

BEFORE THE SECRETARY OF HUMAN RESOURCES

STATE OF KANSAS

SOUTHERN LYON COUNTY  
TEACHERS' ASSOCIATION,

Complainant,

vs.

U.S.D. 252, OLPE, KANSAS,

Respondent.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

CASE NO. 72-CAE-2-1984

ORDER

Comes now on this 16th day of July, 1984, the above captioned case for consideration by the Secretary of the Department of Human Resources. This matter comes before the Secretary on petition of Southern Lyon County Teacher's Association acting on behalf of teachers employed by U.S.D. 252. The petition alleges that U.S.D. 252 has violated the provisions of K.S.A. 72-5430 by their actions during the 1983-84 school year. The hearing was conducted by Jerry Powell, the duly appointed Hearing Examiner so appointed by the Secretary of the Department of Human Resources.

APPEARANCES

Complainant, Southern Lyon County Teachers Association, appears by and through its Chief Counsel, Mr. Richard D. Anderson and Mr. Jeff Chanay, Attorneys at Law, 1000 First National Bank Tower, Topeka, Kansas, and Mr. Steve Lopes, UniServ Director, Sunflower UniServ District, 116½ South Main, Ottawa, Kansas, and Mrs. Jeanette Schmidt, Southern Lyon County Teachers Association.

Respondent, U.S.D. 252, Olpe, Kansas, appears by and through its representatives Mr. Thomas A. Krueger, Krueger and Shaw, Attorneys at Law, P.O. Box 728, Emporia, Kansas, and Mr. Thomas V. Heimann, Superintendent of Schools, U.S.D. 252, P.O. Box 278, Hartford, Kansas, and Mr. Ken Cannon, principal of Olpe High School.

72-CAE-2-1984

PROCEEDINGS BEFORE THE SECRETARY

- 1) Complaint filed January 6, 1984, under the signature of Steve Lopes.
- 2) Answer to complaint received January 31, 1984, under the signature of Thomas Krueger, Attorney at Law, on behalf of U.S.D. 252, Hartford, Kansas. The answer moves for dismissal of the case alleging that Mr. Steve Lopes has no standing to bring the complaint before the Secretary.
- 3) Mr. Paul K. Dickhoff, Jr., Labor Conciliator with the Department of Human Resources, filed a letter on February 2, 1984 with Mr. Steve Lopes granting Mr. Lopes twenty (20) days to respond to the allegations concerning his standing to file a complaint.
- 4) Complainant's response to Respondent's answer concerning the jurisdictional question received in the office of the Secretary on February 22, 1984.
- 5) Parties notified on March 5, 1984 of a pre-hearing conference into the case 72-CAE-2-1984 to be conducted at 10:30 a.m. on March 27, 1984.
- 6) Memorandum served on all parties to the matter from Mr. Paul K. Dickhoff, Jr., Labor Conciliator, dated April 2, 1984. This memorandum outlined the parties' agreement on proceeding and contained Mr. Dickhoff's perception of six issues in question in this case. This memorandum further specified that the hearing to be held into this matter would be limited to the six issues contained within the memorandum.
- 7) A letter received on April 5, 1984, under the signature of Thomas A. Krueger withdrawing his original objection to the filing of the petition under the signature of Mr. Steve Lopes.
- 8) Motion to Dismiss and Memorandum in Support of Motion to Dismiss received in the Department of Human Resources' office on April 26, 1984, under the signature of Thomas Krueger.

9) Notice of Hearing served on all parties on May 1, 1984, under the signature of Jerry Powell, Employment Relations Administrator.

10) Witness lists of Respondent U.S.D. 252 filed with the Department of Human Resources under the signature of Thomas A. Krueger on March 3, 1984.

11) Memorandum in opposition to Motion to Dismiss received in the Department of Human Resources on May 14, 1984, under the signature of Richard D. Anderson.

12) Complainant's witness list and exhibit list received in the Department of Human Resources on May 14, 1984.

13) Motion to amend complaint received in the Department of Human Resources' office on May 25, 1984.

14) Response to the Motion to Dismiss received in the Department of Human Resources' office on June 5, 1984, under the signature of Thomas A. Krueger.

15) Hearing conducted on the following dates: May 21, May 22, June 12, June 13, June 14, June 15, June 19, June 20, June 25, June 28, June 29, July 10, July 11, July 12, and July 16, 1984.

16) Memorandum served on all parties on February 5, 1985, under the signature of Jerry Powell, stating that the record has been closed and that the briefing schedule will now commence.

17) Motion for an extension of time to file brief received in the Department of Human Resources on March 25, 1985, under the signature of Richard D. Anderson. Mr. Anderson requested an extension to file his brief on or before April 15, 1985.

18) Letter filed with Mr. Anderson under the signature of Jerry Powell, granting the extension for filing brief by Complainant until April 15, 1985.

19) Brief of Complainant received in Department of Human Resources on April 12, 1985.

20) Motion received in the Department of Human Resources on June 3, 1985, filed by Mr. Thomas A. Krueger on behalf of Respondent, requesting an extension of time until July 1, 1985, for filing Respondent's brief. Motion for extension of time to file brief by Respondent orally granted by Hearing Examiner Jerry Powell via telephone conversation with Mr. Thomas Krueger. Respondent's brief was to be filed with the Department of Human Resources on or before July 15, 1985.

21) Respondent's brief received in the Department of Human Resources on July 15, 1985.

22) Complainant's reply to Respondent's post-hearing brief received in the Department of Human Resources on July 25, 1985.

23) Respondent's response to Complainant's reply brief received in the Department of Human Resources on August 14, 1985.

24) Motion to amend complaint was granted by the hearing examiner during the course of the hearing.

FINDINGS OF FACT

1) That Richard Lee Banz is currently serving as principal of middle school in Humboldt, Kansas. During the past school year, Mr. Banz was principal at Hartford High School in U.S.D. 252. Mr. Banz recalls two statements that Mr. Heiman made to him toward the end of the year two years ago. One of those statements was to the effect, ". . .If Jeanette (Schmidt) kept her business in the classroom, she would be an excellent teacher." The second statement Mr. Banz recalls Mr. Heiman making referred to the fact that he (Mr. Heiman) perceived Ms. Schmidt to be "a pain in his side" speaking with regard to the negotiations and some figures that she had given him during the negotiations process. (T-14, 15)

2) That Ms. Eileen Lohmeyer currently resides in Topeka, Kansas. Ms. Lohmeyer is a teacher at the Topeka Youth Center. During 1982-1983, Ms. Lohmeyer taught junior high school English, journalism, senior high and sophomore English at Olpe High School. Prior to commencement of school this year, Mr. Cannon called Ms. Lohmeyer and asked her to come to his house to meet with him concerning a job that Mr. Cannon had previously held. (T-24)

3) That during the meeting with Mr. Cannon in his home, Mr. Cannon asked questions about the school in Olpe and what it was like to teach there. Mr. Cannon further inquired about some of the teachers in the Olpe school systems. Ms. Lohmeyer recalls Mr. Cannon mentioning Ms. Jeanette Schmidt's name as an individual who might "cause him some trouble". Ms. Lohmeyer also recalls Mr. Cannon asking her what he thought of Jeanette Schmidt as a teacher. Ms. Lohmeyer further recalls that Mr. Cannon had a paper in front of him when he was asking the questions about the various teachers. (T-25, 26)

4) That during the meeting referenced in the previous Finding, Ms. Lohmeyer recalls that Mr. Cannon went through a list of the teachers' names and she would then respond, "Yes, I know her" or state details within her knowledge. Further,

Ms. Lohmeyer recalls that Mr. Cannon specifically asked or talked about how good each individual teacher might be. (T-30)

5) That during the meeting referenced in the two previous Findings, Ms. Lohmeyer recalls discussing various problems that were difficulties that she perceived within the Olpe school system between various teachers. (T-33)

6) That Mr. Richard Funk is employed by the Kansas Association of School Boards as an assistant executive director. Mr. Funk recalls the first contact he had with Mr. Heiman was on November 16, 1983. Mr. Funk recalls that Mr. Heiman's main concern was that he had received a letter from ten teachers at Olpe requesting to have a meeting with him in compliance with the negotiative agreement. Further, that they wanted to discuss changes of administration policies brought on by comments that Mr. Cannon had made at a meeting. (T-38)

7) That a number of problems were discussed during the conversation referenced in the previous Finding between Mr. Heiman, Mr. Cannon and Mr. Funk. Those problems related to the dinner theatre or play that had been changed, the fact that teachers did not like the time of day that faculty meetings were being held and a discussion centered around the Seven Point Improvement Plan that Mr. Cannon had given Ms. Schmidt. (T-39, 40)

8) That Mr. Funk advised Mr. Cannon and Mr. Heiman that it appeared to him that there were two issues with which they needed to deal. The first issue was between Mr. Cannon and Ms. Schmidt. The second issue was between the nine or ten teachers at Olpe High School and the relationship with the principal that they had. It was Mr. Funk's advise that the problems that they were experiencing at Olpe High School was not an association matter. During the discussions that ensued, Mr. Funk ascertained that the district had a grievance procedure and therefore, his advise to Mr. Heiman was to try to force the problem into some type of structure. (T-41, 42, 43)

9) That Mr. Funk recalls a telephone call from Mr. Cannon on November 20 or November 21, 1983. Mr. Cannon advised Mr. Funk that Ms. Schmidt had agreed to enter into a Level B or second level of the grievance procedure. Mr. Cannon then informed Mr. Funk that Ms. Schmidt was going to be at a meeting the following day on November 22, 1983 at four o'clock. After having studied the negotiated grievance procedure, Mr. Funk determined that Mr. Lopes did not fit into either category contemplated as representatives for the purposes of the grievance procedure. Upon a request from Mr. Cannon, Mr. Funk agreed to travel to Olpe for the meeting in an attempt to assist Mr. Cannon with the grievance meeting. (T-47)

10) That Mr. Cannon related to Mr. Funk prior to the November 22, 1983 grievance meeting that Ms. Schmidt was, in fact, a good teacher and that his complaints had nothing to do with her teaching, but rather were centered around her activities as they pertained to non-teaching type performances. (T-50)

11) That Mr. Cannon related to Mr. Funk prior to that November 22, 1983 meeting that Ms. Schmidt was conducting Association business during school time, that she was not following proper procedure in scheduling guest speakers and she was not scheduling events on the calendar properly. (T-52)

12) That Mr. Funk recalls that the meeting between the administration, Jeanette Schmidt and Mr. Lopes on November 22, 1983 lasted approximately twenty-five (25) minutes. (T-53)

13) That Mr. Funk met with Mr. Heiman on November 22, 1983 after the grievance meeting at the Olpe Chicken House. The discussion at that time centered around the procedures to follow with regard to the matter at hand. (T-54)

14) That Mr. Funk recalls one telephone conversation with Mr. Heiman and Mr. Cannon between November 22, 1983 and November 30, 1983. The questions there, once again, centered around what to do with the situation at Olpe, Ms. Schmidt and the other teachers. Mr. Funk ascertained from that telephone conversation

that Ms. Schmidt was grieving either the way the Seven Point Improvement Plan was presented, the way it was done or what was going to happen with it in the future. (T-56, 57)

15) That Mr. Funk viewed Ms. Schmidt's Seven Point Improvement Plan as something other than an instrument dealing with her instructional skills. Rather, this plan centered around the areas that involved procedures within the buildings. Mr. Funk's advise to Mr. Cannon and Mr. Heiman on November 30, 1983 was to inform Ms. Schmidt that they were not going to remove the Seven Point Improvement Plan from her records and that they could then expect a grievance filed at the superintendent's level. (T-58, 59)

16) That Mr. Cannon indicated to Mr. Funk that he was afraid of Mr. Lopes and that he (Mr. Cannon) hoped that he did not have to deal with Mr. Lopes too much. These comments were made to Mr. Funk after the November 22, 1983 grievance meeting. (T-63)

17) That between December 1, 1983 and December 8, 1983, there were approximately two to three telephone conversations between Mr. Heiman, Mr. Cannon and Mr. Funk. These conversations related to Jeanette Schmidt and whether or not Ms. Schmidt had a right to have a representative with her when Mr. Cannon requested to meet with Ms. Schmidt. It was Mr. Funk's understanding that Mr. Schmidt had requested to have a representative with her on every occasion she was asked to meet with Mr. Cannon. (T-66)

18) That Mr. Funk attended the special Board of Education meeting on December 8, 1983. (T-67)

19) That Mr. Funk recalls that one of the Board members commented during the December 8, 1983 Board executive session, that the problem could be resolved by firing Jeanette Schmidt. Ms. Pat Baker, an attorney for the Kansas School Board Association, responded to that comment stating that's not what they were

here to do. Rather, they were there to visit with the Board to determine alternatives that they could all examine to deal with the situation at Olpe. Mr. Funk recalls that the alternatives of reassignment, suspension and probation were discussed by Ms. Baker with the Board. Ms. Baker recommended to the Board that they reassign Ms. Schmidt as the alternative to be the least disruptive to the building or the district. Ms. Baker then proceeded to discuss the legal ramifications of a reassignment of Ms. Schmidt. Mr. Funk recalls then that the general discussion was that it would be legal for the Board to reassign personnel. Mr. Funk does not recall any discussion concerning the reassignment of anyone other than Jeanette Schmidt. (T-75, 76, 77)

20) That Mr. Funk recalls Mr. Cannon being present at the December 8, 1983 executive session of the Board. Mr. Cannon discussed with the Board the fact that he could no longer communicate with Ms. Jeanette Schmidt. Further, discussions centered around the fact that Mr. Cannon could no longer communicate with Jeanette Schmidt because she insisted on having a KNEA representative at their meetings. Ms. Baker informed the Board that Jeanette Schmidt had contacted a KNEA lawyer. Further, she explained that she had had a conversation with the KNEA lawyer. Ms. Baker related to the Board that she had been in contact with Diane Hull and David Schauner, both attorneys in the Topeka KNEA office and that they had tried to work out an agreement whereby they could get the teachers together to discuss the problem. (T-78, 79)

21) That it was Mr. Funk's determination that the Seven Point Improvement Plan was not an evaluation. Rather, it was a notification to the teacher that proper procedures were not being utilized. This decision was made in light of the fact that there was nothing that was given to him that would indicate anything deficient in Ms. Schmidt's teaching abilities or

skills. Mr. Funk determined that the Seven Point Improvement Plan was a notice to improve actions in regards to procedures and building level policies. Further, if Ms. Schmidt did not improve in those areas, that there was a possibility that she could be disciplined. (T-101, 102)

22) That Ms. Debra Sue Rhoades Schneider is employed in U.S.D. 252. This past year, Ms. Schneider taught kindergarten, junior high and coached. Ms. Schneider's kindergarten class was located in Olpe, Kansas. She has been reassigned for the coming school year to third and second grades at Harmony Hill. (T-197, 198)

23) That Ms. Sharon A. Bechtel is employed by U.S.D. 252. That Ms. Bechtel, through observation of the situation at Olpe High School during the past year, feels that she would not want to take an office in KNEA at this time. However, no one has personally discouraged her from participating in NEA or KNEA activities. When asked why she would not like to take an office at this time, Ms. Bechtel answered, "Well, because I see Ms. Schmidt sitting over here right now. And, if that does have anything to do with it, I wouldn't want to be there." Ms. Bechtel was not one of the ten teachers filing a grievance and thus, one of the group that became known as the "Embarrassed Eleven". (T-219, 243, 244)

24) That Ms. Diane Heins is employed by U.S.D. 252 as a home economics teacher. Ms. Heins has been employed at Olpe High School for the past three years. Ms. Heins had a personal meeting with Mr. Cannon on October 18, 1983. This meeting was conducted on a Friday evening at about 3:30 p.m. Ms. Heins was notified of this meeting when Mr. Cannon stopped Ms. Heins in the hall and related to her that he desired to meet. (T-248)

25) That during Ms. Heins' meeting with Mr. Cannon on October 18, 1983, she related to him her concern about communication in the building, concerns about the money box being picked

up at concession sales, and some other points that were bothering her at the time. Ms. Heins recalls that after she had related her concerns to Mr. Cannon, he asked her if she knew who was creating the problem at school. Further, Ms. Heins recalls Mr. Cannon asking her if she was aware that a lawyer had been contacted. Ms. Heins does not recall that any specific staff members names were mentioned during this meeting. (T-248, 249, 250)

26) That Ms. Heins is a member of the KNEA. (T-251)

27) That Ms. Julia George is employed by U.S.D. 252. Ms. George teaches home economics at Hartford High School. (T-264)

28) That Ms. Julia George served as president of the Southern Lyon County Teachers Association during 1980-81 and 1981-82. Ms. George currently holds no office with the Association. (T-264)

29) That during the time Ms. George was president of the Southern Lyon County Teachers Association, she engaged in discussions on negotiations with Mr. Heiman during school hours. Ms. George believes that there was a provision in the negotiative agreement during this period of time relating to conducting KNEA business during school hours. (T-266, 268)

30) That Ms. Joni Sobieski is currently employed by U.S.D. 252 as a science teacher at the Olpe High School. Ms. Sobieski is a KNEA member and also a member of the "Olpe Ten". Ms. Sobieski recalls an individual meeting with Mr. Cannon in the month of October. Ms. Sobieski recalls Mr. Cannon asking her, "What's going on around here?" Further, Ms. Sobieski recalls that she and Mr. Cannon visited about the run and students and other things. (T-300, 301)

31) That Ms. Sobieski was nervous about her meeting with Mr. Cannon in October since Marilyn Trimmell had related to her that Mr. Cannon had requested that the door be shut during their conference and because the individual meetings had never happened

before. This procedure was something different and Ms. Sobieski  
just didn't quite know what was going on. (T-302)

32) That Ms. Sobieski attended the Board meeting on December 12, 1983 and was one of the teachers who stood up to speak at that time. Ms. Sobieski related at the Board meeting that she felt that Jeanette Schmidt was being hassled. (T-303)

33) That Ms. Sobieski recalls that on November 17, 1983, Jeanette Schmidt asked her to cover Ms. Schmidt's class for her while Ms. Schmidt went with a group of students to work on play practice on the stage in the auditorium. Ms. Sobieski was seated in the back corner of the room helping students during the period of time that Jeanette was out of the classroom. Ms. Sobieski recalls seeing both Mr. Cannon and JoAnn Moran walking past the classroom on two or three occasions. (T-305, 306)

34) That Ms. Sobieski was one of the ten teachers signing the "Ten Teacher Grievance". Ms. Sobieski believes that she signed the grievance on November 15, 1983. Ms. Sobieski testified that she signed the grievance because she had seen Jeanette Schmidt being hassled and harassed. (T-308)

35) That Ms. Sobieski attended a meeting in January of 1984 with Mr. Heiman, Ms. Donna Williams and Mr. Gerry Haag. Ms. Sobieski attended the seven o'clock p.m. meeting that was scheduled for the "Olpe Ten". Ms. Sobieski recalls that the "Olpe Ten" had put together a list of their concerns and that this list was presented to Mr. Heiman, Mr. Haag and Ms. Williams during this January meeting. (T-316)

36) That Ms. Sobieski has turned in her resignation as a teacher in U.S.D. 252 for the coming school year. Ms. Sobieski was quite concerned because she did not know the specific courses and grades that she would be teaching during the coming year. This concern has prompted her resignation from the school system. (T-319)

37) That the members of the U.S.D. 252 Board of Education are Ms. Donna Williams, who serves as president of the Board. Other members are Mr. Richard Schmidt, Ms. Carole Wilson, Mr. Michael Langley, Mr. Eldon Parkman, Mr. Allan Hogan and Mr. Gerry Haag. (T-322)

38) That Ms. Sobieski, during her individual meeting with Mr. Cannon on October 13, 1983, was not aware that there were any difficulties existing in the Olpe High School. (T-324)

39) That Ms. Sobieski recalls at the very beginning of school a time when Mr. Cannon made a statement to the effect, "Please do not leave your classes unattended." (T-328)

40) That Ms. Sobieski recalls, during the December 12, 1984 Board meeting Ms. Gloria Rifembark requesting that the Board meet with the "Olpe Ten" in private. (T-329)

41) That Ms. Sobieski recalls a staff meeting during which Mr. Heiman made reference to teachers using language in front of students that he believed was improper. Some of the comments that Mr. Heiman related to the teachers during that staff meeting were that a teacher had referred to "that SOB" and another statement concerning "he doesn't like me because he can't get in my crotch". Ms. Sobieski objected to the manner in which Mr. Heiman handled this staff meeting. (T-334)

42) That Mr. Gerald Haag is currently a Board member in U.S.D. 252. (T-350)

