STATE OF KANSAS

BEFORE THE SECRETARY OF THE DEPARTMENT OF HUMAN RESOURCES

IN THE MATTER OF North Lyon County Teachers Association, Complainant, vs. U.S.D. 251, Americus, Kansas, Respondent.	CASE NO: 72-CAE-8-1981

ORDER

Comes now this 7th day of January, 1981 the above captioned matter for consideration by the Secretary of the Department of Human Resources.

APPEARANCES

Paul Harrison, Director, Sunflower UniServ District, Complainant; 422 South Main, Suite 4, Ottawa, Kansas 66067.

Fred Rausch, Attorney for U.S.D. 251, Respondent; 220 S. W. 33rd Street, Suite 201, Topeka, Kansas 66611.

PROCEEDINGS BEFORE THE SECRETARY

1. Complaint filed on April 10, 1981.
2. Complaint submitted for response April 10, 1981.
3. Answer to complaint received by Secretary April 29, 1981.
4. Answer submitted to complainant April 30, 1981.
5. Pre-hearing conference conducted May 21, 1981 - All parties in attendance.
6. Parties directed to submit briefs relative to the statutory duty to exchange information.
   A. Complainant's brief received June 10, 1981.
   B. Respondent's brief received July 10, 1981.
7. Opinion of Secretary designee for the administration of K.S.A. 72-5413 et seq., Mr. Jerry Powell, submitted to parties August 24, 1981. (Opinion addressed question of statutory duty to exchange information. Copy attached)
8. Paul K. Dickhoff, Jr. assigned as hearing examiner November 10, 1981.
9. Motion to Dismiss submitted by respondent December 9, 1981.
10. Motion to Dismiss served upon complainant December 15, 1981.
11. Answer to Motion to Dismiss received December 17, 1981.

FINDING OF FACTS - DISCUSSION - CONCLUSIONS

In the resolution of disputes under K.S.A. 72-5413 et seq. (the Professional Negotiations Act) there are certain aspects of the statute which must be recognized if the intent of the law is to be fulfilled. K.S.A. 72-5413 (g) states:

> "(g) 'Professional negotiations' 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." (Emphasis added)

It appears quite clear that the statute was enacted to promote and develop harmonious relationships between and among boards of education and their professional employees. The statute establishes a framework within which these relationships may be developed. The Secretary is of the opinion that this law, not unlike many other statutes, outlines the framework as a "mandatory" minimum standard or point of departure, if you will. Certainly, the statute could not be interpreted as establishing any maximum bounds for the development of those harmonious relationships. It is quite obvious to the Secretary that the legislature would be faced with a monumental, if not impossible, task if they attempted to outline each and every step to be taken by the parties to this process, necessary to function within the concept of good faith. When questions regarding good faith do arise they may be submitted to the Secretary for determination, via a petition alleging bad faith.

In the instant case the complainant filed a charge of bad faith stemming from respondent board of education's actions surrounding the exchange of information requested by the representative of the professional employees. In an opinion dated August 24, 1981, the Secretary designee for the administration of K.S.A. 72-5413 et seq. stated that:

> "In fulfillment of their statutory 'good faith' requirement, each party must do a certain amount of 'homework' in order to make well informed proposals and counter proposals." (Page 3 - Lines 6-9)

The Secretary designee also expresses the opinion that:

> "While the secretary recognizes the fact the N.L.R.B. rulings are not controlling under Kansas law, he accepts the principle that information peculiarly within the knowledge of either party must be exchanged to facilitate an informed proposals or response. Information which is a matter of public record and easily accessible elsewhere is not 'peculiarly within the knowledge of either party'." (Page 3 - Lines 15-20)

Further the Secretary states:

> "Information which is a matter of public record and easily obtainable elsewhere need not be supplied." (Page 4 - Lines 29 and 30)

Finally the Secretary designee advises the public records may be properly requested and should in good faith be supplied by the party using such a document as a basis for a proposal in negotiations. This advice is found in the Secretary's opinion wherein he states:

"Regardless of the accessibility of information, the secretary is of the opinion that even public records, if used as the basis for a negotiations proposal, may be properly requested and should be supplied." (Page 3 - Lines 20-23)

In the opinion of this examiner, the Secretary designee arrives at those conclusions through well founded logic and recognition of the inherent differences between the public and private sectors relative to the requirements for "good faith" bargaining. This examiner, therefore, adopts the August 24, 1981 opinion of the Secretary designee and, by reference, makes it a matter of the record in these proceedings. (Copy attached)

Inasmuch as the question of respondent's obligation to supply complainant with "public records easily obtainable elsewhere" is hereby answered, the examiner now focuses on the allegations contained within paragraph four (4) of complainant's "Answer to Motion to Dismiss". The complainant now askes the Secretary to review the actions of the board of education which they took in response to a request for information which they had no obligation to supply.

