

STATE OF KANSAS
PUBLIC EMPLOYEE RELATIONS BOARD

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| KANSAS HIGHER EDUCATION ASSOCIATION, |) | No. CAE 4-1975 |
| |) | |
| Complainant, |) | |
| |) | |
| vs. |) | |
| |) | |
| THE STATE BOARD OF REGENTS OF THE |) | |
| STATE OF KANSAS, KANSAS STATE COLLEGE |) | |
| OF PITTSBURG, MAX BICKFORD, AND |) | |
| GEORGE BUDD, |) | |
| |) | |
| Respondents. |) | |

FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

Findings of Fact:

1. That Kansas Higher Education Association was elected as employees' representative unit on October 23, 1974.
2. That the designated unit included teaching faculty members at Kansas State Teachers College of Pittsburg, Kansas.
3. That the State Board of Regents retained professional assistance to represent them in meet and confer sessions.
4. That the college had a representative present at all sessions as a member of the team, as well as the Department of Administration.
5. The K.H.E.A. team attempted to initiate some meet and confer sessions prior to and during the college Christmas break of 1974; however, the Board-College team did not finally contract with a negotiator until the last of December, 1974.
6. Some fifteen (15) meetings were held at the following places and dates, to wit:
 1. January 7, 1975 at Pittsburg, Kansas
 2. January 18, 1975 at Topeka, Kansas
 3. January 23, 1975 at Pittsburg, Kansas
 4. February 13, 1975 at Pittsburg, Kansas
 5. February 14, 1975 at Pittsburg, Kansas
 6. February 27, 1975 at Pittsburg, Kansas
 7. March 14, 1975 at Wichita, Kansas
 8. March 15, 1975 at Wichita, Kansas
 9. March 31, 1975 at Pittsburg, Kansas
 10. April 1, 1975 at Pittsburg, Kansas
 11. April 25, 1975 at Pittsburg, Kansas
 12. April 26, 1975 at Pittsburg, Kansas
 13. May 22, 1975 at Pittsburg, Kansas

X

14. June 26, 1975 at Pittsburg, Kansas
15. June 27, 1975 at Pittsburg, Kansas

The last two dates (June 26 & 27, 1975) were held before a federal mediator.

7. That the first two meetings (January 7 and 8, 1975) were held and general ground rules were discussed concerning the conduction of future meetings. There was an understanding that Gerald Kramer, a member of the Board-College team, would provide the K.H.E.A. team with such information as it had at its disposal.

8. At the January 18, 1975, meeting, the K.H.E.A. team presented a written proposal on direct compensation. A discussion was had concerning theories of salary increases i.e., across the board vs. merit. No counter proposals were offered and little headway was accomplished by the teams.

9. The parties met again on January 23, 1975. At this session, the K.H.E.A. introduced its' entire proposal, a thirty-seven page document, containing the entire subject of tentative proposals for the memorandum of agreement (Complainant Exhibit 1). The Board-College team requested at least three weeks in which to examine this document and the parties agreed to meet again on February 13 and 14, 1975.

10. At the February 13 and 14, 1975 sessions, the Board-College team presented four (4) proposals, to wit:

- (a) State Prerogatives
- (b) Recognition
- (c) Grievance Procedure
- (d) Personnel Files

These were not nominated as counter proposals to K.H.E.A. comprehensive package of proposals.

11. On February 27, 1975, the parties met and conferred concerning states prerogatives, recognition, compensation, part-time faculty, and the merit vs. across the board salary increases.

12. At the March 14 and 15, 1975 sessions, salaries were brought up, but no real discussion resulted as the Board-College team was exerting an effort to get a 10% wage-increase through the legislature. Some discussion was had concerning information requested by the K.H.E.A. team.

13. The teams met on March 31 and April 1, 1975.

There was no agreement reached by the parties.

14. On April 25 and 26, 1975, the parties met again. At this meeting the legislature had approved a 10% wage-increase. The Board-College team proposed to distribute on its formula for merit increase. The K.H.E.A. team objected to this method of increase.

15. On May 22, 1975, the parties met again. At this meeting there was little discussion as the Board-College team indicated that the budget, except for K.H.E.A. unit salaries, was set. K.H.E.A. informed Board-College team that they were asking for the assistance of a federal mediator.

16. On June 26 and 27, 1975, the parties met with a federal mediator with no positive results.

17. One item "Personnel Files" was tentatively agreed upon between the teams in 15 meetings averaging some four (4) hours per session. And on this item there was left a question as to whether or not it would be included in the faculty hand-book or put in a memorandum of agreement.

18. After many years of not requiring absence reports to be filled out, as required in the faculty handbook, two such requests were required during a period of time when meet and confer sessions were transpiring.