43) That Mr. Haag met with five teachers on November 12, 1983, at Diane Heins residence in Emporia, Kansas. Also attending the meeting were Jeanette Schmidt, Diane Heins, Gloria Rifembark, Vivian Sexton and Sharon Carnes. The meeting lasted approximately three and a half to four hours and was undertaken so that Mr. Haag could find out for himself what was going on. The teachers informed Mr. Haag that their general problem was a lack of leadership by the principal. When Mr. Haag asked for more specific information, many subjects were discussed, such as;

1) the change in time of the play, 2) not taking care of concession money after the close of the concession stand, 3) an out of town trip in which Mr. Cannon diverted through another town rather than coming straight back to Olpe, and many other general complaints. (T-354)

44) That Ms. Jeanette Schmidt also expressed a concern to Mr. Haag during the meeting referenced in the previous Finding that the Seven Point Improvement Plan was inappropriate. Ms. Schmidt expressed to Mr. Haag that she felt all of the seven points were negative instead of constructive. Mr. Haag was generally familiar with the Seven Point Improvement Plan since he had received it in the mail at an earlier date. (T-365)

45) That Mr. Haag attended the Board meeting on November 14, 1983, during which he expressed to his colleagues that he felt that most of the concerns expressed to him by the teachers on November 12, 1983 were petty concerns. (T-384)

46) That Mr. Haag attended a meeting with some teachers on January 18, 1984. Present for the Board during that meeting were Mr. Heiman, Donna Williams and Mr. Haag. The meeting was scheduled in order to allow the "Olpe Ten" to meet with the Board representatives at seven o'clock p.m. and the "Embarrassed Eleven" to meet with the Board representatives at eight o'clock p.m. It was Mr. Haag's belief that the teachers who were members of the "Olpe Ten" had requested at the December 12, 1983 Board meeting to meet with Board members in private rather than to air their views at a public meeting. Therefore, the Board members felt that it would be more conducive to hearing these views if they scheduled two meetings. (T-398, 399)

47) That to the best of Mr. Haag's recollection, the first time that reassignment of teachers was discussed in any detail was at a Board meeting in approximately March or April of 1984. (T-426)

48) That it was Mr. Haag's belief that the reason for the

reassignment of teachers at Olpe and Harmony Hill was to strengthen the program for the students. (T-427)

49) That during the three and a half to four hours of meeting time on November 12, 1983, wherein Mr. Haag met with five school teachers, there was no indication made that any of the teachers were being discriminated against because of their involvement in KNEA, NEA or SLCTA. None of the teachers nor Jeanette Schmidt indicated to Mr. Haag that Jeanette was being discriminated against because of her presidency of the Southern Lyon County Teachers Association. (T-437, 438)

50) That Mr. Haag made no attempt to contact any individual to urge them to attend the December 12, 1983 Board meeting. (T-443)

51) That Mr. Haag does not recall any teacher stating during the January, 1984 Board meeting, that they were being discriminated against because of their involvement in the Southern Lyon County Teachers Association. Nor, does he recall any of the ten teachers complaining to the Board at that meeting about any type of discrimination because of their involvement at KNEA or NEA or because of their union activities. (T-448)

52) That Ms. Donna A. Williams is currently serving as the president of U.S.D. 252 school board. Ms. Williams has also served as the spokesperson for the negotiating team for the past two years. (T-465, 466)

53) That Ms. Williams recalls several occasions in which she believed Jeanette Schmidt had furnished inaccurate figures at the negotiating table. Ms. William recalls that Mr. Heiman then sent Jeanette Schmidt the proper figures before the next meeting so that the parties could be on the same wavelength. (T-468, 469)

54) That Ms. Williams recalls it was approximately the last of September or first part of October when Mr. Heiman first made her aware Jeanette Schmidt was having some problems in the area of her performance at Olpe High School. (T-476)

55) That Ms. Williams set in on the interview with Mr. Cannon prior to the time he was hired as principal for Olpe High School. (T-495)

56) That Ms. Williams recalls a discussion of Jeanette Schmidt and various options for resolving the Olpe problem during the executive session of the December 8, 1983 Board meeting. (T-510)

57) That as of December 8, 1983, Ms. Williams knew that there was a communication problem existing between Mr. Cannon and Jeanette Schmidt, but at that time she did not know exactly what the problem was. (T-515)

58) That the "Olpe Ten" consisted of Jeanette Schmidt, Vivian Sexton, Joni Sobieski, Jane Schneider, Sara Cannon, Marilyn Trimmell, Gloria Rifembark, Diane Heins, Louise Hinrichs and Sharon Carnes. (T-532)

59) That Ms. Williams was unaware in December of 1983 that Ms. Diane Hull of the Kansas NEA and Ms. Pat Baker of the KASB had reached any agreement regarding a meeting with the ten teachers who signed the grievance. (T-538)

60) That the party stipulated during the hearing that at some time in December, 1983, Diane Hull of the KNEA and Pat Baker of the KASB entered into an agreement in which the Board would agree to waive the time limits for the filing of a grievance and the NEA would agree to drop the prohibited practice that they had pending before the Secretary. This agreement was not known at that time by the members of the U.S.D. 252 Board of Education. (T-542)

61) That Ms. Williams, acting in her capacity as president of the Board, presided over the December 12, 1983 open Board meeting. That in Ms. Williams' opinion, the Board meeting did not get out of hand. Ms. Williams did not attempt to have any people attend this Board meeting in support of the Board. (T-549, 551)

62) That Ms. Williams recalls that Ms. Gloria Rifenburg requested on December 12, 1983 that the "Olpe Ten" be allowed to meet with the Board. The Board subsequently scheduled a meeting on January 18, 1984. (T-553)

63) That Mr. Richard Schmidt is a member of the U.S.D. 252 Board of Education. Mr. Schmidt has served on the Board of Education for the past seven years. (T-574)

64) That Mr. Schmidt does not recall any serious discussion concerning firing Jeanette Schmidt at the December 8, 1983 Board meeting. Mr. Schmidt recalls that various options were discussed concerning Jeanette Schmidt at that Board meeting. (T-584)

65) That Mr. Schmidt believed that the purpose for the transfer of Ms. Schmidt from the Olpe school district to the Hartford school district was mainly because Ms. Schmidt wasn't happy in the Olpe district, and that Mr. Heiman thought that a different surrounding would better suit her purposes. (T-590)

66) That Mr. Kenneth Wayne Cannon served as the principal of Olpe High School, Olpe Junior High, and Harmony Hill Elementary School during the school year 1983-84. (T-755)

67) That Principal Cannon answered directly to the superintendent of schools and then on up through the chain of command to the Board of Education. (T-756)

68) That Mr. Bill Cowan serves as head teacher in the Olpe High School. The head teacher acts in the absence of Principal Cannon and also performs a variety of other roles throughout the school year as needed. (T-756)

69) That the rules and regulations or policies existing at Olpe High School have basically "been on the books" for the past seventeen (17) years. (T-759)

70) That Principal Cannon views the Seven Point Improvement Plan given to Jeanette Schmidt as an informal evaluation. (T-760)

71) That Mr. Cannon traveled to Olpe on July 7, 1983, in order to interview for the position of principal of Olpe High School. (T-762)

72) That Mr. Cannon met with the Board of Education in the gymnasium at the Olpe High School for an interview concerning the principal's position. (T-763)

73) That Mr. Cannon traveled to Olpe for a second interview the latter part of July or the first of August, 1983. (T-765)

74) That Mr. Cannon was notified that he had been selected as the principal of Olpe High School on July 13, 1983. (T-765)

75) That at the first or one of the first faculty meetings Mr. Cannon had with teachers, he explained the use of the "contact" sheets and also provided them a contact sheet and a "Welcome Back" booklet. (T-775)

76) That during one of the early staff meetings, Mr. Cannon, in his role as principal, discussed things that can hurt staff relations, things such as rumors, innuendoes, and petty jealousies. (T-777)

77) That Mr. Cannon, as principal of the high school, perceived that some problems with staff members were developing in September of 1983. (T-779)

78) That during the month of September, 1983, Mr. Cannon believes that he was too busy with school details to really have noticed any problems inside or outside the classroom insofar as teachers were concerned. (T-785, 786)

79) That Mr. Cannon met with Vivian Sexton in a private meeting on October 11, 1983. (T-790)

80) That during the meeting referenced in the previous finding, Mr. Cannon related to Ms. Sexton that he could not tolerate a counselor who cannot speak openly to me (him), it remains confidential about what takes place in the school system. Other communication during this private meeting related to a

lack of communication between Ms. Sexton and Principal Cannon.

(T-792, 793, 794)

81) That Mr. Cannon does not recall asking Vivian Sexton during the private meeting referenced in the previous Finding, "Who is the problem?" Rather, Mr. Cannon recalls asking Vivian Sexton during that meeting, "What's the problem?" (T-796)

82) That Mr. Cannon had a private meeting with Joni Sobieski on October 13, 1983. During that meeting, Mr. Cannon asked her to share her concerns with him. Mr. Cannon does not recall asking Joni, "Who is the problem?" (T-801, 802)

83) That Mr. Cannon had a private meeting and prepared a contact sheet for Ellen Watts on October 14, 1983. During that meeting, Ms. Watts indicated to Mr. Cannon that "they were having a meeting at the Knights of Columbus Hall." (T-805)

84) That Mr. Cannon had a private meeting and prepared a contact sheet for Diane Heins on October 14, 1983. During that meeting, Ms. Heins discussed her concerns with Mr. Cannon. Mr. Cannon does not recall asking Ms. Heins, "Who is the problem?" (T-813, 814)

85) That Mr. Cannon had a private meeting and prepared a contact sheet for Marilyn Trimmell on October 14, 1983. (T-817)

86) That during the meeting referenced in the previous Finding, Ms. Trimmell expressed to Mr. Cannon that "her son comes first," referring to a change of faculty meetings from afternoon to morning. (T-822)

87) That during the meeting between Mr. Cannon and Marilyn Trimmell, Mr. Cannon made the note that "she refused to sit in on a private conference with the office door shut to the outside office area." Ms. Trimmell desired to leave the door open during their meeting. (T-824)

88) That Mr. Cannon had a private meeting and prepared a contact sheet for Bill Cowan on October 17, 1983. (T-826)

89) That during the month of October, 1983, Mr. Cannon conducted individual meetings with the staff of both Olpe High School and Harmony Hill. (T-828)

90) That Mr. Cannon had a private meeting and prepared a contact sheet for Ruth Welborn on October 17, 1983. (T-832, Complainant's Exhibit #30)

91) That Mr. Cannon had a private meeting and prepared a contact sheet for Mike Plunket on October 17, 1983. (T-832, Complainant's Exhibit #31)

92) That Mr. Cannon had a private meeting with and prepared a contact sheet for Marion Plummer on October 18, 1983. (T-833, Complainant's Exhibit #32)

93) That Mr. Cannon had a meeting with and prepared a contact sheet for Marsha Miller on October 18, 1983. (T-837, Complainant's Exhibit #33)

94) That Mr. Cannon had a meeting with and prepared a contact sheet for Calvin Gunkel on October 19, 1983. (T-841, Complainant's Exhibit #34)

95) That Mr. Cannon had a private meeting with and prepared a contact sheet for Jeanette Schmidt on October 28, 1983. (T-843, Complainant's Exhibit #35)

96) That the original contact sheet prepared as a result of the meeting with Jeanette Schmidt was handwritten. That contact sheet was subsequently typed as a result of Ms. Schmidt's request to see the contact sheet. (T-843, 844)

97) That the purpose of the meetings during October with the teaching staff were set in an attempt to try to learn the concerns of the teachers. (T-845)

98) That Mr. Cannon visited with Mr. Heiman, school superintendent, concerning the individual meetings prior to the time the meetings were conducted. The approximate date of the conversation between Mr. Cannon and Mr. Heiman was October 3, 1983. (T-845)

99) That during the private meeting with Jeanette Schmidt, Mr. Cannon noted on the contact sheet the discussion centered around dissatisfaction with his (Mr. Cannon's) relationship with faculty overall. (T-853)

100) That Mr. Cannon attended a meeting with representatives of the Kansas Association of School Board on November 10, 1983. Present at the meeting were Mr. Heiman, Pat Baker, Mr. Cannon and perhaps, Richard Funk. (T-871)

101) That Mr. Cannon prepared a "Seven Point Improvement Plan" for Jeanette Schmidt. This plan was presented to Ms. Schmidt on November 1, 1983 in a private meeting in Mr. Cannon's office. (T-873)

102) That Mr. Cannon had no formal discussions with Jeanette Schmidt about leaving her classes unattended prior to the November 1 date when he gave her the Seven Point Improvement Plan. (T-874)

103) That Mr. Cannon does not recall having any formal discussions with Jeanette Schmidt about inviting guest speakers into the school prior to November 1, when he gave her the Seven Point Improvement Plan. (T-876)

104) That Mr. Cannon recalls discussing the scheduling or changing of school activity dates with the entire staff on several occasions prior to November 1, 1983. (T-877)

105) That Jeanette Schmidt cancelled the dinner theatre program on or about October 19, 1983. (T-880)

106) That Ms. Schmidt, when she cancelled the dinner theatre, simply left a note on Ms. Moran's desk. (T-880)

107) That Mr. Cannon did not talk to Jeanette Schmidt concerning placing calls to KNEA prior to November 1, 1983. (T-884)

108) That Mr. Cannon spoke to Jeanette Schmidt only in very general and vague terms concerning creating an atmosphere

that inhibits good teaching practices prior to November 1, 1983.

(T-886)

109) That at no time prior to November 1, 1983, did Mr. Cannon visit with Jeanette Schmidt about her failure to follow lesson plans. (T-887)

110) That on November 23, 1983, Mr. Cannon gave Jeanette Schmidt a "history of the problem". (T-895, Complainant's Exhibit #36)

111) That a portion of the document referenced in the previous Finding stated, "Problem: Display of conduct unbecoming an instructor or professional staff member. History of the problem: People outside of the school communicated with me that in-house matters have been taken to the public." (T-897)

112) That the problem referenced in the previous Finding was based upon statements that had been made to Mr. Cannon concerning determination of Mr. Heiman and/or Mr. Cannon. However, Mr. Cannon does not recall that he ever specifically told Jeanette of the remarks that he had overheard, nor, in fact, did he ask her if she made such statements. (T-897)

113) That Mr. Cannon asked Jeanette Schmidt to sign the form containing the Seven Point Improvement Plan when he met with her on November 1, 1983. Jeanette objected to signing the form, but was informed by Mr. Cannon that her signature on the form simply indicated that she had seen the form and did not indicate that she agreed with the form. (T-899)

114) That on November 1, 1983, Mr. Cannon told Jeanette Schmidt that the Seven Point Improvement Plan was not an evaluation. (T-900)

115) That Point Four of the Seven Point Improvement Plan related to the placing and taking phone calls from the KNEA office on October 11, 1983. (T-909)

116) That it was the school policy to allow individual teachers to make personal phone calls during the planning period, lunch, etc. (T-911, 912)

117) That Mr. Cannon discussed and noted for Ms. Schmidt the times that Ms. Schmidt was not in her class during class period. (T-912, Complainant's Exhibit #36)

118) That Mr. Cannon noted at least three instances when he believed Ms. Schmidt left her class unattended for one reason or another. He did not recall visiting with Ms. Schmidt about those absences from the classroom, but may have talked to her at the time. (T-919)

119) That Mr. Cannon received a rebuttal to the Seven Point Improvement Plan from Jeanette Schmidt on November 8, 1983. (T-923)

120) That Mr. Cannon prepared a contact sheet for Bill Cowan, in which it is stated that Mr. Cannon confronted Bill Cowan at one time when Mr. Cowan was out of his room, leaving his class unsupervised. (T-924, Complainant's Exhibit #39)

121) That on November 8, 1983, Jeanette Schmidt gave Mr. Cannon a memorandum containing a Seven Point Improvement Plan for Mr. Cannon. (T-937)

122) That Jeanette Schmidt was a signatory to the negotiative agreement existing between the school district and the local NEA unit. (T-942)

123) That on November 22, 1983, Mr. Cannon met with Jeanette Schmidt, Steve Lopes and Mr. Richard Funk. (T-956)

124) That Mr. Cannon authored a letter to Jeanette Schmidt dated November 18, 1983, in which he set a formal grievance meeting for 4:00 p.m. on Tuesday, November 22, 1983. (T-975)

125) That Mr. Cannon, in his letter to Jeanette Schmidt, setting the meeting for November 22, 1983, intended only to meet with Ms. Schmidt and did not intend to meet with the other nine teachers. (T-980)

126) That Mr. Lopes informed Mr. Cannon at the conclusion of the meeting on November 22, 1983 with Mr. Cannon and Jeanette Schmidt, that the other nine teachers were available and ready to meet on that day. (T-981)

127) That Diane Hull, attorney for KNEA, authored a memorandum to Mr. Cannon dated November 21, 1983, in which she related that Ms. Schmidt would not meet with Mr. Cannon involving the contact sheet without counsel present. (T-983)

128) That on November 21, 1983, a faculty meeting was held and Mr. Cannon discussed teachers leaving their classes unattended. (T-986)

129) That Mr. Cannon had a meeting with Ms. Schmidt on December 20, 1983, as a follow-up on the Seven Point Improvement Plan. At that time, he related to her that he had observed her classes being unattended on November 17, 1983, at 10:22 a.m. Mr. Cannon did not step into the class to supervise the students on November 17, 1983, when he observed the class unattended. Further, Mr. Cannon listed the names of seven students that were in the class unsupervised. Ms. Schmidt was in the gymnasium during this time on stage with some of the students of her class. Mr. Cannon did not observe the classroom during the entire thirty-three (33) minutes that Ms. Schmidt was in the gymnasium. Mr. Cannon, at the time of the hearing, could not recall the manner in which he arrived at the names of the seven students who were allegedly unsupervised. (T-989, 990, 991, 992, 993, 994, 995)

130) That Mr. Cannon scheduled a meeting with Jeanette Schmidt on November 30, 1983 to discuss the Seven Point Improvement Plan. Jeanette showed up at the meeting with a witness, Sharon Carnes and refused to attend a private meeting without Ms. Carnes being present. (T-997)

131) That Mr. Cannon informed Jeanette that if she would not meet without a witness present to discuss the Seven Point Improvement Plan, that he, Mr. Cannon, would have to consider her refusal an insubordinate act. (T-1003)

132) That on December 1, 1983, Mr. Cannon hand delivered a letter to Jeanette Schmidt, in which he informed her that he considered her refusal to "meet" with him to be an insubor-

dinate act, and that he was therefore referring this matter  
to the Superintendent, Mr. Thomas B. Heiman. (T-1003)

133) That Ms. Schmidt then requested that Mr. Cannon  
restate a portion of the letter referenced in the previous  
Finding to include language to the effect that she, Ms. Schmidt,  
had refused to meet with Mr. Cannon without a witness present.  
Mr. Cannon then related to Ms. Schmidt that he would indicate  
verbally to Mr. Heiman that this letter should have included  
language to this effect. (T-1004)

134) That the meeting between Mr. Cannon and Ms. Schmidt,  
on November 22, 1983, was for the purpose of discussing Ms.  
Schmidt's grievance. This meeting was attended by Mr. Funk and  
Mr. Lopes. (T-1011)

135) That during the meeting on November 22, 1983, between  
Mr. Cannon and Ms. Schmidt, wherein Mr. Lopes and Mr. Funk were  
present, Mr. Cannon made no objection to Mr. Lopes' presence.  
Mr. Funk did not register any objections to Mr. Lopes' presence  
at the meeting on November 22, 1983. (T-1025)

136) That Jeanette Schmidt met with Mr. Cannon on at least  
one date after December 20, 1983, in order to discuss holding  
unscheduled play practices. (T-1037)

137) That Mr. Cannon, on December 20, 1983 had no evidence  
that Jeanette Schmidt had been conducting KNEA business during  
school time other than the October telephone call. (T-1040)

138) That counsel for Complainant stipulated that subsequent  
to a delivery by Mr. Cannon of a letter from Mr. Heiman scheduling  
a meeting with all staff, Mr. Cannon returned to Ms. Schmidt's  
room to inform her that she was to attend a meeting with Mr.  
Heiman scheduled for 3:30 p.m. on December 2, 1983. Ms. Diane  
Heins was present in the room when Mr. Cannon informed Jeanette  
that she would have the meeting. There were also students present  
in the room when Mr. Cannon delivered the message. Jeanette  
stated words to the effect "that son-of-a-bitch". Ms. Heins

does not know to whom Jeanette was referring. (T-1049, 1050)

139) That Joint Exhibit #2, a copy of a telephone bill, shows that a call was made from the Olpe High School on October 11, 1983, at 8:24 a.m. The call was placed to Topeka, Kansas, 913-232-3271 sic. This telephone call lasted for one minute. A second call was made on the same day at 12:02 p.m. to the same number in Topeka, Kansas. This second call lasted for seven minutes. (T-1060, 1061)