Let us for a moment consider again the intent of the statute i.e., the development of harmonious relationships between boards of education and their professional employees, and moreover the establishment of a forum for the exchange of information leading toward agreement by those parties in regard to terms and conditions of employment. If the examiner were to require a board of education to explain their actions taken in excess beyond their legal obligations, the results could be extremely counterproductive to the intent of the Act. The message conveyed by the Secretary in requiring such an explanation could well be interpreted as an instruction to boards of education to do no less or <u>more</u> than the statute dictates. That is, one could be found guilty of bad faith stemming from an attempt to engage in "extended" good faith. In correlation with the instant case, there is no dispute that some type of budget information was requested of the board. The Secretary has ruled that the board had no obligation to supply the information, therefore at that point they could have simply refused, and at this point the matter would be closed. Setting aside for the moment the intent of the board, they chose rather to respond to the request and supplied, be it right or wrong, some type of budget document. In the opinion of this examiner, <u>any</u> information supplied by the board, which they supplied in excess of their legal obligations, constitutes prima facie good faith. Even if one were to assume that the board was leading the organization down a "primrose path", the employer representative has a certain obligation to recognize that path. If they continue down the path unwittingly, they do so at their own peril.

In summary, this examiner concurs with the opinion of the Secretary wherein he finds no obligation for a board of education to supply "information which is a matter of public record and easily obtainable elsewhere". Second, any information which a board of education chooses to supply in excess of their legal obligation constitutes prima facie good faith and should not be subject to review by the Secretary. Third, requiring an employer to answer charges where he has particiapted in the process beyond his legal obligation could serve to be counterproductive to the intent of the Act. Fourth, an employer organization has no grounds to complain regarding incidents which occur on the "primrose path" leading through an area in which they have no guaranteed right to tread.

It is, therefore the recommendation of this examiner that respondents "Motion to Dismiss" be honored by the Secretary and that this matter be dismissed from further consideration by order of the Secretary.

It is so recommended this 7th day of January, 1982.

Paul K. Dickhoff, Jr.
Hearing Examiner

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The hearing examiner's report and recommended findings in the above captioned matter are hereby approved and adopted as a final order of the Secretary of the Department of Human Resources.

IT IS SO ORDERED THIS 21ST DAY OF January, 1982, BY THE SECRETARY OF HUMAN RESOURCES.

Jerry Powell, Employment Relations Administrator
Secretary designee for the Administration of
K.S.A. 72-5413 et seq.

North Lyon County Teachers Association

vs.

Unified School District 251
Americus, Kansas

CASE NO.: 72-CAE-8-1981

The following is issued as an opinion of the Secretary Designee relative to the exhange of information as it relates to good faith bargaining engaged in pursuant to K.S.A. 72-5413 et. seq. The opinion results from the filing of prohibitive practice charges against U.S.D. 251 by the North Lyon County Teachers Association. For the purpose of this opinion the merits of the charge have not been considered. Rather the Secretary Designee has asked the parties to the complaint to brief the question cited above. Therefore, the issuance of this opinion will not serve to resolve the complaint but rather will develop guidelines within which the parties shall argue the merits of the issues involved in the complaint.

K.S.A. 72-5413 (g) defines professional negotiation as:

> "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."

K.S.A. 75-4322 (m) defines meeting and conferring in good faith as:

> "Meet and confer in good faith" is the process whereby the representative of a public agency and representatives of recognized employee organizations have the mutual obligation personally to meet and confer in order to exchange freely information, opinions and proposals to endeavor to reach agreement on conditions of employment."

The Secretary notes the difference in the definitions of the two processes mandated by the legislature for the two groups of Kansas public employees. That is, the absence of any reference in the Professional Negotiations Act definition of professional negotiation regarding the free exchange of information. However, one must keep in mind that K.S.A. 75-4321 et. seq. has been labeled a "meet and confer" act while K.S.A. 72-5413 et. seq. is an act requiring "negotiations". Surely, the legislature did not intend to make a lesser requirement for "negotiating" than for "meeting and conferring".