19. That complainants attempted to acquire material from respondents and/or their sources. In some instances the materials were furnished to complainants; in other instances reasons were furnished where the materials were not furnished.

20. The president of Pittsburg State College, Dr. George Budd, gave a prepared speech to all faculty members on June 13, 1975, where indications of future faculty status and salaries were discussed.

21. The Board-College team advocated six proposals:

- (a) State Prerogatives
- (b) Faculty Participation and Governance (Recognition)
- (c) Retrenchment
- (d) Grievance Procedure
- (e) Personnel Files
- (f) Compensation

There is no indication that other subjects could not be discussed

or included in a memorandum of agreement.

22. The teams both seemed willing to work toward agreement on specific topics, but failed to conclude an agreement on any particular subject except for "Personnel Files."

23. The evidence does not support the allegation that complainants were required to accept respondents proposals before they could have their proposals discussed.

24. Complainant was granted permission to amend the prayer in his complaint to include "an order declaring the respective rights and obligations of the parties and defining the scope of negotiations under the act."

Conclusions of Law:

1. That the matter is properly before the Kansas Public Employee Relations Board and that it has jurisdiction over the subject matter and the parties.

2. That duly certified employee representative organizations and employers are required to meet and confer in good faith. There are no requirements that either side shall enter into a memorandum of agreement. (K.S.A. 75-4327 (b)).

3. That respondents commenced negotiations on January 7, 1975, which is some nine (9) weeks after certification of complainants unit on October 23, 1974, which does not indicate any lack of good faith.

4. The Board recognizes the provisions of K.S.A. Supp. 75-4326 entitled, "Existing rights of public employer not affected." While from the instant record the Board cannot conclude that bad-faith was evident - this is not to say that unilateral decisions of either side not to progress beyond subjects found in the statute - would not be probative evidence of bad faith in a given case.

5. When one side submits its entire package of proposals for a memorandum of agreement it does not follow that the other side must do likewise or even make counter proposals, thereto, on an item-to-item basis.

6. That when an agreement has been reached as a result of meet and confer sessions, that agreement may be placed in the memorandum of agreement.

7. That certain items herein have been indicated by both parties as proper items for discussion in meet and confer sessions. These items are, to wit:

- (a) Compensation
- (b) Retrenchment
- (c) Grievance
- (d) Personnel Files

That there is no evidence before this body to determine what other items may be a proper subject in a meet and confer session.

8. It is not within the providence of the Kansas Public Employee Relations Board to rule on subjective values of proposals, such as merit vs. across-the-board salary increases, other than an agreement by the parties, thereon, may be included in a memorandum of agreement. As long as the parties are discussing the matter and are open to new proposals and counter proposals it would indicate, barring substantial evidence to the contrary, they are meeting and conferring in good faith.

9. That enforcement of faculty rules and regulations are not, epso facto, bad faith, or a prohibited practice, on the part of respondents. The enforcement of faculty absentee reports during a period of meet and confer sessions, take on a darker shade when the rule, from every indication, had not been enforced for some time. However, due to the circumstances, that neither of the individuals against whom the rule was enforced were in meet and confer sessions at the time, it would not be sufficient to show bad faith on the part of respondents.

10. That one party need not create an undue burden upon itself in order to furnish the other party information; each party must exhaust its own resources to obtain informational material. Neither party is required to furnish material which is of a confidential nature, or the furnishing of which may breach a trust to a third party.

11. It is not a prohibited practice or evidence of bad faith for the president of the college or his agent to make a speech or issue a statement concerning the employment status of the

faculty for the next school year, provided that there are no indices in or by said statement or speech to influence the outcome of the meet and confer session either by direct or indirect word or deed. There are no indicia of bad faith or prohibited practices in President George Budd's statement of June 13, 1975.

12. Since this is a case of first impression for the State of Kansas, the Public Employee Relations Board suggests that a meeting be held and the separate items be discussed and an attempt made to reach agreement as to what items are proper subjects for meet and confer.

IT IS THEREFORE ORDERED that there has been insufficient evidence to conclude that there was a failure by the respondents to meet and confer in good faith and that there was no prohibited practice committed by said respondents and the complaint is accordingly dismissed. That the parties should continue meet and confer sessions in keeping with this order.

BY THE PUBLIC EMPLOYEE RELATIONS BOARD IT IS SO ORDERED.

Date:

10/16/75

Nathan W. Thatcher
Nathan W. Thatcher, Acting Chairman
Public Employee Relations Board

Phyllis Burgess
Phyllis Burgess, Member, PERB

William B. McCormick
William B. McCormick, Member, PERB

E. Jay Reinnick
E. Jay Reinnick, Member, PERB

Richard Rock
Richard Rock, Member, PERB