140) That the school bell rings at 12:00 p.m. ending fourth period. (T-1062)

141) That Jeanette Schmidt has a planning period during her first period of the morning. (T-1063)

142) That the lunch hour is unassigned time for teachers whenever possible. (T-1062)

143) That school begins at the Olpe High School at 8:20 a.m. (T-1063)

144) That Joint Exhibit #3 is a telephone bill produced by the KNEA office in Topeka, which indicates that a call was made on October 11, 1983, at 9:15 a.m. to Olpe, Kansas. The call lasted two minutes and it was directed to 316-475-3223, which is the telephone number for the Olpe High School. (T-1064)

145) That during the December 20, 1983 conference, Ms. Schmidt asked Mr. Cannon if she could have a witness present for the meeting. During that meeting, Mr. Cannon handed some documents to Ms. Schmidt for her perusal. The items handed to Ms. Schmidt during that meeting were "statement of confidentiality". (T-1078)

146) That Jeanette Schmidt informed Mr. Cannon on April 30, 1983, that she was leaving school early. Mr. Cannon made a note on that day to the effect that Ms. Schmidt was leaving early to meet with an attorney and several teachers. (T-1081)

147) That Mr. Cannon does not recall Mr. Heiman or any board member asking him for his input as to what he thought

Jeanette Schmidt's assignment should be for the following  
school year. (T-1085)

148) That Mr. Cannon made a contact sheet on Marilyn Trimmell on May 10, 1984, in which he stated that Ms. Trimmell told him that there seemed to be two different set of rules for the teachers in the building. (T-1095)

149) That Mr. Cannon prepared a contact sheet on Marilyn Trimmell dated November 8, 1983, referencing the fact that a salesman went into the library without first reporting to the office. (T-1102)

150) That Mr. Cannon made a contact sheet (Joint Exhibit #27) on Vivian Sexton dated January 18, 1984, relating to a time when a visitor was in the school without having first notified the office. (T-1102)

151) That Mr. Cannon prepared a contact sheet for Jeanette Schmidt on November 23, 1983, showing that a conversation was had concerning Ellen Watts substituting in Ms. Schmidt's class for that particular day. (T-1105)

152) That to the best of Mr. Cannon's recollection, the only time that Jeanette Schmidt refused to meet with Mr. Cannon was on November 30, 1983, when she desired to have a witness present. (T-1108)

153) That numerous school functions were discussed between Mr. Cannon and Jeanette Schmidt after the early to mid-part of January, 1984. (T-1111)

154) That Mr. Cannon wrote a letter to Jeanette Schmidt on January 2, 1984, which stated that the contact sheet dated November 1, 1983 would not be destroyed, but would be maintained as a part of Ms. Schmidt's permanent record. (T-1142)

155) That Mr. Cannon does not believe that he ever sent the contact sheet on Jeanette Schmidt dated November 1, 1983 to the central office to be placed in Ms. Schmidt's record. (T-1143)

156) That Mr. Cannon prepared a contact sheet for Mike Plunket dated May 17, 1984, the subject matter of which was the fact that Mr. Plunket was not in his room at 12:35 p.m. and that some of the boys were acting up. (T-1147)

157) That Mr. Cannon prepared a contact sheet on February 2, 1984 for Ms. Beth Schmidt, the subject of leaving her class unattended. (T-1149)

158) That Mr. Cannon became a member of KNEA on or before 1978 and was a member of KNEA up until the time he took the principal's position at Olpe High School. (T-1162)

159) That the only recollection Mr. Cannon has of a conversation with Eileen Lohmeyer at his home in Hoyt revolved around a pep club problem with someone named Schmidt and someone named Heins. (T-1165)

160) That Mr. Cannon recalls specifically discussing classroom supervision in a staff meeting that he had with all staff of Olpe High School on August 25, 1983. (T-1182)

161) That Mr. Cannon recalls specifically discussing contact sheets and the purpose of the contact sheets with the teachers in a faculty meeting on August 25, 1983. (T-1186)

162) That Joint Exhibit #49 is Board policy pertaining to procedure to follow when visitors are invited to school. (T-1188)

163) That Mr. Cannon recalls specifically relating to the staff in a staff meeting on September 2, 1983, that they should make sure the students are kept under direct supervision before, during and after school. (T-1193)

164) That Mr. Cannon recalls discussing lesson plans at the September 2, 1983 staff meeting. (T-1193)

165) That Mr. Bill Cowan sent out a memo to all staff members on August 30, 1983, relative to scheduling events on the weekly school calendar. (T-1195)

166) That Mr. Cannon prepared a contact sheet for Sara Cannon, dated September 16, 1983. The nature of the contact

sheet was to relay concerns to her about some of the areas that were perceived as weakness in her teaching ability. (T-1198)

167) That Mr. Cannon scheduled another staff meeting for October 4, 1983. (T-1198)

168) That somewhere in this period of time, early October, Mr. Cannon switched the faculty meetings from evening meetings to morning meetings, commencing at 7:45 a.m. (T-1203)

169) That Mr. Cannon missed the October 4, 1983 staff meeting. (T-1205)

170) That Joann Moran went to the morning faculty meeting on October 4, 1983, and related to the teachers in attendance Mr. Cannon wouldn't be in until later. (T-1205)

171) That Mr. Cannon prepared a contact sheet for Gloria Rifenburg on October 14, 1983. This contact sheet was prepared as a result of a private meeting during which Mr. Cannon invited Ms. Rifenburg to share her concerns with him. Ms. Rifenburg indicated that she was nervous about Mr. Cannon's checking arrival times in light of the fact that this had not been done in previous years. This private meeting was subsequent to the FBLA trip, in which Mr. Cannon, Ms. Rifenburg and several students were late in returning to Olpe. Ms. Rifenburg did not mention her concern with this late arrival to Mr. Cannon during this particular private conference. (T-1211, 1212)

172) That Mr. Cannon had an individual meeting with and prepared a contact sheet for Jane Schneider on October 20, 1983. The conversations in this meeting surrounding the subjects of morning faculty meetings, holding things in confidence and communication. (T-1214)

173) That Jeanette Schmidt was treated in the same manner as all the other teachers at Olpe High School with regard to the one-on-one conferences in October, 1983. The contact sheets for Jeanette Schmidt were typed up and given to her as a result of her request for a copy of the contact sheet. (T-1215)

174) That Mr. Cannon had a meeting with and prepared a contact sheet on Marilyn Trimmell on October 14, 1983. During that meeting, Mr. Cannon visited with Ms. Trimmell about her habitual lateness. Mr. Cannon indicated to Ms. Trimmell that he was going to continue to monitor her arrival time. (T-1219)

175) That during the period October 11, 1983 through October 28, 1983, Mr. Cannon conducted individual conferences with and made contact sheets for each certified staff member at Olpe High School. (T-1226)

176) That during October, 1983, Mr. Cannon engaged in classroom visitations with the various teachers at Olpe High School. During those classroom visitations, Mr. Cannon made notes regarding his findings. Only Jeanette Schmidt asked to see the notes that Mr. Cannon made during his classroom visitation. Mr. Cannon then provided those notes to Ms. Schmidt. (T-1232)

177) That Mr. Cannon viewed his visitation during October with Vivian Sexton and Sara Cannon in much the same light as his visitation during that same period of time with Jeanette Schmidt. That is, the contact sheets that were made during his visitation with Vivian and Sara were made relative to points of improvement for their performances. (T-1234)

178) That on November 8, 1983 Mr. Cannon received a rebuttal and a Seven Point Improvement Plan for Mr. Cannon from Jeanette Schmidt. (T-1244)

179) That on November 30, 1983, Mr. Cannon met with Jeanette Schmidt, involving her Seven Point Improvement Plan. Jeanette Schmidt brought Sharon Carnes to the meeting with her as a witnesses. A brief meeting that was had on November 30, 1983 was tape recorded by Ms. Schmidt or Ms. Carnes. (T-1258, 1259)

180) That Mr. Cannon scheduled a meeting with Jeanette Schmidt on December 20, 1983. Mr. Funk of the Kansas Association of School Boards had advised Mr. Cannon by that

time that Ms. Schmidt could have a witness present if she so desired so long as Jeanette and/or the witnesses signed a waiver of confidentiality. There were, in fact, two forms that were prepared, one of which was called a Statement of Confidentiality, and one, a Waiver of Confidentiality. This meeting was also tape recorded by Ms. Schmidt. (T-1261, 1262)

181) That Jeanette Schmidt handed a sealed envelope to Mr. Cannon on December 19, 1983, which contained a memo regarding a 'Level A' step in the grievance procedure, dated December 17, 1983. (T-1268, Respondent's Exhibit #27)

182) That Mr. Cannon had meetings with numerous teachers concerning the assignments for the 1984-85 school year. These meetings were had at the request of the superintendent and the Board of Education. Mr. Cannon requested that each teacher sign a document presented to them at the conclusion of the meeting. The document stated, "Signature of this document shall mean only that the employee acknowledges that it has been presented to he or she." All teachers signed the document with the exception of Jeanette Schmidt, who refused to sign. (T-1340)

183) That Beverly Cook was a volunteer in U.S.D. 252 to work in the library at Harmony Hill during the 1983-84 school year. Ms. Cook was a member of the Concerned Olpe Patrons for Education. (T-1370)

184) That the COPE was a group of parents and patrons of U.S.D. 252 who were concerned with the "situation" at the Olpe High School. The COPE organization had approximately four meetings with anywhere from eight (8) members in attendance up to twenty (20) or twenty-five (25) members in attendance. (T-1371)

185) That Vivian Sexton was employed at Olpe High School as a half-time English instructor and half-time counselor during the 1983-84 school year. (T-1376)

186) That Vivian Sexton resigned her position with U.S.D. 252 at the conclusion of the 1983-84 school year. (T-1376)

187) That Ms. Sexton's reassignment for the 1984-85 school year was one of the reason for her resignation. (T-1379)

188) That during October, 1983, Mr. Cannon came to Ms. Sexton's room during a sixth hour class and motioned for her to step out into the hall. Mr. Cannon then pointed to a gum wrapper on the floor down the hall and stated something to the effect that "privileges could be taken away." (T-1381, 1382)

189) That Ms. Sexton was concerned with and "intimidated by" Mr. Cannon walking up and down the hallway in the school with a yellow legal pad taking notes. (T-1382)

190) That Mr. Cannon had an individual meeting with Vivian Sexton during the month of October, 1983. Mr. Cannon commenced the meeting by discussing with Ms. Sexton numerous things that she had supposedly done. Ms. Sexton believed that Mr. Cannon was very angry at the time this meeting was had. (T-1384)

191) That Ms. Sexton does not recall that Mr. Cannon orally advised her of any areas in which he expected her to improve during this October, 1983 meeting. (T-1392)

192) That Ms. Sexton was one of the individual teachers to sign the "Ten Teacher Grievance". (T-1396)

193) That Ms. Sexton said nothing to Mr. Cannon concerning her displeasure with the chewing gum wrapper incident. (T-1410)

194) That Ms. Sexton recalls Mr. Cannon asking her during her October individual meeting "Who is the problem?" (T-1428)

195) That Ms. Sexton, on October 11, 1983, was concerned about Mr. Cannon's remark relative to termination of ten new teachers, the tone of voice that he used in talking to various teachers, the gum wrapper incident, and the fact that he was many times gone from the building. With the exception of a discussion concerning the fact that he was gone on numerous occasions, Ms. Sexton did not mention any of her concerns to Mr. Cannon during the October 11, 1983 individual meeting. (T-1432)

196) That Ms. Sexton was concerned during the 1983-84 school year that she would be terminated from her job. That at no time during the year does Ms. Sexton recall Steve Lopes advising her that the Board of Education had sent a message through the NEA to the effect that the teachers need not be concerned about losing their jobs. (T-1462)

197) That Ms. Sexton ran into Mr. Heiman in the hallway and asked him if it would be possible for her to speak with him. Mr. Heiman asked Ms. Sexton the subject matter of her questions. When she replied that it concerned the principal, Mr. Cannon, Ms. Sexton believes that Mr. Heiman then visibly drew back and became defensive. Mr. Heiman then advised Ms. Sexton that he would not talk with a group of individuals, but that he would talk with Ms. Sexton individually. (T-1465)

198) That Mr. Heiman prepared a memorandum for Ms. Sexton two days after the meeting in the hall, in which he stated the times that he could meet with Ms. Sexton. (T-1465)

199) That Ms. Sexton, upon receiving the memo referenced in the previous Finding, chose not to go through with the meeting with Mr. Heiman and just let the matter drop. (T-1467)

200) That Ms. Vivian Sexton held no official position with the local NEA association during the 1983-84 school year. Ms. Sexton was, however, a member of the association. (T-1468)

201) That Ms. Sexton, as a counselor kept certain counseling files. Some of these files are kept in a safe in the office to which Ms. Sexton does not have easy access. After the first couple of months of school, Mr. Cannon informed Ms. Sexton that she would no longer be able to go into the safe in the office to retrieve her counseling files. Rather, that she would have to ask the secretary to get specific files for her. (T-1477)

202) That Mr. Steve Lopes is the UniServ Director for the Kansas National Education Association. Mr. Lopes has been employed by the Kansas National Education Association for approximately three years. (T-1482)

203) That Mr. Lopes transferred to the Sunflower office of the Kansas NEA the last week in October, 1983. Immediately after he assumed his duties in the Sunflower office, Mr. Lopes was informed by Lee Quisenberry, another Kansas NEA staffer, that he, Mr. Quisenberry, had met with some teachers in Olpe and that the teachers were experiencing a problem in their employment. Further, Mr. Quisenberry had scheduled another meeting with these teachers from Olpe during the following week, the week of November 2, 1983, and Mr. Quisenberry asked Mr. Lopes if he would like to attend that meeting. (T-1487)

204) That Mr. Lopes attended a meeting on November 2, 1983, which was also attended by approximately a dozen teachers from the Olpe school system and Mr. Lee Quisenberry, a KNEA staffer. (T-1488)

205) That the meeting referenced in the previous Finding had been convened for approximately an hour or so when Jeanette Schmidt came into the meeting. After general discussion, it was Mr. Lopes' opinion that Jeanette Schmidt had a problem separate from the problem that the other ten or so teachers were complaining. He (Mr. Lopes) perceived Ms. Schmidt's problem to resolve around the Seven Point Improvement Plan given to her by Mr. Cannon, the principal, while the other teachers had a problem with communication with the principal, Mr. Cannon. (T-1489)

206) That Mr. Lopes believed that the meeting referenced in the previous two Findings was held in an effort to identify what the concerns of the teachers were and how they related to the principal. After having heard their concerns, Mr. Lopes tried to convince the teachers to set up a group meeting with the principal. The teachers, upon hearing the advise from Mr. Lopes, advised him that the principal would not meet with them. (T-1490)

207) That Jeanette Schmidt, upon her arrival at the November 2, 1983 meeting, visited with Mr. Lopes concerning her Seven

Point Improvement Plan and, in fact, asked Mr. Lopes for his opinion as to whether or not the plan was an evaluation or a discipline or what it might be. (T-1491)

208) That Mr. Lopes could not positively identify on November 2, 1983, whether the Seven Point Improvement Plan given by Mr. Cannon to Jeanette Schmidt was an evaluation or a disciplinary instrument. (T-1494)

209) That Mr. Lopes met with Jeanette Schmidt on the Friday evening following the November 2, 1983 meeting and spent several hours reviewing what Mr. Cannon told Jeanette during the meeting between Mr. Cannon and Jeanette Schmidt on November 1, 1983. After having reviewed the tape made of the November 1, 1983 meeting, Mr. Lopes and Jeanette Schmidt prepared a response to the Seven Point Improvement Plan, including a Seven Point Improvement Plan for Mr. Cannon and gave Mr. Cannon seven or ten days to respond to his improvement plan. (T-1495)

210) That Mr. Lopes attended a meeting on November 22, 1983 with Mr. Cannon concerning Jeanette Schmidt's grievance. (T-1496)

211) That Mr. Lopes informed the other nine teachers at Olpe High School that he was there on November 22, 1983 to attend a grievance meeting with Jeanette Schmidt, but if they desired for him to attend their meeting with Mr. Cannon on that day that he would be happy to attend with them. (T-1496)

212) That Mr. Lopes specifically avoided any suggestion during the November 2, 1983 meeting that the nine or ten teachers file a grievance concerning their problem and rather, recommended that they ask for a meeting with the superintendent of schools, Mr. Heiman. (T-1497)

213) That Mr. Lopes collaborated with the teachers in preparing a letter to send to the superintendent, concerning their desire to communicate with him. Jeanette Schmidt then called Mr. Lopes on November 4, 1983 and indicated that she had

a hand-delivered response from the superintendent advising the ten teachers that their problem was either a personnel problem or a grievance or a problem with a contract, and further, that he recommended that they file a grievance if they wanted to meet with him. (T-1498)

214) That the ten teachers referenced in the previous Finding then prepared and signed a letter, which was dated November 15, 1983, which they considered to be a grievance on which they were to meet with Mr. Cannon on November 22, 1983. (T-1498)

215) That it was Mr. Lopes understanding, arrived at from the reading of a letter Mr. Cannon had sent to Jeanette Schmidt, that the ten teachers had a scheduled meeting for November 22, 1983, with Mr. Cannon after the grievance meeting with Jeanette Schmidt. (T-1498)

216) That the November 22, 1983 meeting was attended by Mr. Lopes, Ms. Schmidt, Mr. Cannon and Mr. Richard Funk, who were present on behalf of the administration. (T-1500)

217) That Mr. Lopes questioned Mr. Funk's attendance at the November 22, 1983 grievance meeting, and, in fact, read specific language from the contract and then requested that Mr. Funk leave the meeting. (T-1500)

218) That although Mr. Lopes questioned Mr. Funk's attendance at the November 22, 1983 grievance hearing, the parties, nevertheless, went into the grievance matter. (T-1500)

219) That during the November 22, 1983 meeting with Mr. Cannon concerning Jeanette Schmidt's grievance, Mr. Lopes asked Mr. Cannon for substantiation of the Seven Point Improvement Plan. Mr. Cannon then produced seven sheets of paper which concerned a history of the problem and remedy. (T-1502)

220) That Mr. Lopes inquired of Mr. Cannon as to whether or not he had given the history of the problem to Jeanette at a previous time. Mr. Cannon replied that he had not given her the written document but that he had read that history to her during the November 1, 1983 meeting. (T-1502)

221) That after the November 22, 1983 meeting with Mr. Cannon, Mr. Lopes had no more direct communication with Mr. Cannon. (T-1505)

222) That Mr. Lopes first met Superintendent of Schools, Mr. Heiman, on May 21, 1984, the first day of the hearing into this complaint. (T-1506)

223) That Mr. Lopes concluded the grievance meeting with Mr. Cannon and Ms. Schmidt because he "felt that they were not getting anywhere". At that time, Mr. Lopes indicated to Mr. Cannon that the other nine teachers were awaiting their meeting on the ten teacher grievance and that they would be happy to meet with him at that time. Mr. Cannon replied that he and Mr. Funk did not desire to meet with the other nine teachers at that time. (T-1507)

224) That Mr. Lopes advised Jeanette Schmidt that she had the right to have a witness present if any meeting with Mr. Cannon involved discipline, the grievance or anything to do with the Seven Point Improvement Plan. Mr. Lopes specifically instructed Jeanette Schmidt not to refuse to meet with the principal, but rather to insist on the presence of a witness. (T-1508, 1509)

225) That Mr. Lopes drafted and sent a letter to Mr. Heiman informing Mr. Heiman that he (Mr. Lopes) had been informed by members of the association that they had not been receiving their mail at the school building. Further, he informed Mr. Heiman that he had investigated the matter with the postal service regional office in Kansas City, Missouri, and was, at this time, asking Mr. Heiman for his cooperation on investigating the delivery of mail to the teachers at Olpe High School. (T-1511, Joint Exhibit #63)

226) That Mr. Lopes did not receive a response to his letter referenced in the previous Finding from Mr. Heiman or any member of the Board of Education. (T-1511)

227) That Mr. Lopes has written either one or two letters at various times to Ms. Pat Baker, Senior Legal Counsel for the Kansas Association of School Boards, asking for a meeting with the teachers at Olpe High School to discuss a way of diffusing the problem at Olpe High School. Mr. Lopes did not receive a response to his letter to Ms. Baker. (T-1512)

228) That Mr. Lopes was aware that Diane Hull, an attorney for NEA, had a meeting to discuss the Olpe "situation" with Pat Baker, an attorney for KASB. That meeting was had on approximately December 15, 1983. (T-1513)

