BEFORE THE SECRETARY OF THE
KANSAS DEPARTMENT OF HUMAN RESOURCES

LABETTE COUNTY TEACHER'S ASSOCIATION Petitioner, vs. UNIFIED SCHOOL DISTRICT NO. 506, ALTAMONT, KANSAS Respondent	)	Case No.: 72-CAE-1-2000

INITIAL ORDER

NOW on this 12th day of June, the above-captioned Prohibited Practice Charge comes on for decision pursuant to K.S.A. 72-5430 and K.S.A. 77-514(a) before presiding officer Douglas A. Hager.

On October 5, 1999, the Labette County Teacher's Association, (hereinafter "Petitioner"), filed a complaint with this agency against the Unified School District No. 506, Altamont, Kansas, (hereinafter "Respondent"). *See* Complaint Against Employer, October 5, 1999. The complaint alleges two prohibited practices. First, Respondent unilaterally waived payment of a mandatory $400 fee from a teacher, one Vicki Willems, released from contract during the school year. *Id.* Second, Respondent unilaterally changed the starting date of the school year, moving it back in time from a Monday to the preceding Friday and giving two additional half-days of comp time to maintain the number of bargained for contract teaching days. *Id.* By letter dated November 1, 1999, Respondent answered the charges against it, asserting that it "acted in the best interest of staff and students" and generally denying that its actions constituted prohibited practices within the meaning of Kansas law.

72-CAE-1-2000

ISSUES OF LAW

Two legal issues will be addressed in this matter:

1. Whether Respondent committed a prohibited practice by waiving the resignation fee mandated by Article XI of the parties' negotiated agreement, and

2. Whether Respondent committed a prohibited practice by changing the 1999-2000 district calendar.

FINDINGS OF FACT

The parties have filed stipulations of fact and they are adopted as set forth herein.

1. Petitioner is the duly recognized exclusive representative of the professional employees of Respondent for the purpose of negotiating the terms and conditions of the Respondent's professional employees' services.

2. The 1999-2000 Negotiated Agreement between the Petitioner and Respondent was in force during all times relevant to this complaint.

3. Petitioner filed a complaint alleging that Respondent engaged in prohibited practices within the meaning of K.S.A. 72-5430 subsection b(5) of the Professional Negotiations Act.

4. At the July 19, 1999 meeting of Respondent school board, Respondent released Vicki Willems, a first grade teacher, from her contract. Respondent board voted to waive the $400.00 assessment per Article XI of the negotiated agreement.

5. Article XI: Release from Contract, of the negotiated agreement, reads as follows:

> "When a teacher asks to be released from a contract with the district, the Board's first obligation is to the children in the district.
>
> If a suitable replacement can be found and it is felt that the educational program of the school will not be impaired, a teacher may be released from the obligations of a contract.
>
> In the event said release from contract is granted after May 15 and prior to July 1, said teacher shall pay a sum of $300 toward expenses involved in securing a satisfactory replacement.
>
> In the event said release from contract is granted July 1 or after, said teacher shall pay a sum of $400 toward expenses involved in securing a satisfactory replacement."

6. Since 1997, seven teachers requested and were granted a release from their contract. Respondent waived the $400 fee for Vicki Willems, but in other instances, the fee was not waived. Richard Seyfert on July 21, 1997, Pat Callahan on June 30, 1997,

Larry Downing on August 10, 1998, Carolyn Ney on July 21, 1998, Laurel Smith on June 20, 1998, and Kim Ford on August 16, 1999, were granted releases and assessed the fee required by Article XI of the contract. Carolyn Ney was the only teacher who paid the full amount. Larry Downing paid $100 of the $400 amount, while the rest of those released paid nothing.

7. Respondent adopted the original U.S.D. No. 506 1999-2000 calendar on January 11, 1999. *See* Exhibit A, attached.

8. Respondent adopted the revised U.S.D. No. 506 1999-2000 calendar on June 28, 1999. *See* Exhibit B, attached.

9. Respondent moved the starting date of school up one day from Monday, August 16, 1999 to Friday, August 13, 1999. Respondent then inserted one-half day of comp time on Wednesday, November 24, 1999 and one-half day of comp time on Thursday, December 23, 1999. The total number of contract days was not changed.

10. Respondent did not enter into an agreement with Petitioner concerning the June 28, 1999 changes to the 1999-2000 calendar.

CONCLUSIONS OF LAW/DISCUSSION

ISSUE I

Whether Respondent committed a prohibited practice by waiving the resignation fee mandated by Article XI of the parties' negotiated agreement.