Complaintant's brief in this matter is replete with National Labor Relations Board and court decisions regarding the question of exhanging information as a requisite to good faith private sector bargaining. There is, as respondent states, a total absence of Kansas case law in public sector bargaining relative to the exchange of information. Therefore, it is important to briefly contrast public sector bargaining with private sector bargaining in order to determine what types of information, if any, a public sector employer must, at the request of a professional employee organization, disclose.

There exists in Kansas a statute (K.S.A. 45-201) known as the open public records act which requires certain public records to be open for personal inspection by any citizen. The Secretary is unaware of any such act applicable to the records of private sector employers. The aforementioned act does not serve as controlling factor on determining good faith obligations to furnish information but does provide assistance in making a determination regarding (accessability) of certain records. K.S.A. 45-201 provides alternative avenues for employee organizations to obtain information necessary for calculating negotiations proposals. It is logical then to assume that a more stringent requirement for providing information to unions must be placed on private sector employers than their counterparts in the public sector.

The Secretary recognizes the obligation of unions, both public sector and private sector, to represent all individuals within the appropriate unit. Part of that duty extends to the making of well-informed and concise proposals relating to terms and conditions of employment to the employer. The same holds true of the making of counter proposals to the employer. In order to make such proposals and counter proposals the union must be well informed and have access to pertinent information upon which to base its demands. There is also inherent in this obligation to represent, the obligation for the union to make every effort to obtain all necessary data upon which it will base its demands. The secretary also recognizes the duties and responsibilities to the public placed upon boards of education. In a functional labor-management relationship the objectives of both entities should be as one, i.e., to develop and maintain a quality educational program and atmosphere which fulfills the needs of those served as well as those providing the service. Obviously, a state of Utopia is not very realistic and differences of opinion will always be a fact of life. This does not, however, dictate that a labor-management relationship must be an adversarial one. K.S.A. 72-5413 et.seq. was enacted as a medium within which the parties may freely exchange their ideas, concerns, interests, problems, suggestions, goals, concepts, and constraints, all of which have bearing on the attainment of their common goal.

Employers must recognize the obligations placed upon employee organizations and those organizations must recognize the obligations placed upon the employer. Both must recognize the obligations placed upon them by the Professional Negotiations Act, eg., to endeavor to reach agreement through meeting, conferring, consulting and discussing. This mandate in the law does not dictate, however, that every document in the possession of either party must be supplied upon request. In the fulfillment of their statutory "good faith" requirement, each party must do a certain amount of "homework" in order to make well informed proposals and counter proposals. There would be little value in exchanging proposals if there were no inherent obligation to exchange the information which led to the formulation of those proposals. Under such an interpretation each side would be forced to accept or reject the position of the other on "face value". If the parties had no obligation to substantiate or explain their rationale to one another, all negotiations could be submitted to fact-finding as the first step in the process and face to face meetings of the parties could be eliminated. While the secretary recognizes the fact that N.L.R.B. rulings are not controlling under Kansas law, he accepts the principle that information peculiarly within the knowledge of either party must be exchanged to facilitate an informed proposal or response. Information which is a matter of public record and easily accessible elsewhere is not "peculiarly within the knowledge of either party". Regardless of the accessibility of information, the secretary is of the opinion that even public records, if used as the basis for a negotiations proposal, may be properly requested and should be supplied.

Certainly, other principles which have been adopted by the N.L.R.B. are validly dictated by logic and should be utilized by the parties in fulfilling their good faith requirements in requesting and/or supplying information under this act. Any request for information should be specific, understandable, and relevant to the negotiations. Undoubtedly, controversies will continue to arise regarding the relevancy, specificity, and understandable nature of individual requests. The propriety or impropriety of <u>individual</u> requests must be determined, however, on an <u>individual</u> basis considering the facts of each case. The secretary is of the opinion that the above parameters for requesting information are of such a crucial as well as an elementary nature that further explanation of their existance is unnecessary in this opinion.