229) That Diane Hull prepared a memorandum directed to Mr. Steve Lopes regarding an agreement between she and Ms. Baker arrived at the December 15, 1983 meeting. In that memorandum, Ms. Hull stated that it was her understanding that he (Mr. Lopes) accepted the proposals that she had put forth to Ms. Baker during the December 15, 1983 meeting. Mr. Lopes did not agree in total with all of the proposals put forth by Ms. Hull. (T-1514, 1515)

230) That Mr. Lopes notified Ms. Hull in writing that he did not agree with all of the proposals put forth during the December 19, 1983 meeting. (T-1515)

231) That Mr. Lopes placed a phone call to the Lyon County attorney's office, alleging that the school district had violated the Kansas Open Meetings Law. (T-1522)

232) That Mr. Lopes, on January 4, 1984, filed the prohibited practice complaint that's the subject matter for the hearing that was held in Olpe. (T-1521)

233) That Mr. Lopes related to the school board on December 12, 1983, that a suit had been filed against the Board with the Department of Human Resources. (T-1522)

234) That Mr. Lopes had hand-delivered a prohibited practice complaint to the office of the Secretary on approximately November 30, 1983. That complaint was never officially filed by the Secretary. (T-1523)

235) That Mr. Lopes advised the ten teachers to tape record any meeting or conversations with Mr. Cannon or Mr. Heiman whenever possible. This advise was given after Mr. Lopes had listened to the tape of the November 1, 1983 meeting. (T-1525)

236) That Mr. Lopes believes that his position is comparable to the position of legal counsel as contemplated by the negotiative agreement. (T-1532)

237) That Mr. Lopes prepared the following "grievances" December 12, 1983, marked Complainant's Exhibit #23; December 12, 1983, marked Complainant's Exhibit #19; December 23, 1983, marked Complainant's Exhibit #21; and February 16, 1984, marked Complainant's Exhibit #14. (T-1536)

238) That Mr. Lopes was advised by Diane Hull that the Board had indicated to her that none of the jobs of the ten teachers in question were in jeopardy. (T-1539)

239) That Mr. Lopes related to the ten teachers either individually or through Jeanette Schmidt, that the Board had indicated that none of the ten teachers' jobs were in jeopardy. (T-1539)

240) That Mr. Lopes authored a letter on March 16, 1984 to Donna Williams, President of Board of Education #252, advising the Board that he (Mr. Lopes) had instructed each of the ten teachers to refuse to discuss any part of their concerns about personnel matters with a member of the Board or with the administration. (T-1540)

241) That Mr. Lopes authored numerous articles and cause to be distributed numerous articles involving the Olpe "situation". (T-1543, 1544, 1545)

242) That it was Mr. Lopes who coined the phrase "Olpe Ten". (T-1554)

243) That Article 23 of the 1983 negotiated agreement, entitled Teacher's Evaluations provided that a committee would be established to review the existing instrument and to make recommendations to the Board. (T-1557)

244) That Kathy O'Mara, the vice president of the SLCTA, who was also a member of the evaluation committee, related to Mr. Lopes that the committee had met once and had made a recommendation, but that she was not aware of the action that might have been taken upon that recommendation. (T-1558)

245) That Complainant's Exhibit #42, a November 15, 1983 letter directed to Mr. Cannon from the ten teachers signing the document, is the association's response to their understanding of Mr. Heiman's invitation to file a grievance. (T-1563)

246) That Sharon Bechtel recalls Mr. Cannon making a comment at a faculty meeting to the extent of complimenting Ms. Schneider for having attended a bonfire and then he said something about the fact that he might not always see all of us at these things, but that he had other eyes and ears that did. (T-1628)

247) That the Board of Education sent each teacher a letter wherein they extended an invitation to the teachers to attend a certain meeting which occurred on March 28, 1984. Ms. Bechtel recalls that neither Mr. Cannon nor Mr. Heiman attended that meeting. (T-1630, 1631)

248) That Sharon Carnes was employed as a mathematics teacher at Olpe High School during the 1983-84 school year. (T-1633)

249) That Ms. Carnes perceived the "problem" at Olpe High School during August, September and October, as mainly being a total change from what the teachers had been used to and that she didn't feel free to actually communicate with Mr. Cannon. (T-1635)

250) That Ms. Carnes had an individual meeting with Mr. Cannon on October 17, 1983. This meeting was held in the evening prior to the day she left for Washington, D.C. to attend an awards ceremony. (T-1638)

251) That during the meeting referenced in the previous finding, Mr. Cannon first asked Ms. Carnes if she had any

concerns or problems that she would like to communicate to him.

(T-1639)

252) That Ms. Carnes expressed numerous concerns to Mr. Cannon during that October 17, 1983 individual meeting. (T-1640)

253) That Mr. Cannon visited with Ms. Carnes on two occasions prior to the October 17, 1983 meeting and never visited her room after that date with the exception of delivering notes or something of that nature. (T-1644)

254) That Ms. Carnes attended a meeting on November 12, 1983, with Mr. Gerald Haag, a member of the Board of Education. (T-1647)

255) That Ms. Carnes became the contact person for the "ten teacher grievance" on December 6, 1983. Prior to the date, Ms. Jeanette Schmidt was the contact person. (T-1648)

256) That Ms. Carnes believed the problem over which the ten teachers filed a grievance was the arrival of Mr. Cannon, all the changes and "the harassment" the people were receiving. (T-1649)

257) That Ms. Carnes attended the December 5, 1983, faculty meeting with Mr. Heiman. (T-1650)

258) That during the meeting referenced in the previous Finding, neither Ms. Carnes nor other teachers were given an opportunity to speak. (T-1651)

259) That Ms. Carnes sent a letter to Mr. Heiman on approximately December 6, 1983 asking for a meeting on behalf of the ten teachers. This letter was requesting a Level Two grievance meeting with Mr. Heiman and was sent as a result of the teachers' desire to meet with Mr. Cannon on October 22, 1983. (T-1652, Joint Exhibit #53)

260) That as a result of Ms. Carnes' letter to Mr. Heiman, Mr. Heiman prepared and sent a letter to Ms. Carnes, marked Joint Exhibit #64. In that letter, Mr. Heiman asked, "Could you clarify what alleged violation this letter is concerned with?" Further, the letter stated, "Hopefully, you will properly

identify my concerns. When the grievance procedure is properly followed, I will be glad to meet with you." This letter was dated December 12, 1983. (T-1654)

261) That Ms. Carnes attended a meeting on January 18, 1984, with the ten teachers in attendance. Mr. Heiman, Mr. Gerald Haag and Ms. Donna Williams were present at that meeting for the school board. (T-1657)

262) That Ms. Carnes specifically recalls that Joni Sobieski read a statement prior to the commencement of the meeting referenced in the previous Finding. This statement specified that the ten teachers did not regard the meeting as the meeting that was agreed to by legal counsel for NEA and KASB. (T-1658)

263) That Ms. Carnes recalls two occasions wherein she asked permission to leave the school prior to the agreed-upon four o'clock quitting time. On both of those occasions, Mr. Cannon did allow Ms. Carnes to leave the building early. (T-1690, 1691)

264) That Sharon Carnes understood that she and the other eight teachers were to meet on November 22, 1983 with Mr. Cannon in order to discuss the grievance dated November 15, 1983 (Complainant's Exhibit #42). Ms. Carnes' understanding that the meeting was to occur was based upon the November 15, 1983 letter addressed to Jeanette Schmidt from Mr. Cannon and discussions among the group of teachers assuming that there was going to be a meeting with all teachers after Jeanette Schmidt's grievance meeting. (T-1714)

265) That Ms. Carnes received a letter (Joint Exhibit #34) from Mr. Heiman in response to her grievance which stated in part, ". . . Hopefully you will properly identify my concerns. When the grievance procedure is properly followed, I will be glad to meet with you . . .". (T-1720)

266) That Sharon Carnes does not recall any time when Mr.

Lopes informed her that her job or the job of any of the other nine teachers were in jeopardy. Ms. Carnes believes that she heard that the jobs were not in jeopardy through Jeanette Schmidt. (T-1722)

267) That Ms. Carnes attended a meeting with Mr. Gerald Haag of the school board. Jeanette Schmidt informed Ms. Carnes that Mr. Haag did not desire to meet with all of the teachers. (T-1734)

268) That Ms. Carnes was informed that a substitute teacher, who was handling her class while she was in Washington, D.C., had been allowing the students to drink pop around the computers. Therefore, Ms. Carnes expressed to Ms. Moran that she did not want to have this particular individual substituting in her class again. This thought was communicated to Mr. Cannon through JoAnn Moran, the secretary. (T-1750)

269) That Ms. Carnes prepared a list of the times that she personally observed Ms. Beth Schmidt outside of her classroom. Ms. Carnes' note indicates that she observed Ms. Schmidt outside of her classroom on twenty-four (24) separate occasions. (T-1751)

270) That Mr. Fred Warnken is employed at Olpe High School and is the gentleman who is responsible for setting the bell schedule at the high school. Mr. Warnken utilizes a tape system wherein he can program the bells to ring at any interval he might desire. Mr. Warnken receives his instructions on how to program the bells from the principal of the school. For the 1983-84 school year, Mr. Warnken programmed the bells to include a three minute break time between each class. (T-1763, 1764)

271) That Mr. Warnken prepared a listing of the times when the bell rang for the 1983-84 school year which was marked as Complainant's Exhibit #55. (T-1764)

272) That Mr. Warnken programmed the bells for the 1983-84 school year so that the first class in the morning would commence at 8:20. (T-1767)

273) That Mr. Warnken programmed the bells so that the last class of the day ended at 3:15 up until about the last month of the school at which time the district determined that additional time in school was necessary in order to meet the requirements of law. Therefore, five minutes was added to the last school period of the day for the last month of school during the 1983-84 school year. (T-1770)

274) That at some time during the latter part of the school year, Mr. Warnken found that the bells were ringing one minute early throughout the day. Mr. Warnken believes that this problem was caused by a failure of the system insofar as the advancement of the tape is concerned. The tape had evidently crawled one minute at some time during the year. Mr. Warnken had no idea when this might have occurred. (T-1770)

275) That there is a clock in each classroom in the Olpe High School and one clock in the lounge. These clocks are, for the most part, regulated by the master clock in the office. They are regulated in that there is a master switch that sets all the clocks in the building. (T-1774, 1776)

276) That Ms. Marilyn Trimmell was employed during the 1983-84 school year at Olpe High School as a librarian and speech therapist. (T-1778)

277) That Ms. Trimmell resigned her employment with Olpe school district effective at the end of the 1983-84 school year. (T-1778)

278) That Ms. Trimmell had an individual meeting with Mr. Cannon, the principal of Olpe High School, on October 14, 1983. Ms. Trimmell was in the lounge picking up her mail when Mr. Cannon came up to her and asked her to meet with him in this office. (T-1779)

279) That Mr. Cannon asked Ms. Trimmell to close the door to his private office when their individual meeting commenced on October 14, 1983. Ms. Trimmell informed Mr. Cannon that she would prefer to leave the door open, to which Mr. Cannon replied that he desired to have the door shut. (T-1780, 1781)

280) That during this individual meeting between Mr. Cannon and Ms. Trimmell, Mr. Cannon said he thought that there were some problems at the high school and he asked Ms. Trimmell what she thought the problems were. Ms. Trimmell then proceeded to inform Mr. Cannon that she thought there was a lack of communication and further, she pointed out the problem that she had with early morning faculty meetings. (T-1782)

281) That Ms. Trimmell testified that Mr. Cannon asked her who the troublemaker was during this individual meeting on October 14, 1983. (T-1785)

282) That Ms. Trimmell does not believe that Mr. Cannon made any statements relative to requesting that teachers have students under direct supervision until November 21, 1983. (T-1819)

283) That Ms. Trimmell does not recall Mr. Cannon telling her during the October 14, 1983 individual meeting that he intended to monitor Ms. Trimmell's arrival times. (T-1825)

284) That the early morning faculty meetings were scheduled fifteen (15) minutes prior to the teachers' normal arrival time. (T-1827)

285) That Ms. Trimmell recalls that it was approximately the first part of November when she decided that there was a real problem at Olpe High School. She then began to take notes of things that were happening at the school. (T-1832)

286) That Ms. Trimmell recalls Mr. Cannon making a statement in a faculty meeting instructing the teachers not to go over his head to Mr. Heiman. However, Ms. Trimmell has no recollection of Mr. Cannon making a statement concerning students going over teacher's head to him, Mr. Cannon, the principal. (T-1840)

287) That Ms. Trimmell tape recorded a faculty meeting on November 21, 1983. (T-1842)

288) That Ms. Trimmell tape recorded the December 12, 1983 Board of Education meeting. (T-1844)

289) That Ms. Trimmell tape recorded a telephone conversation with Joe Wendling on December 10, 1983. (T-1844)

290) That Ms. Trimmell went to Mr. Wendling's house on November 23, 1983, in order to talk with him concerning the Olpe situation. (T-1846)

291) That Ms. Trimmell related to Mr. Wendling on November 23, 1983, that she was concerned about her family and her career and that she was contemplating resignation at that time. (T-1848)

292) That Ms. Trimmell was not responsible for extending a personal invitation to any other teachers to attend either of the two meetings at Harmony Hill. (T-1889)

293) That Marilyn Trimmell was one of the ten teachers signing the ten teacher grievance. (T-1890)

294) That Ms. Trimmell does not recall any other teacher or Mr. Lopes telling her during the year that her job was not in jeopardy. (T-1892)

295) That Ms. Trimmell recalls a time when Ms. Sharon Bechtel told her (Ms. Trimmell) that in Ms. Bechtel's opinion the ten teachers were going to be terminated. This thought was communicated to Ms. Trimmell subsequent to the March 23, 1984 Board meeting. (T-1893)

296) That Ms. Trimmell had a meeting with Mr. Heiman on April 6, 1984. That meeting was tape recorded by Ms. Trimmell. (T-1894, 1895)

297) That during this April 6, 1984 meeting between Ms. Trimmell and Mr. Heiman, Ms. Trimmell related to Mr. Heiman that she was getting along fine. Ms. Trimmell testified that she was unhappy with the proceedings, but at that point in time she was simply doing as she was told. (T-1897)

298) That Ms. Trimmell attended a meeting with the Board and the other Olpe ten teachers in March of 1984. Ms. Trimmell also tape recorded that meeting. (T-1898)

299) That Mr. Cannon informed Ms. Trimmell that study halls would be conducted in the library during the coming school year. This fact was given to Ms. Trimmell during the meeting between Ms. Trimmell and Mr. Cannon for the purpose of explaining assignments for 1984-85. (T-1900)

300) That Mr. Cannon was aware that Ms. Trimmell preferred not to have study hall in the library because of problems involving the students' proper utilization of the library. (T-1900)

301) That Ms. Trimmell made a tape recording of the meeting between she and Mr. Cannon on April 18, 1984, the purpose of which was to discuss assignments for the coming school year. (T-1901)

302) That during the meetings referenced in the previous Finding of Fact, Mr. Cannon also advised Ms. Trimmell that during the coming school year she would be serving as the junior class sponsor. (T-1903)

303) That sometime during the last two or three weeks of school, Ms. Jeanette Schmidt went to Ms. Trimmell's room and took pictures of Mr. Plummer through the windows in Ms. Trimmell's library room. There was a series of six photographs taken of Mr. Plummer sitting outside the classroom and of the students exiting Mr. Plummer's classroom. (T-1927)

304) That Ms. Trimmell did not start taking pictures at school until after she had turned in her resignation. The purpose of the pictures that she took of the children at school were so that she (Ms. Trimmell) could remember the kids. (T-1928)

305) That Elizabeth Jeanne Heiman is married to the superintendent of U.S.D. 252, Mr. Thomas Heiman. (T-1935)

306) That Ms. Jeanne Heiman wrote a letter to Representative Anita Niles in response to a letter from Representative Anita Niles. (T-1936)

307) That Thomas D. Heiman is currently serving as superintendent of schools, U.S.D. 252. Prior to his past four years of service as superintendent, Mr. Heiman was employed by U.S.D. 252 as principal at Olpe High School. (T-1968, 1969)

308) That while Mr. Heiman was principal of Olpe High School, Jeanette Schmidt was employed directly under his supervision. (T-1970)

309) That Mr. Heiman, as principal of Olpe High, had an occasion and a responsibility to evaluate the performance of Ms. Jeanette Schmidt as a teacher at Olpe High School. (T-1970)

310) That Mr. Heiman evaluated Ms. Jeanette Schmidt on November 9, 1978. Mr. Heiman again evaluated Ms. Jeanette Schmidt on March 16, 1979. Mr. Heiman also evaluated Ms. Schmidt on April 10, 1980. (T-1972)

311) That Mr. Heiman made the comment, "I feel she was an excellent staff member" on the November 9, 1978 evaluation of Ms. Jeanette Schmidt. Mr. Heiman then indicated on Ms. Schmidt's March 16, 1979 evaluation that Ms. Schmidt was continuing to do an excellent teaching job. The 1980 evaluation of Ms. Schmidt by Mr. Heiman once again indicated that Ms. Schmidt was doing a very strong job of teaching. (T-1974, 1975)

312) That when Mr. Heiman became superintendent of schools, a gentleman by the name of Van Bettega became the principal of Olpe High School. During Mr. Van Bettega's tenure as principal, he also prepared evaluations of Jeanette Schmidt. (T-1977, 1978)

313) That Mr. Van Bettega evaluated Jeanette Schmidt February 23, 1982. That evaluation states that Jeanette was a strong asset to the staff and was basically an excellent evaluation. (T-1979, 1982)

314) That Mr. Van Bettega again evaluated Jeanette Schmidt on February 25, 1982, in which he indicates Ms. Schmidt is an excellent teacher. (T-1983)

315) That there are two files maintained on teachers within the school system. The first file is a personnel file maintained by the school board's clerk and the second file is a file maintained in the superintendent's office, which contains evaluation instruments. (T-1985)

316) That there were no formal evaluations made of Jeanette Schmidt's performance during the 1983-84 school year. (T-1987)

317) That Mr. Heiman first became aware that there was a problem at Olpe High School when Mr. Cannon called Mr. Heiman in his office on approximately October 4 or 5, 1983. Mr. Cannon indicated to Mr. Heiman at that time that he thought there was a morale problem in the building. After some discussion on the subject, Mr. Heiman suggested that an attempt should be made to set down with each of the individuals for one-on-one conversation to talk about the problem. (T-1987, 1988)

318) That Mr. Heiman first became aware of a problem with Jeanette Schmidt sometime in mid-October when Mr. Cannon informed him that Jeanette Schmidt was having a problem in leaving classes unattended. (T-1988)

319) That Mr. Cannon informed Mr. Heiman that he was going to meet with Jeanette Schmidt to discuss with her the Seven Point Improvement Plan. (T-1990)

320) That Mr. Heiman does not recall any statement concerning Jeanette Schmidt or any other teacher during the interview process with Mr. Cannon before the Board of Education. (T-1996)

321) That Mr. Heiman sent a copy of Jeanette Schmidt's Seven Point Improvement Plan to the members of the Board on approximately November 2, 1983. (T-2002)

322) That Mr. Heiman, Mr. Cannon and Donna Williams had a meeting with a gentleman by the name of Dr. Jack Skillett, Dean of Education, Emporia State University, concerning the situation at Olpe High School. This meeting took place on approximately October 3 or 4, 1983. (T-2010, 2011)

323) That Mr. Heiman attended a board meeting on November 14, 1983. During that board meeting, an executive session was held with the board members, Mr. Heiman and Ms. Pat Baker from the Kansas Association of School Boards. Mr. Heiman does not recall specifics from the conversation between the board members, himself and Ms. Baker during the board meeting. (T-2015, 2018)

324) That Mr. Heiman had a meeting on November 22, 1983 at the Olpe Chicken House with Mr. Funk and Mr. Cannon. During this meeting at the Chicken House, the Level One grievance meeting was discussed. Mr. Funk may have advised Mr. Cannon and Mr. Heiman that they should have provided Jeanette Schmidt with her history of the problem at a point previous in time. (T-2023, 2024)

325) That the first recollection Mr. Heiman has of any discussion before the Board concerning termination was at the January 9, 1984 school board meeting. He recalls that the discussion at that time simply related to the district's various options. (T-2024, 2032)

326) That Mr. Heiman recalls that during the January 9, 1984 board meeting a board member asked Ms. Pat Baker what the options were. Discussion was then had by all members concerning termination, probation, transfer and just leaving Ms. Schmidt where she was. (T-2025, 2032)

327) That the January 9, 1984 board executive meeting lasted from approximately 9:50 p.m. to 12:15 p.m. During that executive session, among other things, the Board and Mr. Heiman discussed the options for dealing with a problem that they perceived with Jeanette Schmidt. The option selected was to leave her right where she was. (T-2034)

328) That Mr. Heiman attended an executive session of a board meeting held on December 8, 1983, during which options to resolve the Olpe problem were discussed. Mr. Richard Funk and Ms. Pat Baker both attended this executive session. (T-2035)

329) That Jeanette Schmidt was transferred from the Olpe building to the Harmony High School building for the following school year. Mr. Heiman testified that he recommended the transfer based upon a communication that he had received which stated that Jeanette Schmidt could hardly stand to go into the Olpe High School building and because he felt that Jeanette

Schmidt would strengthen the teaching staff at the Hartford building. (T-2037, 2038)

330) That Mr. Heiman did not discuss Ms. Schmidt's transfer with her at any time. Mr. Heiman further testified that it was not his policy to discuss transfers with employees and, in fact, he could only recall one instance when he had such a discussion with an employee. (T-2038)

331) That the telephone bill for Olpe High School was received in the central office around December 5 or December 6, 1983. Upon receipt of that phone bill, Mr. Heiman made some notes on the bill and may have provided copies of the bill to Pat Baker and/or Mr. Cannon. (T-2042, Joint Exhibit #2)

332) That Mr. Heiman recalls a telephone conversation with Mr. Joe Wendling on approximately November 30, 1983, concerning the article that came out in The Wail. Mr. Heiman does not recall discussing what the specific problem was at Olpe High School with Mr. Wendling. (T-2054)

333) That Mr. Heiman first became aware of the individual who wrote the article in The Wail during the December 12, 1983 school board meeting. (T-2055)

334) That Mr. Heiman had a meeting with the teachers of Olpe High School on December 5, 1983, during which he related comments that had been reported to him. Mr. Heiman did not nor did he intend to attribute any of the statements to particular teachers. (T-2057)

335) That Mr. Heiman caused to be prepared and disseminated to patrons of the school district, a pamphlet entitled "Informants." In one Informant sent to the patrons during the school year in question, Mr. Heiman made the statement, "As of December 16, 1983, no grievance has properly been filed at any level." (T-2070)

336) That Mr. Heiman prepared letters to the teachers at Olpe High School, dated January 13, 1984. The purpose of the letter was to invite the teachers to two separate meetings.

