BEFORE THE SECRETARY OF THE DEPARTMENT OF HUMAN RESOURCES

STATE OF KANSAS

Great Bend-NEA, Complainant,	*	
vs.	*	CASE NO: 72-CAE-2-1985
U.S.D. 428, Great Bend, KS, Respondent.	*	

ORDER

Comes now on this 14th day of January, 1985, the above captioned case for consideration by the Secretary of Human Resources. This case is filed under the provisions of K.S.A. 72-5413 et seq., The Professional Negotiations Act, and alleges the commission of an unfair labor practice in violation of K.S.A. 72-5430.

APPEARANCES

Complainant, Great Bend-NEA, appears by and through its counsel, David M. Cooper, Kansas-National Education Association, 715 West 10th Street, Topeka, Kansas. Also appearing on behalf of Great Bend-NEA were Allyn Kratz, UniServ Director, Santa Fe UniServ, and Jim Schoonover, President of Great Bend-NEA.

Respondent, U.S.D. 428, Great Bend, Kansas, appears by and through its counsel, Robert L. Bates, 2018 Forest Avenue, Great Bend, Kansas, and Kenneth L. Kerns. Also appearing on behalf of U.S.D. 428 was John Harris, Assistant Superintendent and Clerk for the Board of Education.

PROCEEDINGS BEFORE THE SECRETARY

1. Complaint filed on September 14, 1984.

2. Complaint submitted to Respondent for answer on September 14, 1984.

3. Respondent's answer received October 2, 1984.

4. Respondent's answer submitted to Complainant on October 2, 1984.

5. Pre-hearing scheduled for November 27, 1984. Notice sent to parties on November 8, 1984.

6. Pre-hearing conducted by Paul K. Dickhoff, Jr., Labor Conciliator, on November 27, 1984, in Great Bend, Kansas.

72-CAE-2-1985

7. Formal hearing scheduled for January 14, 1985. Notice sent to parties on December 17, 1984.

8. Formal hearing conducted by Jerry Powell, Labor and Employment Standards Administrator, on January 14, 1985.

9. Briefs of parties received. Complainant's brief received April 15, 1985, and Respondent's brief received April 17,1985.

FINDINGS OF FACT

1. That the Board of Education of U.S.D. 428 took official action regarding teacher contracts for the 84-85 school year on the evening of September 4, 1984. (T - 9, 10)

2. That the first day of classes for students in U.S.D. 428 was September 4, 1984. (T - 9, 10,)

3. That the Board of Education of U.S.D. 428 properly noticed its intent to negotiate a change in the schooling from six to seven periods. (T - 14)

4. That during pre-enrollment, students enrolled in class schedules consisting of both six and seven periods. (T - 9, 10)

5. That school clocks were programmed to ring indicating a seven period school day. (T - 36)

6. That the school bells rang on September 4, 1984, indicating a seven period school day. (T - 18, 27)

7. That a fact-finding hearing was conducted before Dr. David Dilts on August 13, 1984. (Complainant's Exhibit #1)

8. That Dr. Dilts issued his fact-finding report on August 16, 1984. (Complainant's Exhibit #1)

9. That the parties met after receipt of the fact-finding report, in accordance with K.S.A. 72-5428(e), on August 30-31, 1984. (T - 18, 19)

10. That students engaged in fall enrollment during the week of August 13, 1984. (T - 37, 41)

11. That during fall enrollment, students received only one schedule of classes consisting of seven periods. (T - 36, 37, 41, 42)

12. That professional employees of U.S.D. 428 received teaching schedules in late August (31st) indicating a seven period day. (T - 37, 42)

13. That the decision to implement the seven period day was made by September 1, 1984, at the latest. (T - 45)

14. That the Supreme Court, in Chee-Craw Teachers Association v. U.S.D. No. 247, 225 Kan. 561, 570, 593 P.2d 406 (1979), held that number of teaching periods is mandatorily negotiable under K.S.A. 72-5413(l) since it is included in the statutory item, "hours and amounts of work."

CONCLUSIONS OF LAW/DISCUSSION

In the instant case, all evidence submitted indicates that a change from a six period to a seven period day was made prior to the meeting of the Board of Education of U.S.D. 428 held on the evening of September 4, 1984. Complainant has offered testimony to indicate that the decision to change was made by not later than September 4, 1984, as evidenced by the district's action of programming the class bells to a seven period day. Complainant further alleges that the decision was more likely made on or earlier than August 31, 1984, as evidenced by the seven period class schedules received by bargaining unit members on that day. Complainant finally alleges that the decision must have been made as early as the week of August 13, 1984, as evidenced by the seven period schedules provided to students during fall enrollment. Respondent admits, through testimony of Superintendent of Schools, Dr. Bell, that the decision to implement the seven period day was made prior to official Board of Education action on September 4th. Respondent argues that the decision was made subsequent to the mandated post fact-finding meeting. Respondent further argues that all parties were aware that no additional meetings would be had prior to Board action on September 4th. Respondent reasoned that the negotiations process was over at the conclusion of the August 31st meeting of the parties.

