

BEFORE THE SECRETARY OF THE DEPARTMENT OF HUMAN RESOURCES

STATE OF KANSAS

Chase Local Teachers Association, \*  
Complainant, \*  
vs. \* CASE NO: 72-CAE-9-1983  
Unified School District 401, \*  
Chase, Kansas, \*  
Respondent. \*

O R D E R

Comes now this 10th day of January, 1984, the above captioned matter for consideration by the Secretary of the Department of Human Resources.

This matter comes before the Secretary without benefit of formal hearing and, through mutual agreement of the parties, is to be determined based upon a set of stipulated facts and the briefs of the parties.

A P P E A R A N C E S

Allyn J. Kratz, Director, Santa Fe UniServ District, 2119 Highway 281 By-Pass, Great Bend, Kansas 67530, on behalf of Chase Local Teachers Association.

Michael G. Barricklow, Superintendent, Unified School District 401, Chase, Kansas 67524, on behalf of Unified School District 401 (U.S.D. 401).

PROCEEDINGS BEFORE THE SECRETARY

1. Complaints 72-CAE-9-1983 and 72-CAE-10-1983 filed by Chase Local Teachers Association against U.S.D. 401, Board of Education on June 13, 1983.
2. Complaints sent for answer on June 14, 1983.
3. Answer to 72-CAE-9-1983 received by the Secretary on June 28, 1983.
4. Answer submitted to complainant on July 1, 1983.
5. 72-CAE-9-1983 amended by complainant on July 11, 1983.
6. 72-CAE-10-1983 withdrawn by complainant on July 14, 1983.
7. Parties agree to waive hearing and submit case on stipulations and briefs on September 13, 1983.
8. Complainant's brief received September 23, 1983.
9. Respondent's brief and joint stipulations received December 6, 1983.

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10. Complainant's waiver of rebuttal received December 19, 1983.

STIPULATION OF FACTS (ATTACHED)

1. The Board submitted a notice of intent to negotiate to the Chase Local Teachers Association on or before February 1, 1983, in accordance with K.S.A. 72-5423.

2. Mr. Allyn Kratz, Mr. Y. Zimmerman, Mr. Neil DePew, and Mrs. Sharon Cooper were members of the Chase Local Teachers Association for the 1983-84 contract.

3. All negotiation meetings, with the exception of the impasse meeting with Mr. Harold Walton, were open to the public.

4. All negotiation meetings, with the exception of the impasse meeting with Mr. Harold Walton, were taped by both the Association and the Board team.

5. The article referred to as Exhibit No. 6 is the result of interviews of both Mrs. Sharon Cooper, member of the Association's negotiating team, and Mr. Barricklow, Superintendent.

6. The Chase Local Teachers Association is the recognized bargaining Representative for the Professional Employees of U.S.D. 401, Chase.

7. The Chase Local Teachers Association submitted a notice of intent to negotiate to the Board of Education through the Superintendent on or before February 1, 1983, in accordance with K.S.A. 72-5423.

8. Mike Barricklow, Superintendent of U.S.D. 401, was a member of the Board of Education's negotiating team for the bargaining of the 1983-84 contract with the Chase Local Teachers Association.

9. Mike Barricklow is the author of the negotiation related articles found in publications known as "Your School Bulletin" and the "Chase Raymond USD #401 Newsletter" published by the U.S.D. 401 Board of Education.

10. The publications "Your School Bulletin" and the "Chase Raymond USD #401 Newsletter" are distributed to all Professional Employees of U.S.D. 401.

11. The articles referred to in Stipulation #9 were released to the Chase Index and the Lyons Daily News, both of which are area newspapers.

12. The Association made a news release to the Chase Index and the Lyons Daily News which resulted in an article in each of those publications (Exhibit #3).

13. Mr. Barricklow granted an interview with a reporter from the Lyons Daily News which resulted in the article dated March 2, 1983 (Exhibit #4).

14. The Association provided the Board's negotiation team with a detailed copy of the Association proposals which included an article on Teacher Rights (Exhibit #12) at the March 31, 1983, negotiation session.

15. A pre-hearing conference was held between the two parties with the Secretary's representative on July 13, 1983, at which time the Secretary's representative determined there was no dispute over the facts in this case and there would be no need of a formal hearing.

#### CONCLUSIONS OF LAW - DISCUSSION

In the instant case, the Secretary is asked to find that the respondent in this matter has engaged in violations of K.S.A. 72-5413 (b) (1), (2), (5) and (6). Complainant alleges that respondent's statements in various published documents constitute evidence of those violations. The Secretary has reviewed all of the published statements submitted as exhibits and believes that this case further demonstrates the value of joint press releases during negotiations. Certainly, both parties to the process have the right to address the media at will as long as in so doing they do not violate K.S.A. 72-5430. All too frequently, however, statements made are subject to erroneous interpretation. In this matter, the entire complaint swings on interpretation.

Complainant alleges that certain statements were calculated to inflame the public and the bargaining unit, and to circumvent the exclusive representative. Respondent counters that the statements were designed to inform any interested parties. The Secretary is of the opinion that neither of those positions clearly or completely covers the issue as it evolved.

The Secretary of Human Resources has long held that an accurate portrayal of facts as they exist cannot constitute the commission of an unfair labor practice. After a complete review of all the exhibits, the Secretary finds that the Board of Education through its representatives entered into an ongoing program of explaining the progress of professional negotiations within U.S.D. 401.