Members of the Olpe Ten were sent a letter informing them of a meeting at 7:00 and members of the Embarrassed Eleven were sent letters informing them of a meeting at 8:00 p.m. (T-2080)

337) That on the afternoon of January 18, 1984, Mr. Heiman received phone calls from two staff members. One telephone call was from Gloria Rifenbark and one was from Jeff Nelson. Ms. Rifenbark's letter invited her to attend the seven o'clock meeting, she subsequently asked if she could also attend the eight o'clock meeting. Mr. Jeff Nelson had received a letter inviting him to the eight o'clock meeting and he asked Mr. Heiman if he could attend the seven o'clock meeting. Mr. Heiman gave his permission to both of these individuals for them to attend both meetings on January 18, 1984. (T-2083)

338) That Mr. Heiman received a telephone call from Diane Hall at about 6:20 p.m. on the evening of January 18, 1984. During that telephone conversation, Ms. Hall asked about the meeting scheduled for that evening, wanting to know the reasons behind the meeting. Mr. Heiman recalls explaining to Ms. Hall the format for the meeting and further that one individual from each of the groups would be allowed to attend the other group's meeting. (T-2084)

339) That Mr. Mahan has conducted morning faculty meetings at 7:30 a.m. for a number of years at Hartford High School. (T-2086)

340) That Mr. Heiman drove to Topeka, Kansas to talk with Pat Baker on approximately December 1, 1983. The purpose of the trip was to discuss Ms. Jeanette Schmidt's "insubordination" for failing to meet privately with Mr. Cannon. (T-2093)

341) That Mr. Heiman related to Pat Baker during their meeting on December 1, 1983, a report concerning the meeting between Mr. Cannon and Jeanette Schmidt on November 30, 1983. Ms. Baker then advised Mr. Heiman to set up a meeting with Jeanette Schmidt. (T-2096)

342) That Mr. Heiman believes that any matter which is not a violation of a negotiated agreement or contractual problem would fall within what he defines to be a personnel problem. (T-2099)

343) That Jeanette Schmidt hand-delivered an envelope on the night of January 18, 1984 to Mr. Heiman, which prompted him to consult with his lawyer, Mr. Krueger, involving the proper response to make. (T-2104)

344) That it was Mr. Heiman's understanding that only those teachers whose assignments were going to change for the coming year were asked to sign a document to the effect that they understood their assignments. If their assignments were to remain the same, they did not have staff consultations and were not asked to sign the document. (T-2120)

345) That although Gloria Rifembark's curricular assignments are listed as the same for 1983-84, her extracurricular assignments will change for that school year. (T-2126)

346) That Mr. Heiman decided to relieve Diane Heins and Deb Schneider of the responsibility of junior class sponsors for the coming school year. Deb Schneider was relieved since she would no longer be teaching in the Olpe High School building. Diane Heins was relieved because of a dual feeling that a change was needed and the fact that Mr. Cannon had related a complaint concerning Ms. Heins' handling of the junior class activities to Mr. Heiman. (T-2132)

347) That it was Mr. Heiman's recommendation to the Board that Gloria Rifembark and Marilyn Trimmell be assigned junior class sponsors for the coming school year. (T-2130)

348) That Mr. Heiman did not discuss the junior class sponsorship for the coming year with either Marilyn Trimmell or Gloria Rifembark. Neither did Mr. Heiman instruct Mr. Cannon to visit with the two individuals about the sponsorship. (T-2136)

349) That Ms. Jane Schneider taught the first and second grade during the 1982-83 school year and will be assigned the

fifth and sixth grade classes during the 1983-84 school year.

(T-2138)

350) That Jane Schneider was not consulted about the change in assignments for the 1983-84 school year, referenced in the previous Findings. (T-2139)

351) That Ms. Beth Schmidt has the same curricular assignments for the 1983-84 school year as she did for the 1982-83 school year. However, Ms. Schmidt's extracurricular assignments have changed inasmuch as she will not serve as the freshmen co-sponsor during the 1983-84 school year. (T-2143)

352) That each teacher signed individual contracts for the 1982-83 school year, which specified the assignments that they would handle. Tentative assignments were given to or presented to the teachers in April. (T-2160)

353) That Ruth Welborn will be the third and fourth grade teacher at Harmony Hill for the 1983-84 school year. During the previous school year, Ms. Welborn taught fifth and sixth grade. (T-2167)

354) That Ms. Vivian Sexton was assigned the senior high pep club sponsor for the 1983-84 school year. Ms. Sexton was given this assignment in order to fill in for a teacher who was being transferred to another school. (T-2171)

355) That Ms. Vivian Sexton will also be teaching oral English at Olpe High School during the 1983-84 school year. This assignment will also be a new assignment for Ms. Sexton. Ms. Sexton does not hold state board certification to teach oral English. She is, however, certified to teach language arts. Mr. Heiman testified that it was his idea to ask the state Department of Education to issue a temporary certificate to Ms. Sexton to teach oral English during the 1983-84 school year. (T-2172, 2173, 2174)

356) That Ms. Jeanette Schmidt will be transferred to the Hartford High School the 1983-84 school year, where she will

teach composition literature. During the past school year,  
Ms. Schmidt taught social studies at the Olpe High School.

(T-2178)

357) That during the time Mr. Heiman was principal at Olpe High School, Ms. Jeanette Schmidt taught English. In years past, Ms. Schmidt had indicated to Mr. Heiman that she preferred to teach social studies. (T-2178, 2179)

358) That Ms. Jeanette Schmidt has been assigned pep club sponsor at Hartford High School for the 1983-84 school year.

359) That Ms. Jeanette Schmidt will also be responsible for forensics at Hartford High School, if in fact, the program is continued at the school. (T-2180)

360) That it is also contemplated that Ms. Jeanette Schmidt will conduct a three act play for the 1984-85 school year. (T-2182)

361) That Mr. Heiman believes that a personality conflict exists between Mr. Cannon and Ms. Jeanette Schmidt. (T-2186)

362) That Louise Hinrichs was transferred to Neosho Rapids for the 1984-85 school year. (T-2190)

363) That Mr. Heiman, and to his knowledge, Mr. Cannon, did not make a recommendation that Louise Hinrichs be transferred to Neosho Rapids. It was rather an action of the Board to make the assignment for the 1984-85 school year. (T-2191)

364) That Mr. Heiman received a letter from Sharon Carnes some time in May stating that she did not want the pep club sponsorship. The Board of Education subsequently stated in the May meeting that if another teacher wanted to volunteer for the position that such teacher should notify Mr. Cannon of their desires. Mr. Heiman is unaware of any teacher volunteering for the pep club position as of this date. (T-2197)

365) That the past year was the first year that staff consultations on tentative teaching assignments have been put in writing and that a request was made that documents be signed by the teachers. (T-2207)

366) That Ms. Debra Schneider related concerns to Mr. Heiman during a parent teacher conference that she no longer desired to be the volleyball coach. The Board thereafter changed Ms. Schneider's assignment and, in fact, reassigned Ms. Schneider to teach at Harmony Hill. (T-2211)

367) That Ms. Jeanette Schmidt's assignment for the current school year included pep club sponsor at Olpe High School, forensic assignment for Olpe High School and she was also in charge of the school play for Olpe High School. (T-2211)

368) That Mr. Heiman scheduled the two separate meetings on January 18, 1984 so that the teachers that were members of the "Olpe Ten" would feel free to discuss their concerns. (T-2241)

369) That Mr. Heiman testified that the list of items brought up by the teachers at the first meeting on January 18 was not handed out to the teachers in the second meeting. Mr. Heiman recalls that he did relate to the teachers in the second meeting a couple of items that were mentioned as problems during the first meeting and a few of the teachers in the second meeting, then, commented that they felt that there was a possible problem in one area. (T-2244)

370) That Mr. Jeanette Schmidt is employed by District 252 and has been so employed for the past six years. During the past six years, she taught all of the social science classes rural history, American History, government, Freshman English class and two speech classes. (T-2274)

371) That Ms. Jeanette Schmidt is current president of the Southern Lyon County Teachers Association. She has served in that capacity for the past year. Prior to this year, Ms. Schmidt served as vice president of the association and she has been the chief negotiator for the past three years. (T-2274)

372) That at the current time there are approximately thirty-two (32) to thirty-four (34) teachers who are members of the Southern Lyon County Teachers Association. There are

approximately forty-one (41) teachers in the entire district.

(T-2275)

373) That during the years that Ms. Schmidt has served as a member of the Southern Lyon County Teachers Association negotiations team, the district and the association have not had difficulties in reaching a negotiated agreement. The exception to reaching an agreement occurred during this current school year when the parties reached an impasse. (T-2282, 2283)

374) That during an in-service meeting held at Olpe High School in late August, 1983, Ms. Jeanette Schmidt was given thirty (30) minutes to make a presentation about the association. (T-2287)

375) That during late September, early October, numerous teachers approached Ms. Jeanette Schmidt as president of the Southern Lyon County Teachers Association to express their concern that problems existed at Olpe High School. (T-2297)

376) That Ms. Jeanette Schmidt is under contract to the school district to produce one all school or three act play. The dinner theatre play that Ms. Schmidt produced the previous year was produced on her own time. (T-2303)

377) That Mr. Cannon told Jeanette Schmidt on October 5, 1983, that he was going to change the play dates so that the three act play would be presented in the fall and the dinner theatre play would occur in the spring. (T-2306)

378) That as a result of Mr. Cannon's action to switch the play dates, Ms. Schmidt decided to cancel the dinner theatre which was to be conducted in the spring. (T-2309)

379) That on October 10, 1983, Ms. Jeanette Schmidt called the president of the UniServ District, Ms. Nancy Peavler to express to her the fact that she was experiencing problems in the school district. Ms. Peavler advised Jeanette to contact the KNEA office to inquire whether or not they could send someone down to put on a workshop on teacher's rights. (T-2310)

380) That on October 11, 1983, Jeanette Schmidt placed a call to the state KNEA office at 8:24 a.m. There was no one in the office when Ms. Schmidt called and therefore, she left a message on the recorder requesting that someone return her call. (T-2311)

381) That Jeanette Schmidt was notified at 9:50 a.m. by Ms. JoAnn Moran that she had a telephone call waiting for her. Ms. Schmidt then went to the lounge to answer the telephone. Ms. Schmidt took the telephone into the restroom so that she could speak in private with the caller. (T-2313)

382) That Ms. Schmidt then returned the telephone call to the KNEA office during the lunch hour. Ms. Schmidt spoke with Diane Hull, an attorney for KNEA, who indicated she would come down to meet with Ms. Schmidt and other teachers. (T-2315)

383) That Mr. Cannon observed Ms. Schmidt's classes for a short period of time on October 11, 1983, during both fifth and sixth hour. (T-2316)

384) That Ms. Schmidt received a written note in her mailbox asking her to attend a meeting with Mr. Cannon on October 28, 1983. (T-2319)

385) That the meeting with Mr. Lee Quisenberry and Ms. Diane Hull on the 18th of October, 1983 was advertised by a telephone call from Ms. Jeanette Schmidt to each of the building representatives asking those representatives to let all of the teacher members know that the meeting was going to take place. (T-2322)

386) That the meeting between Ms. Schmidt and Mr. Cannon on October 28, 1983 commenced with Mr. Cannon asking Ms. Schmidt if she had any problems with her classes, the school system or any other concerns. Mr. Schmidt related to Mr. Cannon that she had concerns that faculty morale was low and that various teachers were unhappy that certain changes were being made within the school building. Further, Ms. Schmidt related

to Mr. Cannon that the teachers were uneasy because Mr. Cannon was continuously taking notes in the hall. Mr. Cannon responded that the notes were to help him jog his memory and that anything that he had written down was available for the teachers to see at any time. Ms. Schmidt also related that the teachers all felt that no one knew when the ax was going to fall and that a number of the teachers felt threatened by being called in for one-on-one meetings. During the meeting between Mr. Cannon and Ms. Schmidt, Ms. Schmidt does not recall that Mr. Cannon was responsive to any of the concerns that she expressed. At the conclusion of the meeting, Mr. Cannon informed Ms. Schmidt that he wanted to discuss his concerns with her next Monday evening at 3:30 p.m. in the office. (T-2330)

387) That later in the day, Mr. Cannon came by the door to Ms. Schmidt's room and informed her that he would have to change his appointment with her from Monday evening to Tuesday evening since he was going to be out of town on Monday. (T-2330)

388) That Jeanette Schmidt then had a meeting with Mr. Cannon on November 1, 1983. The first order of business during their meeting was Mr. Cannon giving copies of the notes that he had made during his visits to Ms. Schmidt's class on October 10, 1983. The meeting then turned to the Seven Point Improvement Plan. Mr. Cannon read off each of the seven points individually at the same time giving Ms. Schmidt a history of the problem. Ms. Schmidt attempted to explain what had happened in each occurrence related to her by Mr. Cannon involving the Seven Point Improvement Plan. Ms. Schmidt then asked Mr. Cannon if she could have copies of his notes. Mr. Cannon then replied to Ms. Schmidt that he would give her a copy of the Seven Point Improvement Plan and asked her to sign and date the plan. Further, he specified that her signature would only indicate that she had been exposed to the plan. Ms. Schmidt then asked to look at the handbook or something and Mr. Cannon asked JoAnn Moran to provide Ms. Schmidt with the handbook. Ms. Schmidt asked

Mr. Cannon if, in fact, the Seven Point Improvement Plan was an evaluation, to which he replied that the plan was not, in fact, an evaluation; that it was a Seven Point Improvement Plan.

Ms. Schmidt advised Mr. Cannon that she would like to make a written rebuttal to the Seven Point Improvement Plan. Mr. Cannon advised Ms. Schmidt that he could not give her his notes because they were his own personal copy. Some discussion then occurred concerning an affidavit Ms. Schmidt had signed relating to an incident at Burlington. Subsequent to that discussion the meeting ended. (T-2344-2367)

389) That Ms. Schmidt does not recall any time prior to November 1, 1983, when Mr. Cannon visited with her about her placing calls to KNEA or inviting guest speakers to her classroom. (T-2369)

390) That Ms. Schmidt's first understanding that the Seven Point Improvement Plan was some type of "evaluation" was gained through a letter to her from Mr. Cannon dated November 23, 1983. In that letter, Mr. Cannon states in the second paragraph, ". . .As stated by Mr. Lopes, your representative, the grievance centers around whether I intend to withdraw the 'Seven Point Improvement Plan' as part of your evaluation. . ." Another sentence stated, ". . .The Seven Point Improvement Plan will remain as part of your evaluation for the 1983-84 school year . . ." (T-2381, Complainant's Exhibit #14)

391) That Ms. Jeanette Schmidt presented herself for a meeting with Mr. Cannon on November 30, 1983. Ms. Schmidt had asked Sharon Carnes to attend the meeting with her as her witness. Mr. Cannon informed Ms. Schmidt that the meeting was a personnel matter between Ms. Schmidt and Mr. Cannon, and that witnesses could not be allowed. Further, Mr. Cannon informed Ms. Schmidt that he was giving her a direct order by asking her to meet with him without a witness. Mr. Cannon then informed Ms. Schmidt that the meeting was over. (T-2384, 2385)

392) That on December 2, 1983, at approximately 12:10 p.m.,  
Mr. Cannon delivered a letter to Ms. Schmidt indicating that he  
was charging her with insubordination. Also, on December 2, 1983,  
Ms. Schmidt received a letter from Mr. Heiman. The letter from  
Mr. Heiman was received after school and ended for the day.  
(T-2387, Joint Exhibit #66)

393) That Jeanette Schmidt had another meeting with Mr.  
Cannon to discuss the Seven Point Improvement Plan on December  
21, 1983. This meeting was also recorded by Ms. Schmidt. Ms.  
Schmidt did not take a witness with her to this meeting.  
(T-2397)

394) That at the outset of the meeting between Ms. Schmidt  
and Mr. Cannon referenced in the previous Finding, Mr. Cannon  
informed Ms. Schmidt that if she wanted a witness to the meeting  
she could have one, but they would have to sign a form that he  
would provide to them. (T-2398)

395) That Ms. Schmidt testified that during the approximately  
seventeen (17) minutes that she was allegedly absent from her  
classroom on November 17, 1983, Ms. Joni Sobieski was, in fact,  
in her classroom supervising the students that were in the room  
at that time. (T-2403)

396) That Ms. Jeanette Schmidt does not view her transfer  
to Hartford as a desirable transfer. Ms. Schmidt prefers to  
teach social science and will be teaching English during the  
coming school year. Additionally, her transfer to Hartford  
High School will cause her to incur extra mileage in driving to  
and from work. (T-2430)

397) That the officers of Southern Lyon County Teachers  
Association for the 1983-84 school year were Jeanette Schmidt,  
president, Kathy O'Mara, second vice-president, Janice Davis,  
secretary, and Gloria Rifembark served as treasurer. (T-2490)

398) That Ms. Schmidt recalls that Mr. Cannon made a state-  
ment at the faculty meeting on October 10, 1983 concerning early  
morning faculty meetings. She recalls the substance of that

statement to be something along the lines of ". . . If you have a problem with your family, then you better take care of it because sometimes you have to make a choice whether it's going to be your job or your family . . ." (T-2505)

399) That during the November 1, 1983 meeting between Mr. Cannon and Ms. Schmidt, Mr. Cannon gave Jeanette a copy of notes that he had taken during his classroom visitations. (T-2525)

400) That Ms. Patricia Baker is an attorney for the Kansas Association of School Boards. She resides and offices in Topeka, Kansas. (T-2545)

401) That Ms. Baker had a telephone conversation with Mr. Heiman, the Superintendent of Schools, on approximately October 14, 1983. Ms. Baker subsequently attended two school board meetings, one in November, 1983, and one in December, 1983. (T-2548, 2550)

402) That Ms. Baker's advise to the Board, during the period of time mid-October until mid-November, was to either work the problem out internally in an informal manner or to urge the teachers to utilize the grievance procedure, a more formal procedure. Ms. Baker further advised the Board that they did have a legal right to request that any grievance be specific at the time, place and people involved with the problem. (T-2549-2554)

403) That Ms. Diane Hull of the KNEA met with Ms. Baker on December 15, 1983 in Ms. Baker's office. (T-2556)

404) That the meeting between Ms. Baker and Ms. Hull lasted approximately three hours and was a very far ranging discussion in general of the situation at Olpe. During this meeting, Ms. Baker advised Ms. Hull that she would recommend to the Olpe Board that the time for filing grievance would be extended. Further, Ms. Baker assured Ms. Hull that to her knowledge, none of the Board members or the administrators had talked about firing any of the teachers involved with the situation. (T-2558, 2562)

405) That Ms. Baker discussed with the Board their legal options in "resolving the problems at Olpe" during an executive session in the November or December Board meeting. Ms. Baker advised the Board members that their alternatives were to transfer teachers, to terminate teachers and other possibilities. Ms. Baker's advise to the Board was to retain the status quo in an attempt to resolve whatever problems might exist in the Olpe High School in an informal administrative manner. (T-2610, 2613)

406) That Ms. Baker had a meeting with Mr. Heiman and Mr. Cannon in her office on November 10, 1983. During that meeting, the article reported in the newspaper in a section called "The Wail" was discussed. Ms. Baker advised Mr. Heiman and Mr. Cannon not to respond in the newspaper, but rather to write a letter to the individuals who had signed "The Wail" asking what teachers' jobs were in jeopardy, who had threatened the teachers and what the problems were that the individuals were alluding to in their letter. (T-2618, 2621)

407) That Ms. Baker believed that the earlier correspondence with Ms. Schmidt was an attempt to determine whether or not her grievance was aimed at Mr. Cannon's right to issue a Seven Point Improvement Plan or whether Ms. Schmidt was grieving the content or substance of the Seven Point Improvement Plan. (T-2651)

408) That Ms. Baker advised Mr. Cannon and Mr. Heiman that Mr. Cannon had a right to meet with Jeanette Schmidt on a one-on-one basis concerning the improvement plan and her progress under the plan. Further, she advised these gentlemen that insofar as the grievance surrounding the plan, Ms. Schmidt had a right to have a witness present. (T-2652)

409) That Ms. Schmidt filed her grievance concerning the presentation of the Seven Point Improvement Plan, raising the question with regard to the purpose for the plan. That is, whether or not the Seven Point Improvement Plan was, in fact, an evaluation. (T-2688)

410) That Ms. Jeanette Schmidt considered her meeting on November 22, 1983 with Mr. Cannon to constitute the second step of the grievance procedure within the negotiative contract.

