

STATE OF KANSAS
BEFORE THE SECRETARY OF HUMAN RESOURCES

Ottawa Education Association

Complainant,

vs.

Unified School District 290,
Ottawa, Kansas

Respondent.

CASE NO: 72-CAE-19-1982

ORDER TO DISMISS

Comes now on this 20th day of July, 1982, the above captioned case for consideration by the Secretary of Human Resources. Respondent, Unified School District 290 (U.S.D. 290) Board of Education has filed a Motion to Dismiss pursuant to the provisions of K.S.A. 72-5430(a). Petitioner has answered said motion and the Secretary is now issuing his order regarding the Motion to Dismiss.

Respondent urges the Secretary to dismiss since the alleged prohibited practice occurred on November 2, 3, and 4, 1981 and the Secretary's written notice and a copy of the charge was not received by Respondent until May 7, 1982. Complainant argues that the charge of a prohibited practice was received by the office of the Secretary on May 3, 1982, therefore, allowing ample time for the Secretary to make personal service on Respondent in Ottawa, Kansas. Further, Complainant argues that his claim should not be prejudiced by an error of the Postal Service or of the Secretary. Other arguments are made by Complainant in its answer to the motion, however, complainant does not argue that the alleged incidents constituting the prohibited practice occurred on November 2, 3, and 4, 1981.

It has been the practice of the Secretary to rule on procedural motions filed by the parties prior to looking to the merit of the specific allegations contained in the charge of prohibited practice. Therefore, based upon the record before the Secretary it is found that;

1. Notwithstanding the allegation that service was made on the Secretary by return receipt mail on May 3, 1982, official filing of the complaint was made in the office of the Secretary on May 4, 1982. (See original complaint form and paragraph three of Petitioner's answer to Motion to Dismiss)
2. That the alleged incidents which constitute the prohibited practice occurred on November 2, 3, and 4, 1981. (See original complaint filed by Petitioner)

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3. That the office of the Secretary mailed a copy of the complaint to Respondent on May 5, 1982. (See receipt for certified mail P01-8976979)
4. That the charges were received by Lois Lyman on behalf of Respondent on May 7, 1982.

CONCLUSIONS OF LAW

While the language of K.S.A. 72-5430(a) might serve to work a hardship on the parties or the Secretary, it is of the utmost importance that the time frame set forth in the complaint procedures be strictly observed. The time frame established by Legislature provides ample time to the party wishing to file a complaint; yet the same provision sets forth a directive that the Secretary must, within six months of the date of the alleged prohibited practice, serve notice on the party alleged to have committed the practice. It is clear that the Legislature intended to preserve the rights of all parties to the complaint. Certainly the Legislature intended that the accused party should have the right to an absolute time limitation after which they could no longer be held accountable for responding to complaints. This is well established in jurisprudence. As the administrator of the Professional Negotiations Act, it is incumbent upon the Secretary to protect the rights of all parties to the complaint.

The Respondent in this matter has filed a Motion to Dismiss this case on the basis of jurisdiction. Respondent's rationale is that the six (6) months time limitation set forth at K.S.A. 72-5430 (2) has not been strictly observed in that notice of the complaint was received on May 7, 1982, for alleged practices that occurred November 2, 3, and 4, 1981. The Secretary's date stamp indicates that the complaint was officially filed on May 4, 1982. The Secretary is of the opinion that it is not reasonable to expect "same day" delivery, particularly when service must be accomplished at a location outside of Topeka. It is the responsibility of the parties filing the complaint to ensure that the Secretary has a reasonable time period in which to serve notice to the accused party. In this case, service was initiated within one working day of the receipt of the complaint. In the opinion of the Secretary, the department accomplished a very reasonable and accommodating turn-around time on the complaint, but because of the laxity of the complaining party, notice could not be served within the time frame set by statute.

Complainant in this case suggests in item four (4) of the Answer to Respondent's Motion to Dismiss that "the Secretary could have used personal service to expedite the service of notice." The Secretary reminds the complaining party that the option of personal service was also available for the initial filing of the complaint. The

Secretary observes that the party chose to delay the filing of the complaint until the last possible moment, yet claims that it was the responsibility of the Secretary to take extraordinary steps to accomplish service of process to the accused party.

The Secretary refers to personal service as "extraordinary" in that the usual procedure used by this department in serving complaints is via certified mail. The NEA is certainly aware of the process as they have been parties to complaints on numerous occasions. In the opinion of the Secretary, had "extraordinary steps" been taken in this case, it would be the result of giving preferential treatment to the complaining party. Instead, the Secretary has chosen to treat this complaint like any other.

Complainant appears to believe that once a prohibited practice has been committed, it is a continuing process until the practice is reversed. As applied to this case, complainant suggests that once a grievance is denied it is subsequently denied forever until it is granted. By this logic, each day that the grievance is subsequently denied is an additional prohibited practice. Therefore, a complaint could be filed at any time, whether it be five, ten or fifty years in the future. In the opinion of the Secretary, such logic is clearly contrary to the intent of the time guidelines set forth in the Act.

Complainant suggests that it is not unusual for the Secretary to grant extensions of time in the process of resolving various problems in the negotiations process. Complainant refers to extensions to the impasse date as an example of the Secretary's flexibility in this regard. However, it should be noted that extensions of the impasse date are made only if both parties agree to such an extension. Thus, such an extension would be in the interest of both parties to the negotiations process. This example is a complete antithesis to the instant case. An extension of the deadline for filing a complaint would clearly infringe upon the rights of the responding party. In addition, such an extension would be contrary to the limitation established by law. The Secretary is in no way authorized to assert jurisdiction when it has been precluded by a statute of limitations.

In the interest of preserving the rights of the parties, the Secretary rules that:

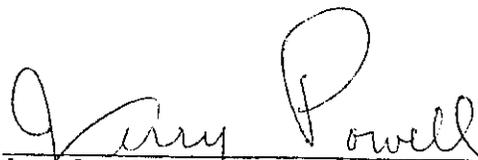
Whereas, the complaining party delayed the filing of the complaint until the last possible moment, and;

Whereas, the Secretary processed the complaint in the usual manner and within one (1) working day of its filing, and;

Whereas, the notice of the complaint was not served within the established time frame,

The Secretary hereby grants the Motion to Dismiss.

IT IS SO ORDERED THIS 20th DAY OF July, 1982, BY THE SECRETARY OF HUMAN RESOURCES.



Jerry Powell, Employment Relations Administrator
Designee of the Secretary
Labor Relations Section
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Topeka, Kansas 66603-3178