An additional item of importance is the form and format in which requests may be properly made. Each team engaged in negotiations is comprised of a finite

number of members, (one of which serves as chief spokesperson). These bodies of individuals, or teams if you will, must be clearly recognizable, each by the other. The secretary does not believe that the only legitimate requests for information are those made at the negotiations table of the chief negotiator. Certainly, proper courtesy and etiquette would direct the parties to, whenever possible, submit their requests in such a manner and in written form but there are occasions when that strict formality is impractical. When those occasions arise, the secretary is of the opinion that a legitimate request may be registered by any team member with any team member of the other party. This conclusion is arrived at based on the assumption that the team members are placed at the table as representatives of their respective groups, and endowed with certain authority to act. If that authority does not extend to the dissemination of information, the individual should certainly know to whom, on his/her team, the request should be directed and relay the request. To find in the alternative would require the parties to meet formally for the simplest exchange of information and would hamper rather than aid the negotiations process. It is important to note that these guidelines continually refer to the representatives of the parties and once representatives have been designated for the purposes of this act they must not be circumvented.

In summary, the secretary recognizes the absence of any specific statutory directive regarding the exchange of information between negotiating parties but believes that such an exchange is crucial to the negotiations process. Requests for and the exchange of information should be in writing and submitted to the chief negotiator at the bargaining table whenever practical but equally legitimate requests may be served by any team member on any other team member at other times. Both parties have the right to designate representatives and have the right to expect that matters relative to negotiations will be conducted through those representatives. Any request for information must be specific, understandable, and relevant. Information which is a matter of public record and easily obtainable elsewhere need not be supplied.

While the secretary if fully aware that N.L.R.B. decisions in no way act as precedent in the administration of the Professional Negotiations Act, those decisions are easily adopted as reasonable guidelines within which parties to this act should function. Law in the public sector makes certain information a matter of public record and therefore the requirements for the exchange of information should understandably be less stringent. This does not, however, dictate a total absence of a requirement for any exchange. As the parties continue to interact

and request information from one another, occasions will arise when the secretary is asked to judge the good or bad faith of information requests or responses and these of course must be viewed on a case by case basis. Important to note, is the determination by the secretary that the exchange of information is essential in the bargaining process and must transpire if fruitful negotiations are expected.

Jerry Powell (Designee of Dr. Harvey L. Ludwick)
Employment Relations Administrator
Kansas Department of Human Resources

STATE OF KANSAS

BEFORE THE SECRETARY OF HUMAN RESOURCES

IN THE MATTER OF Teachers Association of District 366 Complainant, vs. Unified School District 366, Yates Center, Kansas, Respondent.	*	CASE NO: 72-CAE-7-1981

O R D E R

Comes now on this 10th day of November, 1981 the above captioned case for consideration by the Secretary of Human Resources.

PROCEEDINGS BEFORE THE SECRETARY

1. Complaint filed by Paul Harrison, Director, Sunflower Uni-Serv District against U.S.D. 366, Yates Center, Kansas on April 10, 1981.

2. Respondent's answer to complaint received by Secretary on April 16, 1981.

3. Parties met with Secretary designee, Mr. Jerry Powell, on May 15, 1981, to discuss mutual resolution of complaint.

4. Pre-hearing conference conducted by Mr. Powell on July 8, 1981. (All parties in attendance).

5. Stipulations of facts received from parties:

   A. Complainant - July 29, 1981

   B. Respondent - August 6, 1981

6. Briefs of parties received by Secretary:

   A. Complainant - August 17, 1981

   B. Respondent - September 8, 1981

7. Complainants proposed amendment to complaint submitted and denied, September 30, 1981.

FINDINGS OF FACT

(See attached Stipulations of Fact and attachments thereto as submitted by the parties).

DISCUSSION

The instant case comes before the Secretary without benefit of formal hearing inasmuch as there are no disputed factual matters. The parties have entered into

stipulations of the facts in regard to this matter and ask the Secretary simply to rule relative to a question of law. Specifically stated, the two basic questions in this case are: "Was Mr. Weston acting in the capacity of a member of the Board of Education in his letter to the editor of the Yates Center News (Published on April 2, 1981)?" and "Did the action and statements of Mr. Weston, via his letter to the editor, evidence a refusal to negotiate in 'good faith' as required by K.S.A. 72-5423?"

