STATE OF KANSAS

BEFORE THE SECRETARY OF HUMAN RESOURCES

Wellsville Educators Association, Complainant, vs. Unified School District 289, Wellsville, Kansas Respondent.	*	CASE NO: 72-CAE-9-1982

ORDER

Comes now on this 4th day of May, 1982, the above captioned case for consideration by the Secretary. This case comes before the Secretary on petition of Paul R. Harrison, Director, Sunflower UniServ District, on behalf of an employee of Unified School District 289 (U.S.D. 289), alleging that respondent Unified School District 289 (U.S.D. 289), Wellsville, Kansas, engaged in certain practices which constitute violations as specified at K.S.A. 72-5430 (b) (1) and (2).

PROCEEDINGS BEFORE THE SECRETARY

1. Complaint filed on December 21, 1981.

2. Complaint submitted for answer on December 22, 1981.

3. Answer received by Secretary of Human Resources on January 13, 1982.

4. Pre-hearing conducted by Jerry Powell on March 8, 1982, all parties in attendance.

5. Complaint declared void by employee representative on March 24, 1982.

6. Employee representative's declaration submitted to Mr. Harrison on March 31, 1982 granting ten (10) days to reply.

7. Mr. Harrison requested extension of time in which to answer on April 4, 1982.

8. Extension of time granted on April 9, 1982.

9. Amended complaint filed by Mr. Harrison on April 22, 1982.

FINDINGS OF FACT

1. That U.S.D. 289, Wellsville, Kansas is the appropriate employer/Board of Education as defined at K.S.A. 72-5413 (b).

2. That the Wellsville Educators Association is the exclusive representative of the professional employees of U.S.D. 289.

CONCLUSIONS OF LAW - DISCUSSION

The request to amend this complaint alleges that the actions of the school district violated the individual rights of Lora Hylton, a professional employee of the district. K.S.A. 72-5430 (b) (1) makes it 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 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." (Emphasis added)

In this case, the professional employees have exercised their rights and have selected the Wellsville Educators Association as their exclusive representative for purposes of professional negotiations. It is interesting to note that K.S.A. 72-5414, in speaking of the employees' rights, lists "establishing, maintaining, protecting, or improving terms and conditions of professional service", as potential purposes for the formation or existence of professional employees' organizations. While these may, in fact, be the reasons that employees have selected a representative, once that selection has been made, the employer is prohibited from negotiating terms and conditions of professional service with individual employees. This prohibition is found at K.S.A. 72-5415 (a) which states;

> "(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."

K.S.A. 72-5415 (a) then is quite clear. Attention must be paid to the use of the terminology "through representatives of their own choosing", when attempting to analyze the individual employee's rights. Inasmuch as the statute requires the employer to recognize the selected organization's "exclusive" right to engage in professional negotiations, only the organization may allege that the employer has failed to fulfill his requirement to engage in professional negotiations. (The employee organization has advised the Secretary that it does not wish to pursue such a charge.) Ms. Hylton seems to allege that her rights have been violated via the employer's alleged violation of the organization's rights. That is, Ms. Hylton alleges that one of her terms and conditions of employment has been changed by the employer without benefit of the negotiations process. Whether that condition of employment was included in a previous contract or was a matter of past practice or policy of the employer, the

alteration of that term or condition of employment does not constitute a prohibited practice which may be filed by an individual. Rather, the action, if true, might constitute a violation of Ms. Hylton's contractual rights. The Secretary has addressed this matter previously in case number 72-CAE-2-1981. An excerpt from the final order in that matter states as follows:

> "The board has the right to change its policy at any time. The board might choose to meet with the employee organization prior to a change but no such obligation exists. If such a policy change affects the terms and conditions of employment contained within a valid memorandum of agreement, the employer must obtain an agreement from the exclusive representative to amend the memorandum of agreement or risk a charge of a violation of the contract. Obviously, if the parties agree to the change in terms and conditions of employment an addendum to the contract can be made. If the employer cannot secure the agreement and proceeds to implement the change, a breech of contract might occur.
>
> Does a violation of a contract term constitute bad faith bargaining? The prohibited practice section of the Professional Negotiations Act mandates that the Secretary shall 'oversee' professional negotiations to insure that good faith bargaining takes place. Additionally, the statute mandates the Secretary to insure that professional employees are not coerced, interfered with, or discriminated against in exercising their rights to form, join or participate in employee organizations of their choosing. Nothing in K.S.A. 72-5430 authorized the Secretary to make a determination that either party to a memorandum of agreement has violated such agreement. At the point in time when a violation of a contract occurs it is immaterial whether the contract was entered into in good faith. Rather the important questions are whether the contract was violated and the remedy for making the injured party whole. Such a determination of a contract violation might carry with it a connotation of bad faith bargaining but such an individual finding of bad faith would be unnecessary. Allegations of contract violations are properly adjudicated by district courts. The Secretary is without authority to make such determinations. Therefore, based upon the above reasoning the Secretary finds that the board did not commit a prohibited practice by its action to change the board policy and that its refusal to pay Diane Marie Taylor is properly submitted to district court for a contract violation determination.
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> Some memorandums of agreement contain a grievance procedure to be utilized as an alternative to filing contract violation charges in district court. Such grievance procedures are usually more expeditious and less costly than seeking resolutions in district court. In the event a grievant fails to timely file his/her grievance the grievant's right to subsequently file in district court would decided by district court."

If the Secretary were to allow individuals to pursue charges of the type alleged in the instant case, he would be ignoring the principle of "exclusivity". The Secretary does not believe that the legislature intended to allow individual unit members to file charges relative to the relationship of the bargaining parties. This belief, of course, does not by any means preclude an individual from filing a charge under K.S.A. 72-5430 (b) (1). Quite the contrary. If an individual believes he or she has been interfered with, restrained or coerced in the exercise of rights granted in K.S.A. 72-5414, then the filing of a (b) (1) charge could be the appropriate avenue to resolve the matter. Ms. Hylton's charge, however, contains no allegations which, even if found to be true, would constitute interference,

restraint or coercion in the fulfillment of her rights to form, join, or assist a professional employees' organization, or to participate in professional negotiations. The alleged actions of the employer were applied to all employees irrespective of any exercise of their individual rights. Therefore, as stated previously, the Secretary is of the opinion that the actions alleged are improperly filed as a prohibited practice by an individual as a (b) (1) violation.

Complainant has also alleged a violation of K.S.A. 72-5430 (b) (2). As was the case in Ms. Hylton's (b) (1) charge, the complaint contains no foundation for such a charge. In way of explanation, consider the following:

1. Ms. Hylton does not indicate that she was attempting to form an employee organization, much less that she was dominated, interfered with or assisted in any effort of that nature.
2. Ms. Hylton does not identify herself as the designated representative of the Wellsville Educators Association and failing to possess that status has no standing to allege that Wellsville Educators Association has experienced any domination, interference, or assistance in its existence or administration.

Once again, the Secretary does not intend to indicate that an individual employee is precluded from filing charges under subsection (b) (2) of K.S.A. 72-5430. Rather, the Secretary does find that the basis of Ms. Hylton's complaint fails to qualify as a (b) (2) violation.

Certainly the parties to the Professional Negotiations Act must have an avenue of recourse if their rights have been violated. That avenue may be through the courts, through the Secretary, through a grievance procedure, or through other administrative channels, depending upon the nature of the alleged offense. Regardless of the jurisdiction, however, the accuser has no standing to allege a violation of the rights of another. Stated in another manner, only the damaged have the right to be made whole. While Ms. Hylton may certainly demonstrate damages which she has incurred by virtue of the actions of her employer and subsequent inaction of her exclusive representative, the Secretary is without authority to entertain her complaint based upon the allegations therein.

Based upon the above the Secretary has no option but to deny amendment and dismiss the complaint in case 72-CAE-9-1982. IT IS SO ORDERED THIS 4 DAY OF May, 1982.

Jerry Powell

Jerry Powell, Employment Relations Administrator
(Designee for the Secretary of Human Resources)
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