

BEFORE THE SECRETARY OF HUMAN RESOURCES

STATE OF KANSAS

UNIFIED SCHOOL DISTRICT 252, *
Lyon County, Kansas, *
Complainant, *
vs. *
STEVE LOPES, NANCY PEAVLER, *
and JOHN LLOYD, *
Respondent. *

CASE NO. 72-CAEO-1-1984

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 Unified School District 252. The petition alleges that Steve Lopes, Nancy Peavler and John Lloyd have 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

Petitioner, Unified School District 252, Lyon County, Kansas appeared through Thomas A. Krueger, Attorney at Law.

Respondent, Steve Lopes, Nancy Peavler, and John Lloyd appeared in person and through David M. Schauner, KNEA Staff Counsel.

PROCEEDINGS BEFORE THE SECRETARY

- 1) Petition filed on May 23, 1984 under signature of Donna A. Williams, President, Unified School District 252.
- 2) Request for extension of time to answer filed on June 14, 1984 under signature of David M. Schauner on behalf of Respondents.

3) Request for extension of time to answer granted by Mr. Paul K. Dickhoff, Jr., on June 15, 1984. Respondent granted until June 25, 1984.

4) Answer to complaint received June 25, 1984.

5) Attorneys for both parties agreed to utilize the transcript from case 72-CAE-2-1984 as the record for the instant case.

6) Brief of Complainant received August 29, 1985.

7) Brief of Respondent received October 17, 1985.

FINDINGS OF FACT

1) That the matter is properly and timely before the Secretary.

2) That Steve Lopes is employed by the Sunflower UniServ District as the UniServ Director. (T-1482, 1483)

3) Mr. Lopes is employed to provide technical assistance in negotiation matters and in filing grievances. (T-1483)

4) Mr. Lopes has been involved in representation of teachers for approximately 15 years. (T-1485)

5) That Mr. Lopes first met with teachers from Olpe on November 2, 1983. (T-1488)

6) That Mr. Lopes believed that the "10 teachers" had a problem in communicating their concerns to Mr. Cannon. (T-1497)

7) That Mr. Lopes instructed or advised Jeanette Schmidt not to refuse to meet with the principal but rather to insist on having a witness present. (T-1509)

8) That Mr. Lopes advised the Olpe 10 not to meet with the board to discuss personnel matters. (T-1540) (See Respondent's Exhibit #1)

9) That the March 13, 1984 letter from Ms. Williams to the "Olpe 10" was an invitation to the 10 teachers to meet with the Board at 7:00 p.m. on March 23, 1984. (See March 13, 1984 letter from Donna A. Williams to "Olpe 10" attached to Complainant's brief).

10) That nine of the "Olpe 10" teachers attended the March 23, 1984 meeting with the Board. (See Affidavits attached to Respondent's brief)

CONCLUSIONS OF LAW/DISCUSSION

The instant case comes before the examiner as an alleged violation of K.S.A. 72-5413 et. seq., the Professional Negotiations Act. The complaint specifically alleges a violation of K.S.A. 72-5430 (c) (2) which states:

"(c) It shall be a prohibited practice for professional employees or professional employees' organizations or their designated representatives willfully to:

(2) interfere with, restrain or coerce a board of education with respect to rights or duties which are reserved thereto under K.S.A. 72-5423 and amendments thereto, or with respect to selecting a representative for the purpose of professional negotiation or the adjustment of grievances."

In pertinent part, K.S.A. 72-5423 states:

"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,..."

The precise act alleged by petitioner to constitute a prohibited practice was Mr. Lopes' action of instructing ten (10) teachers to refuse to discuss any part of their concerns about "personnel matters" with any members of the Board or Administration. The examiner notes that Mr. Lopes' instructions were prefaced with the statement, "Pending the outcome of a series of legal alternatives, . . .".

It appears to the examiner that petitioner is attempting to demonstrate that Mr. Lopes', through his "instructions", interfered with the Board in their efforts to bring about discussions on "matters of day to day concern of the Administration". If the allegations of the petitioner were true, Mr. Lopes' might easily be adjudged to have committed a prohibited practice. The examiner is not convinced, however, that the intent assigned by petitioner to Mr. Lopes' words was truly what was intended. It

appears that Mr. Lopes was attempting to caution, offer advice, or instruct the employees he represented against discussing any part of those matters which were the subject of pending litigation.

Certainly the examiner recognizes the right of the Board to "direct its employees". As a part of that direction a Board might be faced with the necessity of discussing "personnel matters" on a "day to day" basis. And logically, interference with those discussions could constitute a prohibited practice. The examiner does not believe, however, that the statement made by Mr. Lopes was intended to be so all encompassing so as to preclude every discussion between the Board and its employees on all "personnel matters". The examiner does not believe, therefore, that Mr. Lopes' statement would constitute the interference contemplated by the law.

Assume, however, for the sake of argument that Mr. Lopes intention was to block or interfere with the administration in their efforts to engage in necessary discussions with their employees. If this were the case the examiner would be compelled to judge Mr. Lopes actions in light of the resultant actions of those people he "instructed". It should be noted that Mr. Lopes was an official of the employee organization and was recognized by the employees as their representative and source of information and/or advice relative to employer-employee relations. In a capacity of this type Mr. Lopes must be held accountable for his actions and the results of those actions. The evidence cited by Respondent in this case, however, indicates that the Board did not direct its employees to attend the March 23rd meeting or to engage in discussions relating to "personnel matters". The Board issued an invitation to its employees to attend an evening meeting to discuss those matters.

Notwithstanding the fact that nine of the "Olpe Ten" ignored Mr. Lopes advice or instructions and did attend the meeting, the examiner would find it very difficult to find anyone guilty of any prohibited practice for declining an invitation to attend a

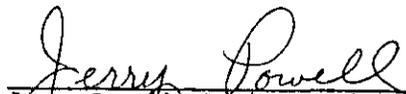
meeting. To discourage attendance at such a meeting for whatever reason could not possibly in good conscience be found to constitute a prohibited practice by this examiner. In addition, the record is silent in regard to any other requests, directions, or invitations issued by the Board to its employees to engage in discussions regarding "personnel matters" subsequent to Mr. Lopes' letter.

In summary, there can be no doubt that Unified School District 252 was torn by internal problems. A great deal of "bad blood" existed between and among the professional employees, the administration, the employee representative, and the board of education. The examiner is not given to speculation regarding the cause of those problems.

In this case, as in all others, the outcome must be dictated by the facts. Those facts indicate that the Board recognized the existence of problems characterized as "personnel matters" and invited the professional employees to attend a meeting to discuss those matters. Knowing that litigation had been filed regarding some "personnel matters", the employee representative advised those he represented to decline the invitation to meet and to refuse to discuss those matters under litigation. The employees' representative informed the Board of the advice he had given and the rationale behind that advice. The employees ignored the advice of their representative and accepted the invitation of the Board.

In light of the entire set of facts present in this case the examiner is without basis upon which to find that a prohibited practice has occurred. Petitioners' complaint in this matter is, therefore, dismissed as being without merit.

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
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Topeka, Kansas 66603-3150