Complainant alleges that Mr. Weston's letter was issued by him in his capacity of president and chief negotiator for the U.S.D. 366 Board of Education. Respondent alleges that the letter written by Mr. Weston was issued in his capacity of candidate for a school board position and not in his capacity of board president and/or chief negotiator. Both parties have, however, stipulated to the fact that Mr. Weston was indeed serving in both capacities on April 2, 1981. While Mr. Weston is certainly entitled to the constitutional guarantees granted to all citizens, the Kansas legislature has imposed certain restrictions on the exercise of those rights by a Board of Education in a collective bargaining atmosphere. It is not the task of the Secretary to determine if those restrictions violate Mr. Weston's constitutional rights but rather if those restrictions have been adhered to and followed. The specific restrictions outlined at K.S.A. 72-5415(a) in concert with K.S.A. 72-5430(b) (6) do, in fact, limit the freedom of speech enjoyed by a board member in regard to subjects of professional negotiations. There can be no argument that the matter of salary discussed within Mr. Weston's April 2nd letter was a subject of negotiations under way during the time the letter was published. Logic dictates that statements regarding negotiations, which are made by the designated representative of the board for negotiations, can reasonably be assumed to "mirror" the board's position on those issues. It matters little, however, in what capacity Mr. Weston was speaking. Each member of the Board of Education has a like responsibility to participate in the negotiations process in good faith. If that board has selected a representative to act in their behalf, that responsibility extends to the representative as well as the board. Certainly a candidate for a position on the board could not engage in a prohibited practice until such time as he/she had won the authority and responsibility to act as a board member. Mr. Weston had won that authority at some prior point in time. That authority and responsibility continues in effect until such time as Mr. Weston, or any board member, is defeated via an election, resigns, is recalled, or in some other manner loses the authority of office. The fact that Mr. Weston was a candidate for a school board position carries no more significance than if he were a candidate for Mayor. He was, in fact, a school board member at the time his letter was published.

The fact that the board was not in official session is, in the opinion of the Secretary, of no consequence. Mr. Weston's term of office does not expire at the close of each board meeting and he may not move into and out of his official role at his pleasure. Even if Mr. Weston had entered a disclaimer within his letter and alleged that he was speaking as a private citizen or as a board candidate, the restriction on his freedom of speech would still exist relative to subjects of negotiations. In the opinion of the Secretary, an employer may not discharge any legal obligations under the Professional Negotiations Act via a simple disclaimer of his or her official position. To do so would undermine the intent of the Act. For example, the law prohibits an employer from intimidating employees in the exercise of their organizational rights. Even if the employer claimed to be acting as an individual without authority, the capacity of the employer to hire and terminate is ever present in reality and in the minds of the employees. If the statutues did provide an avenue for discharging employer responsibilities via a disclaimer, they would in turn grant free rein to employers to act in any manner they so desire. The Secretary is confident that the legislature did not intend to allow such a condition to exist. The Secretary finds therefore, based upon the above rationale, that Mr. Weston was acting in the capacity of a member of the Board of Education in his letter to the editor published on April 2, 1981 in the Yates Center News.

As stated before, the second question to be addressed is; "Did the action and statements of Mr. Weston via his letter to the editor, evidence a refusal to negotiate in 'good faith' as required by K.S.A. 72-5423?". In regard to this question, the Secretary must analyze the statements made within Mr. Weston's letter to determine the existence or lack of 'good faith' as required by the statute. In order to properly analyze those statements, the Secretary must be particularly cognizant of several specific statutory provisions which identify the players and their parts in the negotiations process.

K.S.A. 72-5414 states:

> "Professional employees' rights; representation of employees and school boards; negotiations. 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."

K.S.A. 72-5415 then states:

> "Exclusive representation of negotiating units; any employee or group may present its position or proposal. (a) When a represenative 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."