A preliminary question before the examiner is, therefore: At what point in time does the negotiations process end? In addressing that question, the examiner takes note of the language at K.S.A. 72-5428(f) which states:

> "(f) When the report of the fact-finding board is made public, if the board of education and the recognized professional employees' organization do not resolve the impasse and reach an agreement, the board

> of education shall take such action as it deems in the public interest, including the interest of the professional employees involved, and shall make such action public." (Emphasis added)

The statute in this case certainly gives the Board of Education the right to bring the negotiations process to a close by the taking of action deemed to be in the interest of the public and the professional employees. The legislature, however, goes one step further and mandates that the action shall be made public. In the opinion of this examiner, the negotiations process continues until such time as the Board fulfills its legislative mandates, one of which is public action. Relying on this logic, the examiner must find any unilateral action taken to alter a mandatory subject of bargaining prior to conclusion of the bargaining process to be prohibited. If any other construction were to be placed on the language of K.S.A. 72-5428(f) an unscrupulous Board of Education could participate in the mandated meeting subsequent to fact-finding, implement unilateral changes on mandatory subjects of bargaining and postpone indefinitely any official action for which they could be held accountable. The examiner is convinced that the legislature envisioned a more definitive action to signal the end of negotiations. The examiner believes that signal to be the official public board action.

With Board action identified as the signal of the conclusion of negotiations, the examiner must address an additional question, specifically; "At what point in time did the Board of Education take unilateral action and convert from a six period to a seven period day?"

Through testimony of the Superintendent of Schools, the decision to change took place on August 31st or September 1st, but in either case subsequent to the last "post fact-finding" meeting of the parties. In keeping with the previously stated position of this examiner, even an action taken at that time would constitute a violation. A review of all the evidence, however, leads the examiner to believe that the decision was made at an earlier point in time. The examiner finds no fault with the Board's action of pre-enrolling students in both six and seven period class schedules. Those contingency plans were simply a product of foresight. Similarly, the examiner believes the programming of the school bells for a seven period day was also an acceptable act compatible with good faith bargaining. The examiner does find fault with the Board, however, in their action of firm enrollment of students

during mid-August in a seven period schedule only. Similar fault is found in the Board's action of providing schedules to the professional employees consisting only of seven periods. And finally, the examiner finds fault in the Board's action of commencing a seven period day on the first day of classes. All of the three above mentioned actions demonstrate an intent on the part of the Board to institute the seven period day as early as mid-August and most certainly prior to official public action of the Board.

The examiner is convinced that the Board, by their actions, put students, patrons, and professional employees of the district on notice of their intent to implement a seven period day. That intent carried with it no latitude or provision for alternative action, was physically implemented, and was verified by Board action on September 4th.

K.S.A. 72-5413(g) defines Professional Negotiations as:

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

A predetermined outcome to negotiations is totally inconsistent with a good faith effort to reach an agreement.

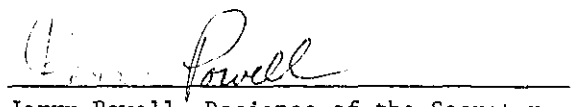
In light of the foregoing, the examiner finds that the Board of Education of U.S.D. 428 did engage in a prohibited practice in violation of K.S.A. 72-5413 et seq., and thereby did demonstrate their lack of good faith during professional negotiations.

By way of relief, the examiner orders the Board to cease and desist their unlawful actions, to fully negotiate in the future the subject of "number of teaching periods", and to fully exhaust all dispute resolution mechanisms prior to implementing changes in mandatory subjects of bargaining. Complainant has asked the Secretary to require the Board to return to the table to negotiate the "number of teaching periods" for school year 84-85. The examiner does not believe that anyone's interests would be served by such an order. The record shows that the length of the duty day was not changed, that students have attended classes on the seven period day schedule for nearly the entire school year, and that the teachers' representative had, during negotiations, tentatively agreed to the nonlengthened seven period day. In addition,

no evidence was presented that any employee refused the unilateral contract issued by the Board based upon the inclusion of the extra class preparation.

The examiner certainly does not condone the action of the Board but must also fashion his relief to appropriately remedy the wrong which has been done. The examiner is of the belief that the relief outlined above fulfills that and while remaining mindful of the interests of the patrons of the district.

IT IS SO ORDERED THIS 13th DAY OF May, 1985.



Jerry Powell, Designee of the Secretary
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