and stated that it was a final offer. The Board team refused to schedule any more meetings and stated that impasse must exist.

Counsel for Complainant has repeatedly stated the issue in this case to simply be one of; "whether the district failed to be willing to meet a sufficient number of times in an attempt to meet a bilateral agreement" (T-63), or that the ". . . Board willfully chose not to meet often enough with an effort to reach an agreement." (T-77). Each time counsel has framed the "issue", he has emphasized number of meetings. However, the record of the hearing covers offers, demands, acceptance and rejection of proposals, and discussion of positions.

The examiner believes that good faith negotiations entails more than meeting a "sufficient" number of times. Some parties may be able to reach an agreement in one meeting while others might require dozens of meetings to reach agreement or impasse. Therefore, one must not only look at the number of meetings and the parties' willingness to schedule more meetings but also look to the substance of each meeting and the progress therein.

K.S.A. 72-5413 (g) states:

"'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."

This definition really gives one little guidance upon which to judge the good or bad faith of the required meeting, conferring, consulting, and discussing. There is, however, a historical test applied when attempting to make these judgement calls. Certainly, one test is the parties' willingness to schedule

meetings. Another test is that of reasonableness of offers and demands. Still another test is that of movement on the issues by the parties. This last test of movement must, however, be tempered by the thought that neither party is required to make a concession on any one issue. Rather, it must be demonstrated that one is willing to move on a package of offers or demands in order to reach an agreement on the issues being negotiated.

Looking first at the Board's willingness to schedule meetings, the examiner finds that the Board seemed reasonable in their rejection of February 19th and its suggestion of meeting February 24th, 25th or March 4th. Next the Board offered to meet at any time the Association might desire but stated that the Board could make no offers until after the first week of May. The examiner would question whether the Board could or should make no financial proposals until the school finance act was finalized, but he must respect the Board's belief since the teacher team apparently accepted the idea. That is, the transcript of the March 4, 1986 negotiations session reveals that the teacher team did not express any great concern with waiting that long.

The record is not very clear with respect to the request to meet tendered April 26th. The occurrences surrounding this letter and the phone calls does indicate an unwillingness on the part of the Board to meet with the Association. However, the Board did relate reasons for their desire not to meet.

The May 19th negotiations transcript reveals that both the Association and the Board indicated in negotiations that their last offers were pretty much set in concrete. One party characterized their position as not being able to "budge" and the other party stated the offer was a "final" offer. Without regard to the time of year, one must look at this characterization of offers to determine whether an impasse existed or more meetings should have been scheduled. If either party had indicated a willingness to reconsider the positions or to meet with their constituents for reconsideration, it would have been evident that more meetings needed to be scheduled. In the absence of such indications it seems reasonable to assume impasse and request the assistance of a third party neutral.

When viewing the Board's reluctance to schedule meetings subsequent to the March meeting, one must also consider the Board's request for positions on all economic proposals. Board representatives, on numerous occasions, made requests for all economic demands. In light of the fact that the teachers had requested to reopen, it seems logical to assume that it would be incumbent upon the teachers to state their demands. The explanation given by the teachers for their negotiations strategy appears analogous to a situation wherein two parties negotiate the purchase price of an automobile one piece at a time. This method of negotiations might culminate in a final price but surely it will require more time with more chances for negotiations to fail. Additionally, many statements of the teacher team could lead a reasonable person to conclude that the teachers desired to place the Board team in a position of both "buying" and "selling" the automobile. It is most difficult for the examiner to find any merit in the logic of negotiations strategy put forth by the teacher team. One certain result of such actions is to alienate the other party to negotiations, thus creating hard feelings between the parties. Therefore, while the examiner does not condone the Board's reluctance to meet, he certainly understands their frustration and cannot find this reluctance to meet to be of a willful nature.

Turning to the question of reasonableness of offers, the examiner interprets the facts to show that the Board made reasonable offers insofar as "new" money is concerned. The question of the number of teachers in the district was most certainly not answered at the time of the negotiations sessions. Thus, it was logical for the Board to cost the contract based upon the possibility that staffing of Stark might be necessary. In addition to the staffing question, two other elements concerning the availability of funds were introduced by the teachers. Those two elements are: 1) savings by the closing of Stark, and 2) unspent budget from previous years. Again, the

examiner considers the uncertainty of the Stark closing as a circumstance to be considered prior to spending any savings. The unspent budget may well be a viable alternative available to the Board for improving teachers salaries. Although a study of the availability of unspent funds was undertaken and completed by the teachers prior to the May meeting, testimony indicates that the study was never shared with Board representatives. In the absence of an agreement and prior to a recommendation that such funds be utilized in this manner, comes a determination that additional improvement is warranted. The processes designed by the Legislature for resolving such a dispute are mediation and fact-finding. Certainly, little testimony in the record goes to the weight of this issue, thus, the examiner is in no position to determine whether a reasonable offer should include unspent funds. Further, the Board has stipulated that availability of funds was not an issue in these negotiations.

When viewing the offers and demands, the examiner concludes that both parties have been reasonable in their efforts.

Movement on the issues is difficult to judge when a reopening of a contract is involved. Few issues afford less movement than when numerous issues are involved. The facts in the instant case show that little movement occurred by either party. In fact, little chance for movement was available in light of the number and duration of meetings. However, it appears that the Board gave as much effort to movement as did the teachers. That is, they presented three salary schedules and agreed to accept one proposal put forth by the teachers.

In sum the examiner views the actions of both parties to the process as less than that which was contemplated by the Kansas Legislature when the Act was designed. Certainly, the parties did not act and react in a manner which the examiner would find acceptable if either had exerted any extra effort to show the other their willingness to cooperate. It appears to the examiner that the negotiations efforts, however limited, have at this point in time culminated in an impasse, thus necessitating the intervention of a third party neutral.

The examiner finds no willful violations of K.S.A. 72-5430
(b) (5), and, therefore, orders the dismissal of the pending
charges.

IT IS SO ORDERED THIS 24th DAY OF October, 1986.



Jerry Powell, Designee of the Secretary
Labor Relations & Employment Standards
Section - Department of Human Resources
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