These two sections of the Professional Negotiations Act give the employees the right to opt for organization, and give the selected organization "exclusive" representation rights. The employees in this case have opted for organization, and designated the complainant as their exclusive representative. The actions taken by the employees are solely theirs to exercise and employers must be especially wary to insure that they do not interfere with the employees in the exercise of those rights. In a recent opinion (81-185) the Kansas Attorney General analyzed the language in K.S.A. 72-5415(a) and found in part that; "Clearly, if a Board of Education attempted to negotiate directly with members of a collective negotiations unit for which a representative had been selected, said board might well be adjudged to have committed a prohibited practice under the provisions of K.S.A. 72-5430(b) (6)". The Secretary concurs with this interpretation, finding that the employer, the Board of Education in this instance, has the responsibility to acknowledge the exclusive rights of the representative and to engage in professional negotiations with, and only with, the representative "in good faith". In order to properly participate in the process, each party should arrive at the table with an open mind. Certainly they will each arrive with positions in which they believe and which convey the wishes of the majority of those they represent. The good faith requirement in the statute, however, contemplates a great deal more than an exchange of those positions or proposals. The Secretary is of the opinion that the parties are required to meet embracing the attitude that their positions are amendable if the facts so dictate. Certain statements in Mr. Weston's letter indicate an absence of this potential for flexibility. Mr. Weston indicates that his position favors the younger teachers and that irrespective of the wishes of "some of the employees", via their exclusive representative, he has "no intention of changing". While not controlling, it is certainly worthy of notice that the National Labor Relations Board and the courts in review, have long held that a "take-it-or leave-it" approach to bargaining is not always an illegal one. The Second Circuit Court of Appeals in a review of a National Labor Relations Board decision on this matter did find however that the take-it-or-leave-it approach was illegal when coupled with communications to the employees that the company and not the union was their true representative. The Court further affirmed that the employer may not deal with the union through the employees but is

required to deal with the employees through the union.

If Mr. Weston and the balance of the board believe it to be in the best public interest to expend all their tax dollars attracting and rewarding the younger teachers they may certainly exercise that option but only after full participation in the negotiations process. If the younger teachers do not believe they are being properly represented by the organization they may petition to decertify the organization or they may bring charges before the Secretary alleging the existence of such a condition. In no case, however, are the internal workings of the employee organization subject to the scrutiny of the Board of Education. Statements of the type which appeared in Mr. Weston's letter can only be interpreted as an attempt to inflame the public and the younger teachers against the employee organization and are, in and of themselves, a subtle form of negotiations. That is, they constitute an attempt on the part of the board to force the organization to amend their positions through a means other than "professional negotiations". Activities of this type can only serve to destroy a process which the legislature has implemented to facilitate harmonious and cooperative problem solving within the school districts of this State. Additionally, "negotiations" with the public or factions of the appropriate bargaining unit deny the organization the right to function as the exclusive representative of the unit which is a violation of K.S.A. 72-5430(b) (6). The discrediting statements and innuendos contained in Mr. Weston's letter constitute violations of K.S.A. 72-5430 (b) (1) and/or (2), in the opinion of the Secretary, and when viewed in total, evidence a clear lack of good faith as alleged by complainant. The Secretary is of the further opinion that Mr. Weston's letter became a violation of the Professional Negotiations Act at the time his statements began to insinuate misrepresentation of unit members by their representatives, and when he espoused a position of unyielding favoritism toward the younger teachers.

It should be noted that while the Professional Negotiations Act requires that any violation thereof must be found to be "willful", the existence of intent may be determined by inference. From the moment Mr. Weston became a board member he was charged with the duty and responsibility for familiarity with the provisions of the Act. In addition, as the chief negotiator for the board, Mr. Weston should have made himself totally familiar with the provisions of the Act. Any failure to do so does not constitute an adequate defense against potential violations of the Act. In summary, the Secretary finds 1) That Mr. Weston was acting in the capacity of President of the Board of Education and chief negotiator of U.S.D 366 at the time the letter to the editor was written and published. 2) That the actions and state-

ments made by Mr. Weston, via his letter to the editor, do evidence a refusal to negotitate in "good faith" as required by K.S.A. 72-5423, and 3) That the actions of Mr. Weston do constitute a "willful" violation of K.S.A. 72-5430 (b) (5) as alleged by petitioner.

Upon a finding that a willful violation of the Act has occurred, the Secretary is charged with the duty of determining an adequate remedy. The Secretary, therefore, orders U.S.D. 366 to henceforth cease and desist all such unlawful action. The Secretary further finds that additional remedies could destroy rather than promote a harmonious relationship between the parties and as such would be counter productive. The Secretary, therefore, denies all other relief sought by petitioner.

IT IS SO ORDERED THIS 10th DAY OF November, 1981.

Jerry Powell

Jerry Powell (for Dr. Harvey L. Ludwick,
Secretary of the Department of Human
Resources) Employment Relations Administrator
Labor Relations Section
512 West Sixth Street
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