

BEFORE THE SECRETARY OF THE DEPARTMENT OF HUMAN RESOURCES
STATE OF KANSAS

BUTLER COUNTY COMMUNITY COLLEGE)
EDUCATION ASSOCIATION,)
)
Petitioner,)
)
vs.) Case 72-CAE-13-1989
)
BUTLER COUNTY COMMUNITY COLLEGE,)
)
Respondent.)

ORDER

NOW, on this 27th day of September, 1990, the Respondent's motion to dismiss comes on for review. Upon review of Respondent's arguments, applicable statutes and regulations, and case law the presiding officer finds that the motion should be denied.

It is the position of Respondent that the parties have settled the issue of salary inequities and therefore there is no longer a case in controversy requiring determination by the Secretary. Accordingly, Respondent citing National Education Association - Topeka, Inc. v. U.S.D. 501, 227 Kan. 529 (1980), urges the Secretary to follow the Kansas Supreme Court and declare the issue moot and dismiss same. While an actual case in controversy may be required for purposes of appellate review by the courts, such is not necessarily a requirement upon the Secretary under the Professional Negotiations Act.

Two reasons are presented by the court for its position on the case in controversy requirement. First, "it has never been the policy of this court to write advisory opinions." Thompson v.

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Kansas City Power & Light Co., 208 Kan. 869 (873 (1972)). By contrast, the Secretary is called upon to render advisory opinions relative to the Professional Negotiations Act and provides such opinions where there are existing questions of public interest which should be answered to provide guidance for future interaction between professional employees and Boards of Education.

Second, the court "is not statutorily empowered to render advisory opinions". NEA-Topeka, Inc. v U.S.D. No. 501, supra at 531. Pursuant to K.S.A. 72-5430a(b) once the complaint has been filed the Secretary "shall hold a hearing", "shall make findings of fact", "shall either dismiss the complaint or determine that a prohibited practice has been or is being committed" and "shall enter a final order." Additionally pursuant to K.A.R. 49-23-6(b) a petition may be withdrawn by the Petitioner after the filing of an answer "only with the approval of the Secretary." Such indicates a grant of discretion to the Secretary to continue with a complaint after the Petitioner seeks to withdraw apparently even if the parties have settled the case.

The rationale for such a position is the continuing relationship between the parties and the need to provide the guidance referred to above should similar circumstances be encountered in the future. It can also be argued that regardless of the settlement between the parties, the question of whether a prohibited practice has been committed still remains.

In the instant case, the factual situation presents a question of first impression which may be encountered by these parties or other parties in the future and an Order of the Secretary will

provide guidance to assist these parties and others in future dealings under the Professional Negotiations Act. Therefore, the motion to dismiss must be denied.

IT IS SO ORDERED this 27th day of September, 1990.



Monty R. Bertelli
Senior Labor Conciliator
Employment Standards & Labor Relations
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NOTICE OF RIGHT TO REVIEW

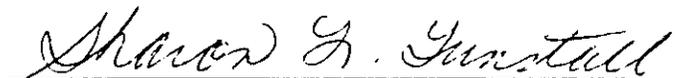
This is an initial order of a presiding officer. It will become a final order fifteen (15) days from the date of service unless a petition for review pursuant to K.S.A. 77-526(2)(b) is filed with the Secretary of the Department of Human Resources, Employment Standards and Labor Relations, 1430 Topeka Blvd., Topeka, Kansas 66603.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 28th day of September, 1990, the above and foregoing Initial Order was mailed, first class, postage prepaid to the following:

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