(T-2689)

411) That Ms. Schmidt tape recorded the November 1, 1983 meeting, the November 30, 1983 meeting and the December 20, 1983 meeting. (T-2691)

412) That Ms. Jeanette Schmidt considered her letter (Complainant's Exhibit #20) to constitute a formal filing of a grievance. This letter stated that she was planning to meet with Mr. Cannon on November 22, 1983 at 4:00 p.m. to discuss the contact sheet. Further, the letter stated that she would regard this meeting as the formal grievance level. (T-2702)

413) That Mr. Keith Durall was the author of the letter to the editor in "The Wail" section of the Emporia Gazette.

(T-2704)

414) That Ms. Jeanette Schmidt and the other nine teachers attended a meeting with Representative Anita Niles in Topeka, Kansas. (T-2756)

415) That Mr. Jesse Nelson is an employee of U.S.D. 252 and has been so employed for the past six years. Mr. Nelson is employed as a teacher/coach, driver's ed teacher and elementary school physical education teacher. (T-2801)

416) That Mr. Nelson went to Mr. Cannon and asked if it would be okay for him to attend the seven o'clock meeting as well as the eight o'clock meeting with the Board on January 18, 1984. Mr. Heiman subsequently called Mr. Nelson and explained that it would be alright for Mr. Nelson to attend the seven o'clock and the eight o'clock meeting. (T-2825, 2834)

417) That Ms. Ruth Welborn was employed by school district 252 during the 1983-84 school year as a fifth and sixth grade teacher at Harmony Hill. (T-2869)

418) That both Mr. Jesse Nelson and Ms. Ruth Welborn recall discussions by Mr. Cannon in either in-service or faculty meetings concerning class supervision. These in-service meetings or faculty meetings in which the subjects were discussed were early in the school year. (T-2804, 2875)

419) That Ms. Welborn was reassigned for the 1984-85 school year to teach third and fourth grade as opposed to the fifth and sixth grade classes during the current school year. Ms. Welborn did not request this reassignment, nor is she pleased with the reassignment. (T-2888)

420) That Ms. Ruth Welborn is employed by school district 252. During the 1983-84 school year, Ms. Welborn was employed to teach fifth and sixth grade at Harmony Hill. (T-2869)

421) That Ms. Welborn has been reassigned for the school year 1984-85. She has been assigned to teach the third and fourth grade at Harmony Hill. (T-2890)

422) That Ms. Welborn testified that she would have been much more comfortable and would rather have stayed as the fifth and sixth grade teacher. (T-2890)

423) That Marsha Miller was employed during the 1983-84 school year by the Flint Hills Special Education District, U.S.D. 253. However, Ms. Miller performs work for U.S.D. 252 and 386 as well as the other district. (T-2909)

424) That Ms. Miller recalls staff meetings conducted in the early part of September or October during which Mr. Cannon went over the attendance policy, discussed professionalism, procedures for visitors to check in and out of the office and other matters. (T-2915)

425) That Marsha Miller is a member of KNEA. (T-2915)

426) That Beth Schmidt is currently employed by U.S.D. 252 and has been so employed for the past eleven (11) years. Ms. Schmidt is employed to teach Spanish, French and English. During the 1983-84 school year, Ms. Schmidt taught at the Olpe High School. (T-2964, 2965)

427) That Ms. Beth Schmidt has been reassigned for the 1984-85 school year. That reassignment consists of having a different English class. (T-2986)

428) That Ms. Beth Schmidt does not recall any time during the 1983-84 school year when Mr. Cannon asked her who the instigator of any problem at Olpe High might be. Ms. Schmidt does recall approaching Mr. Cannon to ask him what was going on or if there was a problem. (T-2988)

429) That Mr. Bill Cowan is currently employed as a teacher/coach at Olpe High School. Mr. Cowan is currently serving as the head teacher at Olpe High School and has been so employed for the last three or four years. (T-3149)

430) That Mr. Cowan, in his capacity as head teacher, is responsible for keeping the official school calendar. The procedure for setting or changing dates on the school calendar was specified in a memo that Mr. Cowan provided to all teachers at an earlier date. That procedure consists of the teacher first contacting Mr. Cowan to determine what dates are available and once those dates are obtained, the teacher is then responsible for going to Mr. Cannon for his approval or rejection. If, in fact, Mr. Cannon approves a particular date, he then notified Mr. Cowan of that approval and Mr. Cowan then puts that function on that particular date on the official school calendar. (T-3151)

431) That Mr. Cowan's teaching duties will remain the same for 1984-85 as they were for 1983-84. However, Mr. Cowan's coaching duties or extracurricular duties have changed for the coming school year. (T-3175)

CONCLUSIONS OF LAW/DISCUSSION/ORDER

It appears that all allegations made by Complainant in this case may be separated into two basic groups. There are two documents to which the hearing examiner refers in grouping the charges. First, the examiner utilizes the April 2, 1984 memo under the signature of Paul K. Dickhoff, Jr., which was prepared after a pre-hearing conference between the parties. Secondly, the hearing examiner utilized the May 25, 1984 Motion to Amend Complaint filed by Richard D. Anderson on behalf of Complainant. This Motion to Amend was granted by the examiner.

The allegations may be separated as follows:

A) Allegations concerning the treatment of Jeanette Schmidt.

Count 3 - April Issue Memo

That the president of the local association was subjected to a special evaluation procedure (contact sheet) which spoke to her involvement in protected activities in violation of K.S.A. 72-5430 (b) (1), (2), (3), and (4).

Count 5 - April Issue Memo

That the accusation of conducting NEA-K-NEA business during school hours tended to discourage Jeanette Schmidt's involvement, under threat of discipline, in association business in violation of K.S.A. 72-5430 (b) (1), (2), (3), and (4).

Count 4 - April Issue Memo

That the assumption of the school building principal in considering 2 (two) separate grievances as one "singled out" Jeanette Schmidt in violation of K.S.A. 72-5430 (b) (1), (2), (3), and (4).

Count 6 - April Issue Memo

That the presence and involvement of an outside "observer" in the November 22, 1983 level one grievance hearing of Jeanette Schmidt tended to discourage her participation in protected activities in violation of K.S.A. 72-5430 (b) (1), (2), (3), and (4).

Count 2 - Motion to Amend

On or about November 30, 1983 and December 6, 1983, Respondent, by and through its agents, willfully interfered with, restrained and coerced professional employees, and denied the Southern Lyon County Teachers Association (SLCTA) rights accompanying formal recognition granted in K.S.A. 72-5415, thereby violating K.S.A. 72-5430 (b) (1), (2), and (6) by denying Jeanette Schmidt a witness during meetings with administrators which she reasonably believed could result in discipline.

B) Allegations concerning the treatment of ten (10) teachers including Jeanette Schmidt.

Count 1 - April Issue Memo

That the denial of informal discussions with superintendent in accordance with Board policy constitutes a prohibited practice as outlined in K.S.A. 72-5430 (b) (1), (2), (3), and (4).

Count 2 - April Issue Memo

That a level 1 grievance meeting was held but the principal denied or refused to meet with the teachers in violation of K.S.A. 72-5430 (b) (1), (2), (3), (4), and (5).

Count 3 - Motion to Amend

On or about March 28, 1984, at an Executive Board Meeting attended by teachers, Respondent and its agents willfully interfered with, restrained and coerced professional employees in the exercise of rights granted in K.S.A. 72-5414, dominated and interfered with the existence and administration of the professional employees' organization (SLCTA), and denied the professional employees rights accompanying formal recognition granted in K.S.A. 72-5415, by disparaging the SLCTA and discouraging participation in SLCTA matters in violation of K.S.A. 72-5430 (b) (1), (2), and (6).

Count 1 - Motion to Amend

On or about April 16-17, 1984, Respondent willfully interfered with, restrained and coerced professional employees by unlawfully transferring and/or reassigning such employees in reprisal for such employees exercising rights granted by K.S.A. 72-5414 in violation of K.S.A. 72-5430 (b) (1) and (3).

The examiner shall address each allegation in the above order to determine the validity of the charge and shall issue his ruling concerning violations of K.S.A. 72-5430 (b).

Count 3 of the April issue memo states:

"That the president of the local association was subjected to a special evaluation procedure (contact sheet) which spoke to her involvement in protected activities in violation of K.S.A. 72-5430 (b) (1), (2), (3), and (4)."

The special evaluation referred to in this allegation is the 7 point improvement plan given to Jeanette Schmidt during the October 1, 1983 meeting between Mr. Cannon and Ms. Schmidt.

Count 5 of the April issue memo states:

"That the accusation of conducting NEA-K-NEA business during school hours tended to discourage Jeanette Schmidt's involvement, under threat of discipline, in association business in violation of K.S.A. 72-5430 (b) (1), (2), (3), and (4)."

The examiner is unable to separate these two counts inasmuch as both refer to the 7 point improvement plan. It appears that Complainant is arguing that the issuance of the 7 point plan was prompted by Ms. Schmidt's union activities of past years and by her contact with the NEA during the current school year. It is not clear whether Complainant is arguing that the issuance of the 7 point plan in and of itself constitute a violation of the law or whether the reference to NEA phone calls within the plan constitutes the violation. Therefore, the examiner shall first explore the possibility that some type of plot existed which stemmed from previous years. He shall then look to the issuance of a "special evaluation" as reprisal for union activities and last of all view that portion of the 7 point plan that speaks to union activities.

Complainant points to numerous occurrences to show that Mr. Cannon and Mr. Heiman both had knowledge of Ms. Schmidt's position within the Southern Lyon County Teachers Association and that some type of "plan" existed to punish her for that position and/or her efforts to obtain advice from KNEA on behalf of other teachers. Complainant points to testimony given by Ms. Eileen Lohmeyer, a former teacher at Olpe High School, and Mr. Banz, former principal at Hartford High School, to show the mind set of Mr. Cannon and Mr. Heiman. Ms. Lohmeyer testified that Mr. Cannon initiated a meeting with her at his home to discuss a teaching position in which Ms. Lohmeyer was interested. The meeting occurred sometime in June or July prior to the commencement of school. During this meeting the discussion turned to Olpe High School where Mr. Cannon was to serve as principal for the following school year. Ms. Lohmeyer recalls a discussion of most of the teachers at Olpe either by name or by subject taught. Further, she recalls that Mr. Cannon specifically mentioned Ms. Schmidt's name and that he made a statement that Ms. Schmidt might cause him some trouble. Mr. Cannon recalls Ms. Lohmeyer mentioning a problem between Ms. Schmidt and Ms. Heins. Fur-

ther, Mr. Cannon testified that he was unaware as to whether Mr. Lohmeyer was referring to Ms. Beth Schmidt or Ms. Jeanette Schmidt.

The examiner finds the testimony, to this point, of both Ms. Lohmeyer and Mr. Cannon to be creditable and therefore must look to the job interviews of Mr. Cannon by the Board to determine whether Mr. Cannon had any knowledge of Ms. Jeanette Schmidt's position or her propensity to "cause trouble".

The testimony of Mr. Cannon, Mr. Heiman and various Board members state that individual teachers were not discussed when Mr. Cannon interviewed for the position of principal at Olpe High. While it would not be uncommon for a new supervisor to be told of potential "problem employees" or personality conflicts between employees by the supervisors' superiors, the examiner finds no evidence to indicate that such conversation occurred. It logically follows that Mr. Cannon's recollection of the visit with Ms. Lohmeyer is most believable in light of testimony given by Board members relating to discussions of individual teachers. That is, Mr. Cannon could only have known of potential "trouble makers" by his visit with Mr. Heiman or Board members. Therefore, little weight can be given to Ms. Lohmeyer's testimony as contradicted by Mr. Cannon.

Mr. Banz testified that Mr. Heiman made statements on two occasions concerning Ms. Schmidt. One statement related to Ms. Schmidt's action outside the classroom. It is interesting to note that the jest of this statement was repeated quite often by Mr. Heiman during the hearing. No specific interpretation was given to this statement but such a statement could relate to Ms. Schmidt's actions on behalf of the Association. Conversely the statement could relate to numerous other activities in which Ms. Schmidt was involved. A statement made to a member of the management team does not appear in and of itself unusual when a supervisor questions the abilities of an employee. Mr. Banz

further testified that Mr. Heiman was displeased with Ms. Schmidt for having utilized figures which conflicted with his figures during negotiations in a previous year. Testimony indicates that a conflict in computations did occur during negotiations. Again, it is not unreasonable or even unusual for one party to the negotiations process to express displeasure with the other party over computations or even demeanor at the bargaining table. Nothing in the record suggests that Mr. Heiman or any member of the Board took any action prior to the 83-84 school year to discriminate against or discredit Ms. Schmidt for past Association activities. The examiner is unable, therefore, to believe that any "plot" existed to "get" Ms. Schmidt prior to the commencement of the 83-84 school year.

Complainant points to point 4 of the seven point improvement plan, Ms. Schmidt's telephone contact with the KNEA, as one piece in a pattern of discrimination by Mr. Cannon against Jeanette Schmidt.

Joint Exhibit #1 at Article 6 states:

"Duly authorized representatives of the Association shall be permitted to transact official Association business on school property only before classes begin in the morning, and after classes end in the afternoon. The Association may have the right to use school buildings for meetings after obtaining prior approval of the administration. No charge shall be made for use of school rooms other than actual costs that are in addition to the normal operation of the school."

A great deal of testimony in the record relates to the time of day that the telephone calls to and from KNEA took place. Joint Exhibits #2 and #3 clearly indicate the time and length of the telephone calls. Questions were raised relative to Ms. Schmidt's "in class" status when the calls were made and received. Further, testimony was given concerning a definition of "Association Business". The hearing examiner recognized the rather loose language utilized in Article 6 of the negotiated agreement but he must point to Article 21 of that agreement as the proper forum for resolving disputes concerning interpretations of contract language.

Further, the examiner takes note of K.S.A. 72-5413 (1), wherein disciplinary procedure is defined to be a mandatorily negotiable subject. If one chooses to view the "7 point improvement plan" to be a disciplinary document one would expect the aggrieved party to file a grievance concerning the time of the telephone calls and whether the calls constituted doing "Association business". The examiner would expect an employer to convey some oral or written statement of dissatisfaction to an employee if the employer believed the employee was violating the negotiated agreement. Certainly, Mr. Cannon believed that a violation took place. Testimony was given to the effect that Ms. Schmidt and others had previously transacted "Association business" during school hours without reprimand. However, these other cases were carried out under the supervision of a principal other than Mr. Cannon. He, as a first line supervisor, was given the discretion to interpret the negotiated agreement and the facts indicate that not only did he interpret the agreement but that he placed Ms. Schmidt on notice that he believed she had violated the agreement. Therefore, at least point 4 of the "7 point improvement plan" was issued well within the employers rights.

It would appear that all points within the "7 point improvement plan", are points which an employer might choose to call to the attention of an employee. Here again the examiner notes the absence of an article on discipline within the negotiated agreement. It is logical to assume that any teacher receiving a contact sheet or improvement plan could file a grievance complaining of the contents.

Complainant states that Ms. Schmidt was subjected to a "special evaluation" which spoke to her involvement in protected activities. First of all the examiner notes that a great deal of time was spent on the record concerning the question of whether the 7 point improvement plan constituted a "formal" evaluation, an "informal" evaluation or something else altogether. The examiner submits that it is totally immaterial into

which category one might choose to place the plan, insofar as a prohibited practice charge is concerned. Regardless of what one might choose to call the plan, such allegations as were contained within the plan might violate the law if they were unmerited and it could be shown that the plan was prompted by union activities. In this case the record reflects that a majority of the allegations, however poorly written, were merited. That is, Ms. Schmidt did leave her classes unattended, she did fail to follow procedures in bringing in guest speakers, she did not follow established procedures in changing school dates, she did not follow her lesson plans and she did use some questionable language in front of students. Complainant did not deny that the above listed incidents occurred. Rather they argued that Ms. Schmidt was singled out and watched more closely than other teachers because of her position in, and contact with the NEA.

The record reflects that contact sheets, similar to Ms. Schmidt's, were prepared and filed on other employees. Further, the record reflects that other teachers were cautioned about breaking the rules. The examiner cannot view Ms. Schmidt's 7 point improvement plan in any different light than that of a supervisor telling any employee that they are deficient in certain areas and improvement is needed. Although the method of presentation of the plan to Ms. Schmidt differed from that of other employees, the net result was the same. All were placed on notice that improvement was expected and in Ms. Schmidt's case the record reflects that improvement occurred.

Secondly, Complainant seems to argue that the seven point improvement plan was placed in Ms. Schmidt's file in violation of the negotiated agreement. The examiner submits that this question should properly be answered via the contract grievance procedure. The types of issues within the plan and the merits thereof are totally irrelevant to the question concerning contract violation of the evaluation article.

The examiner has found that the "7 point improvement plan" was issued within the employers prerogative and it was not prompt-

ed by Ms. Schmidt's union activities. Therefore, the examiner must dismiss count's 3 and 5 of the April issue memo.

The next allegation to be addressed is "count" 4 of the April issue memo which states:

"That the assumption of the school building principal in considering 2 (two) separate grievances as one 'singled out' Jeanette Schmidt in violation of K.S.A. 72-5430 (b) (1), (2), (3), and (4)."

The examiner fails to fully understand the allegations of count 4 inasmuch as Ms. Schmidt signed the "ten teacher grievance" and was in fact the President of Southern Lyon County Teachers Association. Complainant's Exhibit #42 shows that not only did Ms. Schmidt sign the grievance but that her signature appears as the first signature on the petition. Mr. Cannon knew, at least by November 8, 1983, that Ms. Schmidt was the President of the Association. It seems to follow that any contact concerning the ten teacher grievance would be directed to Ms. Schmidt. Certainly, the grievance itself does not state that future correspondence should be directed to someone other than Ms. Schmidt. However, the record indicates that at the time Mr. Cannon wrote the November 18, 1983 letter (Complainant's Exhibit #41) only one grievance existed. At least the November 7, 1983 memo from Jeanette Schmidt to Mr. Cannon was not intended by Ms. Schmidt to constitute a grievance. This thought was communicated to Mr. Cannon in Ms. Schmidt's letter of November 19, 1983 (Complainant's Exhibit #20). It appears therefore that Mr. Cannon did assume that the "ten teacher grievance" concerned Ms. Schmidt's receipt of the "7 point improvement plan". While such an assumption does not appear the most logical at least it is not totally unreasonable due to the vagueness of Complainant's Exhibit #42 and provisions of the grievance procedure. Article 21 Paragraph 9 of subsection D (Supplemental Conditions) states:

"The filing of a grievance at all levels shall be in writing and shall be explicit as to the nature of the complaint. The description of the grievance shall state in the allegation the time, date, place, event or act and the names and addresses of witnesses."

The "Ten Teacher Grievance" states:

"The undersigned teachers, in compliance with our negotiated agreement, and the outlined grievance procedure, ask that you meet with us in a formal conference to discuss problems that the faculty members have in dealing with changes in administration policies brought on by your administration.