Petitioner urges that Respondent should have negotiated with Petitioner whether it could waive a $400 resignation fee assessment against Vicki Willems. The topic of "resignations" is listed as a term and condition of professional service by statute. K.S.A. 72-5413(l)(1). Terms and conditions of professional service are mandatorily negotiable. Petitioner argues that by unilaterally waiving the bargained for mandatory resignation fee without first negotiating for the right to waive such fees, the Board has committed a prohibited practice. See Brief of Labette County Teacher's Association, p. 4 (hereinafter "Petitioner's Brief").

Respondent contends that it did negotiate with Petitioner regarding "resignations" and reached agreement about the mandatory resignation fee. However, the Respondent argues, waiver of the assessed fee in this instance was within its duty and obligation to make policy and manage the business of the school district. *See* Brief of Unified School District No. 506, Altamont, Kansas, pp. 8-10 (hereinafter "Respondent's Brief").

Kansas' Professional Negotiations Act, K.S.A. 72-5413 *et seq.*, was enacted by the Kansas Legislature in 1970. Kansas Session Laws, 1970, Ch. 284, § 1. The statute's

"underlying purpose . . . is to encourage good relationships between a board of education and its professional employees." *Liberal-NEA v. Board of Education*, 211 Kan. 219, 232 (1973). To promote these ends, the statute authorizes that a school district's professional employees may form and join professional employee organizations in order to conduct negotiations with their employer school boards. Such negotiations are conducted "for the purpose of establishing, maintaining, protecting or improving terms and conditions of professional service." K.S.A. 72-5414. "Terms and conditions of professional service" is statutorily defined to include certain topics, one of which is "resignation". K.S.A. 72-5413(l)(1).

The Professional Negotiations Act deems it a prohibited practice for a board of education to refuse to negotiate in good faith with representatives of a recognized professional employees' organization. K.S.A. 72-5430(b)(5). Relief from the commission of a prohibited practice can be granted in whole or in part by order of the Secretary of Human Resources. However, the granting of relief here would be appropriate only if it is determined that Respondent refused to negotiate in good faith with respect to mandatorily negotiable topics. See *NEA-Wichita v. U.S.D. No. 259*, 234 Kan. 512, 518 (1983); *U.S.D. No. 501 v. Secretary of Kansas Dept. of Human Resources*, 235 Kan. 968, 969 (1984).

Under Kansas law, the question of whether a specific subject is mandatorily negotiable is determined by use of the "topic" approach. *U.S.D. No. 501*, at 969.

> "Under this approach, a proposal does not have to be specifically listed under K.S.A. 72-5413(l) to be mandatorily negotiable as a term and condition of employment. All that is required is that the subject matter of the specific proposal be within the purview of one of the categories listed under 'terms and conditions of professional service.'"

Id. Under the "topic" approach of determining whether an item is mandatorily negotiable, if a topic is listed as mandatorily negotiable at K.S.A. 72-5413(l), then any particular proposal under that category is mandatorily negotiable unless excluded by the following portion of the provision:

> "Nothing in this act, or the act of which this section is amendatory, shall authorize the adjustment or change of such matters which have been fixed by statute or the constitution of this state."

Chee-Craw Teachers Ass'n v. U.S.D. No. 247, 225 Kan. 561, 568 (1979)(citing to K.S.A. 72-5413(l)). Respondent argues that it did negotiate the topic of resignations and reach agreement with Petitioner regarding the mandatory resignation fee. Respondent's waiver of the mandatory fee in this instance, however, was within its right. Respondent's Brief, p. 10. Respondent argues that an exception to the "impact test", explained in the Court's 1979 *Chee-Craw* decision, justifies its position in this matter. *Id.* The presiding officer notes that in 1980, the Kansas legislature amended the Professional Negotiations Act, adopting the current definition of 'terms and conditions of professional service' contained at K.S.A. 72-5413(l). Kansas Session Laws, 1980, Ch. 220, § 1. Several new mandatory topics were added by that change and the "impact test" was deleted. *U.S.D. No. 501*, at 970.

There is no bright line rule as to when a prohibited practice occurs. *Garden City Educators v. U.S.D. No. 457*, 15 Kan. App. 187, 195 (1991). "Whether an act or action constitutes a prohibited practice must be determined in each case based upon the facts and their effect on the negotiation process." *Id.* By its unilateral waiver of the mandatory fee set out in the parties' negotiated agreement, Respondent's actions have the effect of circumventing the purposes for which the Act was designed, i.e., to promote stability in employer-labor relationships between employer school districts and teachers organizations through negotiations over the terms and conditions of teachers' professional employment. By its waiver, Respondent unilaterally rejected negotiated terms concerning resignation fees previously determined and memorialized by the parties in their agreement. If Respondent can so easily disregard the product of the parties' negotiations, regardless of its motivation, then its actions have the effect of undermining the negotiating process.

