

BEFORE THE SECRETARY OF THE DEPARTMENT OF HUMAN RESOURCES
STATE OF KANSAS

Great Bend-NEA,

Complainant,

vs.

U.S.D. 428, Great Bend, KS,

Respondent.

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CASE NO: 72-CAE-3-1985

ORDER

Comes now on this 14th day of January, 1985, the above captioned case for consideration by the Secretary of Human Resources. This case is filed under the provisions of K.S.A. 72-5413 et seq., The Professional Negotiations Act, and alleges the commission of an unfair labor practice in violation of K.S.A. 72-5430.

APPEARANCES

Complainant, Great Bend-NEA, appears by and through its counsel, David M. Cooper, Kansas-National Education Association, 715 West 10th Street, Topeka, Kansas. Also appearing on behalf of Great Bend-NEA were Allyn Kratz, UniServ Director, Santa Fe UniServ, and Jim Schoonover, President of Great Bend-NEA.

Respondent, U.S.D. 428, Great Bend, Kansas, appears by and through its counsel, Robert L. Bates, 2018 Forest Avenue, Great Bend, Kansas, and Kenneth L. Kerns. Also appearing on behalf of U.S.D. 428 were John Harris, Assistant Superintendent and Clerk for the Board of Education.

PROCEEDINGS BEFORE THE SECRETARY

1. Complaint filed with Secretary of Human Resources on September 21, 1984.
2. Complaint submitted to Respondent for reply on September 21, 1984.
3. Answer of Respondent received by Secretary of Human Resources on October 12, 1984.
4. Pre-hearing scheduled for November 27, 1984. Notice sent to parties on November 8, 1984.
5. Pre-hearing conducted by Paul K. Dickhoff, Jr., on November 27, 1984.

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6. Formal hearing scheduled for January 14, 1985. Notice sent to parties on December 17, 1984.
7. Formal hearing conducted by Jerry Powell on January 14, 1985.
8. Transcript of formal hearing received March 13, 1985.
9. Briefs of parties received. Complainant's brief received April 15, 1985, and Respondent's brief received April 17, 1985.

FINDINGS OF FACT

1. That the Board of Education made a final salary increase offer of seven and one half percent (7 1/2%). (T - 17)
2. That the Association made a final salary increase demand of ten percent (10%). (T - 25)
3. That the final salary offer made by the Board of Education could have resulted in an eight point zero six percent (8.06%) increase in "total compensation", according to the report of the fact-finder. (Complainant's Exhibit #1, T - 27)
4. That the fact-finder recommended an eight point three five percent (8.35%) salary increase. (Complainant's Exhibit #1)
5. That the Board of Education believed they could have raised salaries a maximum of eight point zero three percent (8.03%). (T - 18)
6. That the Board of Education made financial documents and information available to the Association as requested. (T - 39, 52, 53, 63, 64, 69)
7. That the Board of Education discussed percentage raises as high as eight point five (8.5). (T - 62)

CONCLUSIONS OF LAW/DISCUSSION

The examiner has reviewed all of the testimony, pleadings, and evidence presented and believes the primary question in this case to turn on the obligations of the parties to negotiations. In reviewing those obligations, the examiner naturally refers to statutory definitions and language. K.S.A. 72-5413(g) defines professional negotiations and states:

"(g) 'Professional negotiation' means meeting, conferring, consulting and discussing in a good faith effort by both parties to reach agreement with respect to the terms and conditions of professional service."

The Secretary has previously ruled that a "good faith" effort includes the exchange of information between the parties when that information is not reasonably available to one of the parties through another source.

In the instant case, there is no allegation that information was not readily exchanged. On the contrary, the record indicates that the Board received and responded to several requests for information from the Association. The record does reflect, as Complainant contends, that the Board and the Association reached different conclusions and opinions based upon the study of that information. The Association concluded a percentage amount which could be funded by the Board. Similarly, the Board reached its own conclusions regarding monies available for unit member salary raises. Complainant asks the examiner to find that an unfair practice was committed when Respondent adopted the position that it was unable to fund more than its offer without explaining its supporting rationale. If the case ended at this point, the Association could well have a valid complaint. The evidence, however, indicates discussions of potential percentage raises as high as eight point five percent (8.5%). The examiner concludes that the Board was providing the Association with their rationale through their actions. That rationale was that the Board had established a set of priorities for their available monies and was unwilling to fund more than a seven point five percent (7.5%) increase in salaries, unless other conditions of their salary offers were agreed upon. To say that the Board took a firm position of an inability to pay is simply not substantiated by the evidence.

Assume for a moment that the Board had arrived at a firm position that they were unable to fund raises above a certain level. Assume further that the Board supported their position by stating that they intended to buy ten thousand new dictionaries for the library. In keeping with the logic of the Complainant in this matter, the Board would have fulfilled its requirement for "good faith" bargaining when its rationale was explained. If this example seems ridiculous, assume the priority was to purchase two new buses or to hire three additional administrators.

The examiner's point is this; it seems unreasonable to attempt to define good or bad faith on the presence or absence of a stated rationale for a particular position. If the presence of a rationale

is the key, then a ridiculous rationale is just as valid as a well considered one. The examiner does not believe that the requirement for good faith can be so easily defined, met or avoided.

The bargaining process contains its own safeguards to insure considered reasoning on the part of both parties. Specifically, the examiner is referring to the impasse resolution machinery of fact-finding. The statute defines the process at K.S.A. 72-5413(i) as:

"(i) 'Fact-Finding' means the investigation by an individual or board of a dispute concerning terms and conditions of professional service which arose in the course of professional negotiation, and the submission of a report by such individual or board to the parties to such dispute which includes a determination of the issues involved, the findings of fact regarding such issues, and the recommendation of the fact-finding individual or board for resolution of the dispute."

Within that process, each party to the dispute is required not only to explain their position but also to explain their reasons for adopting their position. Based upon the evidence presented at fact-finding, the fact-finder issues a report which may be made public, unless the parties are then able to reach agreement. If the report is published, the public then decides, at the polls, if the district and the Board are operating in their best interests.

The scenario outlined above fairly well restates the conditions present in the instant case. While the examiner is of the personal opinion that any information, including rationale which may help the parties reach an agreement should be shared, he further believes that the mandates of the law were fulfilled in this case. The fact that the parties reached different conclusions regarding the amount of money to be made available for raises is not unique to this particular district. Such disputes are the essence of negotiations.

Based upon the foregoing, the examiner is not convinced that a prohibited practice has been committed. Lacking sufficient evidence to support the allegations of the Complainant, the above captioned case is hereby dismissed with prejudice. Complainant is denied the relief sought.

IT IS SO ORDERED THIS 13th DAY OF May, 1985.


Jerry Powell, Designee of the Secretary
Labor Relations & Employment Standards
Section 4 Department of Human Resources
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Topeka, KS 66603-3178