Please arrange this meeting within the next 10 days as provided for in Article 31 of the negotiated agreement."

The examiner next turns to Article 21 of the negotiated agreement which states in part, "Any grievance shall, first of all, present his/her grievance to the building principal in private informal conference(s)." The procedure further states; "If the grievant is not satisfied with the outcome of the initial conference(s), the grievant shall request, in writing a formal conference with the building principal." It appears that the ten teachers complied with the provision for presenting the grievance in writing without meeting informally with the building principal. Further, it appears that Mr. Cannon simply assumed that Ms. Schmidt had joined with nine other teachers to file a grievance over her improvement plan and other matters.

Ms. Schmidt makes it abundantly clear in her November 19, 1983 letter to Cannon that the "ten teacher grievance" is a separate matter from her "contact sheet" and that she desires to be viewed as an individual teacher rather than the president of Southern Lyon County Teachers Association. The examiner finds no violation of Ms. Schmidt's rights by Mr. Cannon's "assumption" that the "ten teacher grievance" was a part of any problem Ms. Schmidt might have with her improvement plan.

The examiner rules that count 4 of the April issue memo is without merit and is hereby dismissed.

Count 6 of the April issue memo states:

"That the presence and involvement of an outside 'observer' in the November 22, 1983 level one grievance hearing of Jeanette Schmidt tended to discourage her participation in protected activities in violation of K.S.A. 72-5430 (b) (1), (2), (3), and (4)."

It appears to the examiner that Complainant, in making this allegation, has confused the prohibited practice section of the Professional Negotiations Act with a violation of the provisions of a contracted grievance procedure. Certainly, K.S.A. 72-5430 (b) (4) protects an employee from discharge or discrimination because such an employee has filed a complaint under the Act. Since the grievance procedure was negotiated under the provisions of the Act, any discharge or act of discrimination against an employee for filing a grievance would constitute a prohibited practice. However, the simple presence of an "observer" during a grievance hearing does not constitute discrimination as contemplated by K.S.A. 72-5430 (b) (4). If, in fact, the presence of an observer violated the negotiated agreement, the observer was someone with an influence over the employee and it could be shown that the purpose of the observer was to intimidate the employee, a prohibited practice would occur. That is, such actions would certainly discourage employees from filing grievances, a protected activity. In this case the negotiated agreement appears to be silent with regard to the number or types of individuals who might be present on behalf of the employer at the formal conference with the building principal. Certainly, the informal conference or first step is private, however, subsequent steps are not specifically designed to be attended only by the principal or the superintendent.

Mr. Funk attended the grievance hearing with Mr. Cannon, the building principal, as an advisor to Mr. Cannon. Mr. Funk had no control over Ms. Schmidt's destiny and the record is void of any evidence or testimony to show that Mr. Funk's presence was intended or did intimidate Ms. Schmidt. Therefore, the examiner must dismiss count 6.

The examiner will next address count 2 of the May 25 Motion to Amend. That count states:

"On or about November 30, 1983 and December 6, 1983, Respondent, by and through its agents, willfully interfered with, restrained and coerced professional employees, and denied the Southern Lyon County Teachers Association (SLCTA) rights accompanying formal recognition granted in K.S.A. 72-5415, thereby violating K.S.A. 72-5430 (b) (1), (2) and (6) by denying Jeanette Schmidt a witness during meetings with administrators which she reasonably believed could result in discipline."

The allegations that the denial of Ms. Schmidt, a witness at the November 30 and December 6 meetings, are substantiated by evidence and testimony on the record. Further, the record reflects that neither the November 30 nor the December 6 meetings were scheduled pursuant to the negotiated grievance procedure. Complainant's Exhibit #4 clearly indicates that Ms. Schmidt's grievance was denied by Mr. Cannon on November 23, 1983. Further, Ms. Schmidt acknowledges that her level "a" grievance was rejected in her memo to Mr. Cannon dated December 12, 1983 (Complainant's Exhibit #19). Mr. Heiman scheduled the December 6 meeting with Ms. Schmidt by way of a letter dated December 2, 1983 (Complainant's Exhibit #13), for the purpose of discussing an "insubordinate act". Ms. Schmidt did not file a grievance at Mr. Heiman's level until her letter of December 12, 1983 was hand delivered to him.

Simply looking at the purpose of the November 20, 1983 meeting, to review Ms. Schmidt's improvement in the seven specified areas, one might reasonably believe that a disciplinary action might result from the meeting. Similarly the Heiman letter dated December 2, 1983 (Complainant's Exhibit #13), would certainly lead a reasonable person to believe that a disciplinary action might result from the December 6 meeting with Mr. Heiman. The record then reflects that Ms. Schmidt was accompanied to both meetings by a witness. Ms. Sharon Carnes accompanied Ms. Schmidt to the November 30 meeting and Ms. Diane Hull accompanied Ms. Schmidt to the December 6, 1983 meeting. On both occasions Ms. Schmidt was refused a witness to the meetings. The November 30 meeting did not take place and Mr. Heiman would not allow Ms. Hull to attend the December 6 meeting. On these occasions

Mr. Cannon and Mr. Heiman stated that the purpose of the meetings was to discuss personnel matters thus Ms. Schmidt had no right to a witness.

Complainant argues that K.S.A. 72-5414 (K.S.A. 72-5430) guarantees an employee the right to have a witness present when the employee believes that discipline may result from a meeting. Additionally, Complainant argues that Respondent's failure to allow Ms. Schmidt a witness for the two meetings constituted a refusal to deal with the exclusive representative as provided by K.S.A. 72-5430 (b) (2) and (6). Complainant points to National Labor Relations Board vs. J. Weingarten, Inc., 420 U.S. 251 (1975), and certain state cases to supplement the above espoused theory. There are two basic principles which apply in Weingarten. They are: 1) The employee must reasonably believe discipline to be imminent, and 2) The employee must demand union representation. The facts in the instant case differ inasmuch as Ms. Schmidt requested a witness to the meetings rather than union representation at the meetings. Thus the instant case while similar in nature does not fall factually under the principles of Weingarten. Even if the cases were factually similar the examiner must rule on the question based upon verbiage within K.S.A. 72-5430 (b) (1), (2) and (6).

K.S.A. 72-5430 (b) (1) states:

"(b) It shall be a prohibited practice for a board of education or its designated representative willfully to:  
(1) Interfere with, restrain or coerce professional employees in the exercise of rights granted in K.S.A. 72-5414;"

K.S.A. 72-5414 then states:

"Professional employees shall have the right to form, join or assist professional employees' organizations, to participate in professional negotiation with boards of education through representatives of their own choosing for the purpose of establishing, maintaining, protecting or improving terms and conditions of professional service. Professional employees shall also have the right to refrain from any or all of the foregoing activities. In professional negotiations under this act the board of education may be represented by an agent or committee designated by it."

The examiner finds nothing within K.S.A. 72-5414 which in any way speaks to a right to have witness present during any type of meeting. Rather this statute grants a right or protects the employee in organizational and negotiations endeavors. K.S.A. 72-5413 (1) then clearly defines disciplinary procedure to be a mandatorily negotiable subject. If, in fact an employee has any right to the presence of a witness during a disciplinary meeting such a right would stem from a contract.

Complainant also argues that K.S.A. 72-5430 (b) (2) and (6), grants some type of a right to an exclusive representative to "witness" and/or represent an employee in meetings in which the employee fears discipline. K.S.A. 72-5430 (b) (2) states:

"(b) It shall be a prohibited practice for a board of education or its designated representative willfully to:  
(2) dominate, interfere or assist in the information existence, or administration of any professional employees' organization;"

This statute does not grant a right to an organization to represent employees in any specific meeting or meetings. Nor can an interference be drawn to that effect. K.S.A. 72-5430 (b) (6) states:

"(b) It shall be a prohibited practice for a board of education or its designated representative willfully to:  
(6) deny the rights accompanying recognition of a professional employees' organization which are granted in K.S.A. 72-5415;"

K.S.A. 72-5415 states in pertinent part:

"(a) When a representative is designated or selected for the purposes of professional negotiation by the majority of the professional employees in an appropriate negotiating unit, such representative shall be the exclusive representative of all the professional employees in the unit for such purpose.  
(b) Nothing in this act or in acts amendatory thereof or supplemental thereto shall be construed to prevent professional employees, individually or collectively, from presenting or making known their positions or proposals or both to a board of education, a superintendent of schools or other chief executive officer employed by a board of education."

This statute simply establishes the exclusivity of an organization to represent employees in professional negotiations. The

statute does not grant a right to the exclusive representative to represent employees in all types of meetings. It follows then that once a grievance procedure is negotiated the exclusive representative has a vested interest in protecting the terms and conditions of professional service which have been negotiated. However, this interest only extends to the limits of the contracted grievance procedure.

In light of the foregoing the examiner must rule that count 2 of the Motion to Amend is without merit and accordingly order its dismissal.

"Count" 1 of the April issue memo states:

"That the denial of informal discussions with superintendent in accordance with Board policy constitutes a prohibited practice as outlined in K.S.A. 72-5430 (b) (1), (2), (3), and (4)."

Complainant would lead the examiner to believe that an employer is obligated to meet with employees and/or union representatives concerning terms and conditions of employment or other matters at anytime upon request of the exclusive representative. The examiner construes the totality of K.S.A. 72-5413 et seq., to require an employer to meet for negotiations concerning terms and conditions of employment at anytime in a school year if the conditions of K.S.A. 72-5423 are met. K.S.A. 72-5423 states in pertinent part:

"(a) Nothing in this act, or the act of which this section is amendatory, shall be construed to change or affect any right or duty conferred or imposed by law upon any board of education except that boards of education are required to comply with this act, and the act of which this section is amendatory, in recognizing professional employees' organizations, and when such an organization is recognized, the board of education and the professional employees' organization shall enter into professional negotiations on request of either party at any time during the school year prior to issuance or renewal of the annual teachers' contracts. Notices to negotiate on new items or to amend an existing contract must be filed on or before February 1 in any school year by either party, such notices shall be in writing and delivered to the superintendent of schools or to the representative of the bargaining unit and shall contain in reasonable and understandable detail the purpose of the new or amended items desired."

This provision coupled with other provisions of the law, i.e., June 1 impasse date - unilateral action by an employer after impasse procedures...leads the examiner to conclude that these required meetings are intended to occur no more than one time in any school year. An agreement between the parties to a multi-year agreement would further limit required meetings to the duration of the agreement. Any other required meetings for discussions could only be guaranteed by an agreement (labor contract) or by order of the Secretary of the Department of Human Resources. Certainly, nothing bars a meeting between the parties at any time for any type discussions in the event both parties agree to meet. However, any other types of meetings, even grievance meetings are a matter of contract rather than statute.

An employer might choose to enact numerous "board policies or rules and regulations" which might govern its behavior. The employer might even choose to contract with an association to meet upon request. If however, the employer violates those board policies or contractual provisions the Secretary has no jurisdiction to intervene on his own motion or on the motion of either party. The exception to this statement would be an employers refusal to engage in arbitration efforts contracted between the parties. K.S.A. 72-5430 (b) (7) grants jurisdiction to the Secretary to determine whether a prohibited practice has occurred if the employer refused to arbitrate if such employer has previously agreed to arbitrate.

The examiner finds that count 1 of the April issue memo is without merit and herein orders its dismissal.

Count #2 of the April issue memo states:

"That a level 1 grievance meeting was held but the principal denied or refused to meet with the teachers in violation of K.S.A. 72-5430 (b) (1), (2), (3), (4) and (5)."

In reviewing the circumstances surrounding the "filing" of the ten teacher grievance the examiner notes the following:

- 1) The November 2, 1983 letter to Heiman under the signature of Jeanette Schmidt (Joint Exhibit #54) request a meeting with the "leadership of SLCTA" to "discuss relations between the administrator and staff..." No mention is made of 10 teachers.
- 2) Heiman's letter dated November 4, 1983 to Jeanette Schmidt advises Ms. Schmidt that if her concerns relate to a contract violation she should refer to the grievance procedure of the labor agreement. Further, that if her concerns relate to a personnel matter, the Board would refuse to enter into discussions with the SLCTA.
- 3) Article 21 Paragraph (C) (2) of the labor agreement (Joint Exhibit #1) clearly states that any grievant shall "first of all, present his/her grievance to the building principal in private conferences." The record is void of any evidence that the 10 teachers fulfilled this contract provision.
- 4) The November 15, 1983 ten teacher "grievance" request that Mr. Cannon meet with them to "discuss problems that the faculty members have in dealing with changes in administration policies". This statement does not comply with Article 21 Paragraph (D) (9) of the labor agreement which states:

"The filing of a grievance at all levels shall be in writing and shall be explicit as to the nature of the complaint. The description of the grievance shall state in the allegation the time, date, place, event or act and the names and addresses of witnesses."

- 5) Counsel for Complainant points out that "The teachers signed the grievance because they believed Jeanette Schmidt was being singled out. (T-303, 304, 308, 1647, 1648, 1670, 1397, 1470)."  
Paragraph (D) (6) states:

"The responsibility for utilizing the procedure for seeking a solution to a grievance lies with the person who feels he is aggrieved."

- 6) Article 21 Paragraph (C) (3) states in pertinent part:

"If the grievant is not satisfied with the disposition of his grievance at level a, or in the event that no decision was reached within ten school days after the grievance was presented he may appeal in writing to the Superintendent of Schools."

7) Ms. Schmidt's November 19, 1983 letter to Mr. Cannon states in part; "That the objectives of both communications cited in your letter were efforts on the part of me (in the November 7 letter) and a group of teachers (in the November 15 memo) to bring concerns to your attention in an effort to resolve them outside the formal grievance channels."

8) Article 21 Paragraph (D) (1) states:

"All individuals involved, including those who might possibly contribute to the solution of a grievance, are authorized and urged to furnish pertinent information with full assurance that no reprisal will follow by reason of such participation."

Setting aside for a moment the question of whether K.S.A. 72-5430 (b) (1), (2), (3), (4), and (5) grants any "right" to teachers to meet in a grievance meeting, the examiner will comment on the above listed circumstances.

The examiner does not know Mr. Heiman's motives for refusing to meet with the leadership of SLCTA but finds no requirement within the law for Mr. Heiman to meet. It appears that perhaps the most prudent decision would have been to meet with the teachers, nevertheless Mr. Heiman did not violate the provisions of the statute by his decision not to meet. His direction to the SLCTA appears legally sound. As a result of his direction the ten teachers decided to file a grievance. While the examiner recognizes that the ten teachers were inexperienced in filing grievance he cannot ignore the fact that the grievance which was filed in no way complied with the contracted definition of a grievance or the contracted form and substance of a grievance. Additionally, Ms. Schmidt relates that the teachers were attempting to state concerns outside formal channels. Mr. Cannon's confusion over the subject of the grievance and persons filing the grievance is understandable. Ms. Schmidt's November 19, 1983 letter did nothing to alleviate the confusion. First, Ms. Schmidt states in her November 7th memo, that she will consider the November 22, 1983 meeting as a "formal grievance level", and then she states that the presence of the ten teachers shall

be protected by Article 21, Paragraph (D) (1). Therefore, the examiner concludes that Ms. Schmidt was intending to utilize the other nine teachers as witnesses to her own grievance.

Ms. Schmidt did relate to Mr. Cannon, in her November 19, 1983 letter, that "those signatories deserve a response, and shall be present at the November 22 meeting." However, due to the lack of specificity in the November 15 grievance, the examiner cannot understand what "response" Ms. Schmidt contemplated. If, in fact, the ten teacher grievance was filed because ten individuals believed Ms. Schmidt was being singled out, it is logical to believe that Ms. Schmidt's grievance and the ten teacher grievance were one and the same.

The record reflects that Mr. Cannon chose not to meet with the ten teachers on November 22, 1983. The examiner notes that Ms. Schmidt set the November 22, 1983 date for a meeting of the ten teachers with Mr. Cannon. The grievance procedure allows ten (10) days from the filing of the grievance for this meeting to be held. Further, this grievance procedure like most grievance procedures affords a grievant an opportunity to proceed with his/her grievance if a meeting is not conducted. That procedure is to file an appeal to the Superintendent of Schools. It is unusual for a supervisor to refuse a grievance meeting but not totally without precedent. This fact was evidently contemplated by the parties to the negotiated agreement and the grievant's rights to pursue his/her grievance was protected by contract. Notwithstanding, therefore, the question of statutory rights, the circumstances previously set out surrounding the "filing" of the ten teacher grievance coupled with the language of the grievance procedure leads the examiner to the conclusion that Mr. Cannon did not "willfully" deny any rights of the ten teachers by refusing to meet with them on November 22, 1983.

Although the examiner believes the factual occurrences in this "count" dictates dismissal of the count, he believes a brief review of statutory rights to be in order. As previously stated

in this order the examiner believes that the right of an employee to grieve springs from the labor agreement rather than the statute. Certainly, the exclusive representative of employees has a statutory right and obligation to be involved in grievance meetings. However, nothing within K.S.A. 72-5430 (b) (1), (2), (3), (4) or (5) dictates the makeup of a grievance procedure. Rather the grievance procedure is, by K.S.A. 72-5413 (1), defined to be a mandatorily negotiated subject and therefore molded by the parties during negotiations. To rule that a failure of one party or the other to comply with any step of the contracted grievance procedure constituted a prohibited practice when the procedure itself provided an alternative would in effect circumvent the legislative intent of requiring the parties to negotiate their own procedure.

K.S.A. 72-5430 (b) (7) is somewhat of an exception to the above statement. That is, the Legislature saw fit to require, by provision of this statute, employers and employees to participate in good faith efforts in arbitration endeavors when a contracted grievance procedure contains arbitration provisions. It must be remembered that historically grievance procedures are designed to allow an employee the flexibility to move from one step to the next regardless of the employers actions. Generally however, grievance procedure culminate in arbitration and there is no appeal from the arbitrator's decision. These theories were embraced by the Legislature thus the guarantee that employers would participate in the procedure at the arbitration step if such employer had previously agreed to the finality of arbitration. Any other refusal of an employer to participate in a contracted grievance procedure which would preclude an employee from resolving his/her complaint, would properly be resolved by moving to the next step or the filing of a contract violation.

In this case the examiner finds no violation of K.S.A. 72-5430 (b) (1), (2), (3), (4) or (5) by Mr. Cannon's action of refusing to meet with the ten teachers on November 22, 1983.

The count is therefore dismissed.

Count 3 of the Motion to Amend states:

"On or about March 28, 1984, at an Executive Board Meeting attended by teachers, Respondent and its agents willfully interfered with, restrained and coerced professional employees in the exercise of rights granted in K.S.A. 72-5414, dominated and interfered with the existence and administration of the professional employees' organization (SLCTA), and denied the professional employees rights accompanying formal recognition granted in K.S.A. 72-5415, by disparaging the SLCTA and discouraging participation in SLCTA matters in violation of K.S.A. 72-5430 (b) (1), (2), and (6)."

Complainant points to two occurrences as evidence to support the above listed allegation. First, Complainant points to the January 18, 1984 staff meetings wherein certain members of the Board and the superintendent met with the "Olpe 10" at 7:00 P.M. and the "Embarrassed 11" at 8:00 P.M. Next the Complainant points to the March 28, 1984 executive session of the Board wherein only the "Embarrassed 11" were invited to attend.

Testimony indicates that the January 18, 1984 meetings were scheduled as a result of a request from the "Olpe 10" to meet with the Board outside the atmosphere of an open Board meeting. The examiner is convinced that Mr. Heiman scheduled two meetings so that a free exchange of concerns could take place. Complainant does not seem to argue that coercion of employees took place during either meeting held on January 18, 1984. Rather Complainant seems to argue that the segregation of the two groups coupled with Mr. Heiman's decision to allow only two individuals to attend both meetings, violated the statute.

It is apparent that there was some miscommunication between Mr. Heiman and Ms. Hull concerning the January 18, 1984 staff meetings. She testified that Mr. Heiman indicated to her that all teachers could attend both meetings. Mr. Heiman testified that he told Ms. Hull that one individual from each group could attend the meeting for the other group. Regardless, however, of which testimony was most accurate, one individual from each

group was allowed to attend the other meetings. The examiner having found no statutory violations in Mr. Heiman's motives for scheduling the two meetings, further finds no violations in conducting the two meetings. That is, there are no allegations that either group was treated differently or unfairly by the Superintendent or the Board members in attendance. While the separation of the two groups would certainly provide a forum for coercive tactics by an employer, there is no evidence to indicate that such actions occurred.