Complainant is totally correct in his assumption that statements made by the designated representatives of the Board of Education can be interpreted as those of the Board. Without doubt, the order of the

Secretary in case number 72-CAE-7-1981 (U.S.D. 366 - Yates Center) addresses this issue in considerable detail. The capacity in which Mr. Barricklow was speaking in this matter does not, however, appear to be at issue. The question in this case is the legality of Mr. Barricklow's statements to the press. Complainant directs the Secretary's attention to the language contained in Exhibit 4 and asks the Secretary to find that the Board has placed the Association's proposals in an unfavorable light and attempted to negotiate directly with bargaining unit members. The Secretary believes that the statements were general observations of factual economic conditions. The writer even acknowledges that these conditions are clearly prevalent in the immediate area. The Secretary recognizes the remarks as a form of "posturing" for negotiations, but if the conditions are in such prominent existence what purpose is served by repeating them? Clearly, the statements tend to set the tone for negotiations, would be better left unsaid, but don't appear to the Secretary to constitute an unfair practice. Complainant also takes exception to the language in Exhibit 6. Again, the Secretary views the language as an explanation of factual conditions and additional "posturing", but not as an unfair labor practice. The statements in Exhibit 10 may well conjure negative images in the mind of the beholder but do not, in and of themselves, contain those images. The author, Mr. Barricklow, is once again relaying factual information and doing so in a manner which the Secretary finds ill-advised but legal.

By and large, the information contained in the various publications was nothing more than a portrayal of the facts. In addition, an individual reading of each article identified only one instance where the written word of the Board's representative might be construed to be inflammatory or a possible circumvention of the bargaining unit representatives exclusive right to represent. Specifically, the Secretary refers to language from Exhibit 11 which states:

"Many items presented deal with topics or problems that have never affected our district and seem unrelated to our schools. Many staff members have had little input into the large list of items. I also feel that many teachers do not feel that many of the items presented are in their best interest or the school's."

While the Board's representatives managed to conduct their reporting function in a nonjudgmental fashion in the vast majority of cases, the above cited language transcends those bounds and clearly becomes an expression of opinion. At best, the representative of the Board

exercised poor judgment in passing judgment on the internal workings of the employee organization. The Secretary has held that only the employees have the right to determine if their representative is fulfilling the obligation to represent. If that obligation is not being fulfilled, the employees may remedy that situation via appropriate charges or a unit decertification election. Statements of the type made by the representative of the Board may be viewed as an attempt to cause the bargaining unit to alter their positions in negotiations through some avenue other than professional negotiations as that term is defined by the statute. The Secretary is fully cognizant of the difficulties which the parties faced in these negotiations and the many months that the process consumed. Certainly, the Secretary cannot condone illegal actions engaged in by either party. By the same token, the Secretary would be remiss in finding either party in bad faith when the vast majority of the evidence indicates otherwise.

The Secretary reminds the parties that the time period in which negotiations take place is a delicate one. Each party has an obligation to respect the rights, duties and responsibilities of the other. The freedom of speech enjoyed by every citizen is modified when that citizen assumes the posture of a representative for negotiations under K.S.A. 72-5413. And finally, seemingly harmless comments can be construed as unfair labor practices and destroy the progress attained at the table through many difficult hours of negotiations.

The Secretary is of the opinion that both parties to this complaint, in their attempt to inform and posture for negotiations, embarked on a difficult and hazard laden path. While both parties generally managed to follow the fine line down the middle of that path, the line leaves little margin for error. While the Secretary does not condone the statements made by respondent in Exhibit 11, and moreover finds those statements to constitute a technical violation of the Act, the Secretary believes the question of good or bad faith necessarily entails more in depth analysis of the situation. As stated earlier, the majority of the evidence indicates that both parties participated in the negotiations process in conformity with the law as they understood it. As might be expected the parties encountered problems. There have been no allegations that anyone refused to participate in any of the negotiations steps or the impasse resolution meetings. In light of the foregoing the Secretary finds it impossible to carve a few

isolated sentences out of mounds of press releases and rule that they constitute a willful, calculated attempt to circumvent the employees chosen representative, disrupt the bargaining process, interfere with the administration or existence of the teachers association, deny the association their rights accompanying recognition, and/or interfere, restrain, or coerce professional employees in the exercise of their rights granted in K.S.A. 72-5414.

In summary, the Secretary finds a technical violation of the Act in the language used in Exhibit 11 but is without grounds to find that the Board of Education of U.S.D. 401, through the actions of its designated representative, willfully acted in bad faith.

IT IS SO ORDERED THIS 10th DAY OF January, 1984, BY  
THE SECRETARY OF THE DEPARTMENT OF HUMAN RESOURCES.



Jerry Powell, Secretary Designee  
Kansas Department of Human Resources  
Public Employee Relations Section  
512 West Sixth Street  
Topeka, Kansas 66603-3178

BEFORE THE KANSAS PUBLIC EMPLOYEES RELATIONS BOARD

OF THE  
STATE OF KANSAS

IN THE MATTER OF:

Chase Local Teachers Association  
of District 401,

Complainant,

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Respondent.

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DEC 06 '83

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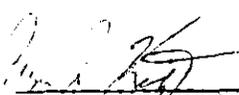
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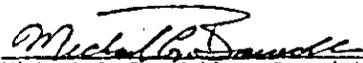
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Allyn J. Krawz, Director  
Santa Fe Uniserv District  
2119 Highway 281 By-Pass  
Great Bend, Kansas 67530  
(316) 792-3124  
Representing Complainant

  
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Michael G. Barricklow, Superintendent  
U.S.D. #401 Board of Education  
Chase, Kansas 67524  
(316) 938-2913  
Representing Respondent