

# KANSAS DEPARTMENT OF HUMAN RESOURCES



LABOR-MANAGEMENT RELATIONS AND  
EMPLOYMENT STANDARDS  
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Mike Hayden, Governor

Dennis R. Taylor, Secretary

## MEMORANDUM

TO: Fred W. Rausch, Jr., Attorney *1056 4/21*  
for U.S.D. 231

Charles W. Johns, Director *117-48*  
Kansas National Education Association

David M. Schauner, General Counsel *114531*  
Kansas National Education Association

DATE: April 28, 1987

SUBJECT: Final Order in case 72-CAE-3-1987

This memorandum shall serve as official notice that the designee of the Secretary of Human Resources has adopted and made as his final order in the above referenced case, his statements as contained on pages 51 through 58 of the official transcript. I have attached a copy of that statement to this memorandum.

A brief summary of the facts and conclusions is as follows.

- 1) The Gardner-Edgerton-Antioch Teachers Association has alleged that representatives of USD 231 engaged in actions in violation of K.S.A. 72-5430 (b) (5) and (6).
- 2) The action complained of by the Association consists of a change in interpretation or administration of a personal leave policy.
- 3) There is a negotiated agreement concerning terms and conditions of employment between the parties.
- 4) Board policy, at least that pertaining to personal leave, is by agreement somehow made a part of the negotiated agreement.
- 5) Personal leave is a mandatorily negotiable item or subject.
- 6) K.S.A. 72-5413 et seq., empowers the Secretary to determine whether a prohibited practice has been committed.
- 7) K.S.A. 72-5430 (b) (5) and (6) provides that a board must negotiate mandatorily negotiable subjects with the exclusive representative of professional employees.

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- 8) It is a violation of K.S.A. 72-5430 (b) (5) for a board to change the language or past interpretation of a mandatorily negotiable subject which is not contained within an existing memorandum of agreement (contract).
- 9) It is not a violation of K.S.A. 72-5430 (b) (5) or (6) for a board to change the language or past interpretation of a mandatorily negotiable subject if such subject is contained within the existing agreement. Such an action by a board might prove to be a contract violation which is properly resolved via the contracted grievance procedure or through a law suit properly filed with the district court. There are certain exceptions to this statement. For example it might prove to be a violation if a board simply failed to implement a contract which they had previously negotiated.

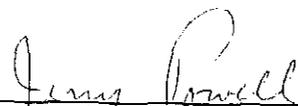
In sum the Secretary designee found the personal leave provision to be a part of the "agreement" as defined by K.S.A. 72-5424. There were no timely allegations made that the agreement on personal leave was entered into in other than good faith. The interpretation of the personal leave provision may have been changed. However such disputes over "contractual" language do not fall within the provisions of bad faith bargaining as set out at K.S.A. 72-5430.

A claimed failure to bargain may be alleged only when;

- 1) Negotiations on a new or amended agreement is taking place;  
or,
- 2) Negotiations on an agreement have been completed (an agreement reached or unilaterals issued) and the subject in question is not contained in the agreement.

The Secretary designee thus dismissed the complaint since the instant dispute properly is resolved as a contract violation.

The dismissal shall be effective as of this date and the transcript and this memorandum shall serve as a final order.

  
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Jerry Powell, Designee of the Secretary  
of the Department of Human Resources