Such a forum again existed during the March 28, 1984 executive session of the Board wherein the "Embarrassed 11" were present. Complainant argues that the actions and statements of the Board members during this meeting served to discourage professional employees from participating in union activities. The examiner notes that little testimony was given concerning the purpose or planning of the March 28, 1984 meeting. There was, in fact little testimony given concerning the subject matter covered in the meeting. One witness offered testimony in this regard. She testified that she could not remember much of the dialogue that took place. She did recall that the Board asked questions of the group. Further, she recalls that someone, perhaps Mr. Schmidt, stated; "It's the teacher union, its the teacher union, that's what the problem is." However, Ms. Bechtel couldn't seem to place this statement in any particular context. Additionally, Ms. Bechtel stated her opinion that the ten teachers signing the grievance were being harrassed. While this opinion was stated rather succinctly, Ms. Bechtel couldn't seem to relate or put a finger on the factual occurrences which caused her to arrive at that conclusion. Complainant would lead the examiner to believe that Ms. Bechtel was intimidated by the Board and/or the superintendent and the principal, thus she would or could not relate specific occurrences during the hearing. Although numerous other individuals were present at the March 28, 1984

meeting, few questions were asked of other witnesses concerning the tenor of that meeting.

The examiner is hard pressed to find the Board guilty of a "willful" violation of professional employees rights based upon the unsubstantiated testimony of one witness who "may" have heard three statements she perceived to be disparaging. This is particularly true when that witness could not even state the dialogue preceeding or following the statements in question. It appears to the examiner that the most enlightening portion of Ms. Bechtel's testimony consists of the following response to the question, "Why would you not want to take an office at this time." "Well because I see Ms. Schmidt sitting over here right now, and if that does have anything to do with it, I wouldn't want to be there." That statement clearly shows that at least one professional employee has been discouraged from becoming involved in union politics. Complainant must also show that acts of the Respondent have caused that discouragement. It further appears that Ms. Bechtel has become discouraged based upon the possibility that Ms. Schmidt was discriminated against because of her union affiliation. The examiner cannot find a violation of K.S.A. 72-5430 (b) (1) or (2) based solely upon the opinion of one witness without a showing that specific actions by the employer occurred. For the above reasons the examiner must dismiss count 3 of the Motion to Amend.

Count 1 of the Motion to Amend states:

"On or about April 16-17, 1984, Respondent willfully interfered with, restrained and coerced professional employees by unlawfully transferring and/or reassigning such employees in reprisal for such employees exercising rights granted by K.S.A. 72-5414 in violation of K.S.A. 72-5430 (b) (1) and (3)."

Setting aside for a moment Ms. Schmidt's transfer, the examiner will look to the reassignment of the other nine teachers. Complainant argues that Respondent has reassigned these teachers

as a reprisal against them for signing and prosecution of the November 15, 1983 grievance. Complainant then attempts to show that each individual was "harmed" by their reassignment. Further, Complainant spent a considerable amount of time in questioning the explanation given by Respondent for the reassignments.

The examiner notes that the filing of a grievance is a protected activity and any discriminatory treatment of an employee for having filed a grievance would be a violation of K.S.A. 72-5430. In order for such a violation to occur the effected employee must clearly show the act of discrimination. In this case the negotiated agreement specifically reserves to management the right to transfer and assign. (See Article #5 Joint Exhibit #1). Therefore, the employee must show that the transfer/assignment in some way "harms" the individual. The record indicates that the Olpe 10 were transferred/reassigned in the following manner.

	<u>1983-1984</u>	<u>1984-1985</u>
1) Marilyn Trimmell		
Curricular Assignment		same
Extracurricular Assignment	Junior Class Sponsor	
Additionally was notified by Mr. Cannon that in 1985 study halls would meet in the library.		
Ms. Trimmell tendered her resignation.		
2) Vivian Sexton		
Curricular Assignment	Half time English and half time counselor.	Composition and Literature at Olpe Junior High & Senior High - Oral English at Olpe High School.
Extracurricular Assignment	Student Council Sponsor	Junior High Pep Club Sponsor

Note: Ms. Sexton does not believe that she is certified to teach oral communications.

	<u>1983-1984</u>	<u>1984-1985</u>
3) Diane Heins		
Curricular Assignment	Home Economics	Home Economics and Junior High Language Arts.
Extracurricular Assignment	Junior Class Sponsor	Freshman Class Co-Sponsor

Note: Ms. Heins believed she would not have a planning period with the new assignment. The negotiated agreement calls for a planning period.

4) Sharon Carnes		
Curricular Assignment		Same as 1983-1984
Extracurricular Assignment		Pep Club Sponsor Freshman Class Co-Sponsor.

Note: Ms. Carnes informed Mr. Heiman in 1980-81 that she did not want a job with a lot of extracurricular assignment. Ms. Carnes believed she might have seven (7) classes per day with no planning period.

5) Joni Sobieski		
Curricular Assignment	Biology, Chemistry, General Science at Olpe High School.	Not specified Orally explained that she might be teaching Junior High Science and Physics.

Note: No staff Consultation Sheet was given to Ms. Sobieski. Ms. Sobieski tendered her resignation on May 14, 1984.

6) Louise Hinrich		
Curricular Assignment	Math at Olpe High School.	Science, Reading, Math at Neosho Rapids Junior High.
Extracurricular Assignment		Jr. High Pep Club Sponsor at Neosho Rapids.

7) Gloria Rifembark		
Curricular Assignment		Same as 1983-84
Extracurricular Assignment	FBLA	FBLA and Junior Class Co-Sponsor.

	<u>1983-1984</u>	<u>1984-1985</u>
8) Sara Cannon		
Curricular Assignment	3rd and 4th grade at Harmony Hill	Kindergarten at Olpe

Note: Ms. Cannon did not testify at the hearing.

9) Jane Schneider		
Curricular Assignment	1st and 2nd grades at Harmony Hill	5th and 6th grades at Harmony Hill

Note: Ms. Schneider did not testify at the hearing.

In addition to the above listed individuals at least six other teachers at Olpe and Harmony Hill were given new assignments. The record reflects that some of these six (6) individuals were not please with their new assignments. Of the above listed nine teachers, two were unhappy with their 1985 assignments because of extracurricular activities; one because of her curricular and extracurricular assignment; one because of her extracurricular assignment and because she believed she was not certified to teach an assigned subject; one because of her extracurricular assignment and the fact that she believed that placing study hall in the library was an error; one because she was transferred to Neosho Rapids; one because she received no written job description; and two did not appear to state what their concerns might be.

The examiner recognizes that at least seven of the above listed individuals were unhappy with 1985 assignments/transfers but he fails to see the involved plot of discrimination painted by Complainant. While the examiner cannot follow the logic put forth by Respondent on all reassignments he cannot question Respondent's motives when the facts reveal that none of the nine individuals listed above suffered any real "harm". The record clearly reveals that those who resigned did so of their own free will because they did not like their work assignments. If the examiner was to adopt Complainant's argument he would be sending a message to all employees. That is, file a grievance, however

frivolous, fail to pursue that grievance and rest assured that management can take no action which makes you unhappy.

In addition to this failure to find discriminatory treatment, the examiner questions that Complainant has shown motive for the alleged acts. As stated earlier in this order the examiner has no jurisdiction to rule on the merits of the ten teacher grievance. However, he does question whether the November 15, 1983 letter constitutes a proper filing of a grievance. Neither the form nor the substance of the letter seems to comply with the agreed upon procedure. Further it appears to the examiner that the ten teacher grievance was somehow "lost" after the December 23, 1983 memo from Sharon Carnes to Mr. Heiman. In that memo Ms. Carnes agrees to withdraw the ten teacher grievance in exchange for a meeting which never took place. The examiner finds nothing in the record subsequent to the December 23, 1983 memo to indicate that the teachers notified the Superintendent or Board of their desire to pursue the grievance.

Practically every witness who testified at the hearing believed that a "problem" developed at Olpe High School during September and October of 1983. A number of the witnesses believed the problem to be Mr. Cannon. Testimony was given concerning numerous instances when teachers were dissatisfied with Mr. Cannon's actions. From the gum wrapper incident through early morning faculty meetings to "writing people up" for leaving classes unattended, the list of concerns seem to be equally applicable to all teachers at Olpe High School. An examination of Respondent's Exhibit #28, teachers concerns about Mr. Cannon, as presented to Board members on January 18, 1984, reveals that very few of the complaints relate only to the "Olpe 10" rather than all teachers at Olpe High. There is a conspicuous absence of any complaint relating to discrimination against KNEA members or officers. In fact, the record reveals not one instance when any teacher other than Ms. Schmidt complained to Mr. Cannon, Mr. Heiman or any member of the Board that they were being discriminated against because of association membership.

There is no doubt that the Olpe 10 were dissatisfied with the manner in which Mr. Cannon chose to fulfill his role as administrator at Olpe High. The record is, however totally void of any specific statements that Mr. Cannon violated the negotiated agreement. Further it appears that Mr. Cannon changed no rules but that he simply chose to enforce the rules. Although the nine teachers believed they were singled out, they show no reason for this treatment except for the vocal disagreement with Mr. Cannon's management style. Additionally, one might draw an inference from the record that the various meetings with NEA officials contributed to the overall "plan" of discrimination by the Board. This inference is not supported by fact, however, inasmuch as teachers other than the "Olpe 10" attended the meetings.

Complainant points out that there were more reassignments/transfers for 1984-85 than any past year. The examiner recognizes this to be a true statement. In light of the stated dissatisfaction by approximately half the staff at Olpe High the examiner can hardly find the number of transfers/assignments for 1984-85 to be unusual.

Since the examiner finds no real harm to remedy and believes that the reassignments/transfers were not brought about because the teachers met with NEA officials or filed a grievance, count 1 of the Motion to Amend as it relates to the nine teachers (excluding Ms. Schmidt) must be dismissed.

Turning now to the transfer of Jeanette Schmidt, the examiner notes that Complainant argues that Ms. Schmidt's transfer to Hartford would have a chilling effect on her "organizational rights" and the "rights" of other teachers in viewing this discriminating act. Obviously the examiner must first find an act of discrimination against Ms. Schmidt prior to any finding of intimidation of other employees.

The record reflects that Ms. Schmidt was transferred to Hartford and give a curricular assignment for 1984-85 which differed from her 1983-84 assignment. Complainant argues that the

transfer caused a hardship on Ms. Schmidt because of extra driving to work and because her son was active in athletics at Olpe High. Further, Ms. Schmidt was displeased that she would no longer be teaching her favorite subject, social studies.

Respondent argues that the transfer was prompted by an effort to improve the Hartford system and to relieve tension at Olpe High School. There can be no doubt that tension existed between Ms. Schmidt and Mr. Cannon. This tension is evidenced by the number of contact sheets, the seven point improvement plan, the improvement plan prepared by Ms. Schmidt for Mr. Cannon, and the report that it had become difficult for Ms. Schmidt to report to work at Olpe High. As stated previously the examiner can find no pre-existing "plot" to "get" Ms. Schmidt because of her position in the NEA. Rather it appears that Ms. Schmidt's "problem" began to develop during the 1983-84 school year. Respondent states that the problem consisted of Ms. Schmidt's failure to follow the rules. It is interesting to note that Complainant does not argue that Ms. Schmidt followed the rules. Rather Complainant argues that Ms. Schmidt was singled out and that others also failed to follow the rules. The examiner suspects that Ms. Schmidt was in fact watched more closely than other teachers. The examiner also recognizes that Ms. Schmidt chose to strike out at the administration in some sort of power struggle rather than to make an effort to comply with the rules and work through proper grievance channels to resolve what she believed to be a violation of the evaluation procedure contained within the negotiated agreement. Certainly Ms. Schmidt and other teachers were displeased with Mr. Cannon's administrative style. Ms. Schmidt, therefore, chose to give Mr. Cannon a written improvement plan. While the examiner knows that Mr. Cannon, like any other supervisor, is open to improvement, he is also aware that such action is certain to cause the recipient to look more closely at the actions of the preparer of the plan. It seems that neither the Olpe 10 nor

the involved NEA officials recognized the value of the very important labor relations principal of obey now grieve later. Rather course of open warfare was chosen to resolve the problem.

These types of situations are the very situations that a formalized labor/management relationship is designed to resolve. Yet the "Olpe situation" proceeded as though no such relationship existed. Ms. Schmidt's grievance came about only after Mr. Cannon mistakenly believed that the "10 teacher grievance" was concerning Ms. Schmidt's situation. The examiner finds that Ms. Schmidt's transfer and re-assignment resulted from her own statements relative to her reluctance to go to work at Olpe High coupled with the very obvious tension between Mr. Cannon and Ms. Schmidt.

Certainly the transfer and reassignment has no effect on Ms. Schmidt's position within the NEA. She can perform her NEA duties equally well at Hartford as she could at Olpe High.

Since the examiner finds Ms. Schmidt's transfer and reassignment to be based upon logical reasoning and to be within the employers prerogative he must dismiss this count.

In summary the examiner has found that the district did not willfully act in bad faith to deny professional employees rights under the Professional Negotiations Act. Nor did the district discriminate against professional employees because of the employees choice to participate in union activities (file grievance). The examiner must, however, state that the district chose a hard line position which is seldom conclusive to solving problems. In retrospect perhaps a simple meeting at the building principal level might have served to resolve many of the perceived problems prior to community involvement.

On the other hand it appears to the examiner that certain individuals within the association desired a head to head confrontation. As previously mentioned in this order one might not expect teachers to be experts at grievance filing. In the instant case, however, those professionals whose help was solicited by the teachers should have been more aware of proper form and substance

for filing grievances pursuant to the contracted grievance procedure. Further, those professionals should be aware that problems are seldom resolved once a community is divided and positions are solidified. Yet it appears that is exactly what occurred. That is the NEA representatives actively sought community involvement and quite openly advocated a position of getting both the principal and the superintendent fired.

The examiner admonishes both parties to this matter that future problems would best be handled by informal inhouse discussions or by formal channels dictated by the grievance procedure. The outside "support" which apparently was solicited by both parties can only add to the problems. The collective bargaining process in a formalized labor/management relationship works best and is designed to resolve problems without outside support and pressure. This order is therefore intended to not only to resolve the pending charges but also to serve as guidance to the parties in resolving any problems which might arise in the future.

A brief review of the examiners findings and conclusions is as follows:

Count 1 of the April Issue Memo

That the denial of informal discussions with superintendent in accordance with Board policy constitutes a prohibited practice as outlined in K.S.A. 72-5430 (b) (1), (2), (3), and (4).

K.S.A. 72-5430 (b) (1), (2), (3), and (4) grants no rights to employees or exclusive representatives to hold "informal discussions with any board representative even if Board policy provides such a procedure. A negotiated agreement might provide such a forum but a denial of that contracted "right" would properly be resolved via the grievance procedure.

Count 2 of the April Issue Memo

That a level 1 grievance meeting was held but the principal denied or refused to meet with the teachers in violation of K.S.A. 72-5430 (b) (1), (2), (3), (4), and (5).

K.S.A. 72-5430 (b) (1), (2), (3), (4), and (5) grants no rights to employees or exclusive representatives which requires employers to participate in any step of a contracted grievance procedure. Rather it is the grievance procedure which governs the obligation to meet and any refusal would result in a contract violation not a prohibited practice. In the instant case the teacher(s) should have simply moved ahead to the next step of the procedure if they desired to proceed with their grievance.

Count 3 of the April Issue Memo

That the president of the local association was subjected to a special evaluation procedure (contact sheet) which spoke to her involvement in protected activities in violation of K.S.A. 72-5430 (b) (1), (2), (3), and (4).

The examiner has found that the 7 point improvement plan was not given to Ms. Schmidt because of her union activities. Rather it was given to her because she was violating rules which Mr. Cannon unlike his predecessor, chose to enforce. Further, Mr. Cannon utilized substantially the same method (contact sheets) to notify all employees that he expected improvement. Point 4 of the plan placed Ms. Schmidt on notice that Mr. Cannon believed she was violating the negotiated agreement. Such a warning does not depart from expected behavior by a supervisor when he/she believes the agreement is being violated. Ms. Schmidt's recourse was to file a grievance if she believed the plan violated the evaluation article of the agreement.

Count 4 of the April Issue Memo

That the assumption of the school building principal in considering 2 (two) separate grievances as one "singled out" Jeanette Schmidt in violation of K.S.A. 72-5430 (b) (1), (2), (3), and (4).

This allegation, without extenuating circumstances would not violate any provision of K.S.A. 72-5430 (b) (1), (2), (3), and (4). Given the factual circumstances in this matter, the examiner might expect any reasonable individual to reach substantially the same conclusion as Mr. Cannon.

Count 5 of the April Issue Memo

That the accusation of conducting NEA-K-NEA business during school hours tended to discourage Jeanette Schmidt's involvement, under threat of discipline, in association business in violation of K.S.A. 72-5430 (b) (1), (2), (3), and (4).

This accusation that a union officer was conducting association business during school hours should discourage such actions if, in fact, that officer was violating the negotiated agreement. The proper resolution of the question concerning contract language is via the contracted grievance procedure. If, the question is answered in favor of the grievant then future accusations of the same nature might prove to be a violation of the officers protected rights.

The examiner submits that the employer acted in a logical and proper manner when they officially notified Ms. Schmidt that they believed she had conducted union business contrary to the negotiated agreement. Certainly a question exists as to the interpretation of Article 6 of the negotiated agreement thus Ms. Schmidt was within her rights to file a grievance. If the examiner was to adopt Complainant's argument he would be removing from the employer any opportunity to discipline a union representative for even blatant violations of conditions the union had previously agreed upon. K.S.A. 72-5430 (b) (1), (2), (3), and (4) grants no exemption from disciplinary measures to union representatives or other employees for legitimate violations of contract or rules and regulations. The legitimacy of the violation in this case is then dependent upon an interpretation of contract language.

Count 6 of the April Issue Memo

That the presence and involvement of an outside "observer" in the November 22, 1983 level one grievance hearing of Jeanette Schmidt tended to discourage her participation in protected activities in violation of K.S.A. 72-5430 (b) (1), (2), (3), and (4).

The presence of Mr. Funk in the November 22, 1983 grievance hearing did not violate the agreement nor was it shown that Mr. Funk was in a position to, or that he did intimidate Ms. Schmidt thus discouraging her from exercising her right to file grievance

(protect terms and conditions of employment).

Count 1 Motion to Amend

On or about April 16-17, 1984, Respondent willfully interfered with, restrained and coerced professional employees by unlawfully transferring and/or reassigning such employees in reprisal for such employees exercising rights granted by K.S.A. 72-5414 in violation of K.S.A. 72-5430 (b) (1) and (3).

The examiner recognizes that at least eight of the ten teachers were unhappy with their transfers and/or reassignments. However, the examiner cannot find that these transfers/reassignments in anyway caused a harm that he could remedy. The action appears to be within managements rights and motivated by reasons other than discriminatory treatment for engaging in protected activites.

Count 2 Motion to Amend

On or about November 30, 1983 and December 6, 1983, Respondent, by and through its agents, willfully interfered with, restrained and coerced professional employees, and denied the Southern Lyon County Teachers Association (SLCTA) rights accompanying formal recognition granted in K.S.A. 72-5415, thereby violating K.S.A. 72-5430 (b) (1), (2), and (6) by denying Jeanette Schmidt a witness during meetings with administrators which she reasonably believed could result in discipline.

Ms. Schmidt had no statutory right to a witness in either the November 30 or the December 6 meetings.

Count 3 Motion to Amend

On or about March 28, 1984, at an Executive Board Meeting attended by teachers, Respondent and its agents willfully interfered with, restrained and coerced professional employees in the exercise of rights granted in K.S.A. 72-5414, dominated and interfered with the existence and administration of the professional employees' organization (SLCTA), and denied the professional employees rights accompanying formal recognition granted in K.S.A. 72-5415, by disparaging the SLCTA and discouraging participation in SLCTA matters in violation of K.S.A 72-5430 (b) (1), (2), and (6).

The examiner finds that the meetings conducted on January 18 were scheduled for the purpose of affording both the Olpe 10 and the Embarrassed 11 an open opportunity to discuss concerns. The meeting on March 28, certainly could have provided a forum for the employer to discourage participation in union activites. However, the witness who testified concerning the events which took place at that meeting could remember very little. It appears

to the examiner that this witness was discouraged from union activity because of the pending charges between Ms. Schmidt and the employer rather than whether the charges were legitimate. There is no doubt that certain members of the Board were displeased with the union involvement but there is no evidence to show that this displeasure was used to threaten or coerce employees.

In light of the foregoing findings the examiner must dismiss these charges in their entirety.

IT IS SO ORDERED THIS 30th DAY OF January, 1986.

  
\_\_\_\_\_  
Jerry Powell, Designee of the Secretary  
Labor Relations & Employment Standards  
Section - Department of Human Resources  
512 W. 6th  
Topeka, KS 66603-3150