Accordingly, the presiding officer notes that resignation is a mandatorily negotiable topic and the waiver of resignation fees is within the purview of said topic. Nothing in the record of this matter, or in the parties' arguments, persuades the presiding

officer that requiring the parties to negotiate the question of waiver of the mandatory resignation fees would amount to the "change of such matters which have been fixed by statute or the constitution of this state", which such change is impermissable under Kansas law. K.S.A. 72-5413(l). As such, the waiver of these fees is a topic that must be negotiated with Petitioner. Although the Respondent's waiver of the fee in this instance was motivated by a desire to act in consideration of the teacher involved, *see* Affidavit of Dennis W. Wilson, dated March 29, 2000, it is the presiding officer's conclusion that Respondent's unilateral waiver of the fee constituted a prohibited practice.

ISSUE 2

Whether Respondent committed a prohibited practice by changing the 1999-2000 district calendar.

The original 1999-2000 U.S.D. No. 506 calendar was adopted by the Board of Education on January 11, 1999. *See* Exhibit A, attached. On this calendar, the date for teachers to return to work was Monday, August 16, 1999. On June 28, 1999, the Board of Education adopted a revised calendar, *see* Exhibit B, attached, in order to incorporate an inservice day to present Quantum Teaching training. Affidavit of Dennis W. Wilson, dated March 29, 2000. On the changed calendar, the teachers' return-to-school date was moved up to Friday, August 13, 1999. The teachers' total number of calendar days, however, remained unchanged by this revision because the Board inserted an additional half-day of comp time on Wednesday, November 24, 1999 and on Thursday, December 23, 1999. These two pre-holiday dates were originally scheduled to be a half-day of work and a half-day of comp time, so the change converted each of these two dates into an entire day off.

The presiding officer notes, as have the parties, that the beginning and ending dates for the school term are not mandatorily negotiable. *NEA-Kansas City v. U.S.D. No. 500*, 227 Kan. 541, 543-44 (1980). Petitioner asserts, however, that "hours and amounts of work" and "vacation allowance, holiday, sick, extended, sabbatical, and other leave, and number of holidays" are topics included in the statutory definition of "terms and conditions of professional services" under the Professional Negotiations Act, K.S.A. 72-

5413(l), and alleges that the board's calendar change implicates these two statutory topics, thus making the calendar change mandatorily negotiable.

As to the first topic, Petitioner asserts that although the change to the calendar does not alter the total number of calendar work days, it does affect the teachers' hours and amounts of work. This is so, Petitioner argues, because moving up the return-to-school date from a Monday to the preceding Friday "required teachers to do an additional amount of work". Petitioner's Brief, p. 8. "The addition of a late and unilaterally placed staff development or inservice day at the beginning of the school year only served to create a situation in which the teachers had less preparation time before the arrival of students." *Id.*, p. 9. In addition, Petitioner asserts that the change in return-to-school date "impinged on the vacation time of teachers." *Id.*, p. 10. "The teachers were required to cut short their summer vacations in order to return to work not just one day early, but, in fact, four days early". *Id.* Moreover, the increase from one-half day comp time to a full day of comp time on each of two days before the Thanksgiving and Christmas holidays also affects vacation time and holiday leave. Therefore, Petitioner asserts, the calendar change at issue here is within the purview of mandatorily negotiable topic(s) and Respondent's unilateral change to the calendar is a prohibited practice.

As stated previously in this decision, the Act deems it a prohibited practice for a school board to refuse to negotiate in good faith with a recognized professional employees' organization. The finding that a prohibited practice occurred here would be appropriate only if it is determined that Respondent refused to negotiate in good faith with respect to mandatorily negotiable topics. See *NEA-Wichita v. U.S.D. No. 259*, 234 Kan. 512, 518 (1983); *U.S.D. No. 501 v. Secretary of Kansas Dept. of Human Resources*, 235 Kan. 968, 969 (1984). Petitioner asserts that the Board's changes to the 1999-2000 calendar are within the purview of two different statutory mandatorily negotiable topics, "hours and amounts of work" and "vacation allowance . . . [and] leave . . .". Petitioner's Brief, pp. 7, 9.

On first impression, it is tempting to conclude that the calendar revision here at issue merely changed the teachers' *timing* of work for school preparation. However,

because of the late addition of an inservice day at the beginning of the school year, the calendar also created *additional* work for the teachers, that involved with the inservice day itself. Although the beginning and ending dates of the school term are not mandatorily negotiable, the board's unilateral change to the previously negotiated and agreed 1999-2000 calendar is within the purview of a mandatorily negotiable topic, that of "hours and amounts of work" and the presiding officer concludes that its unilateral change is a prohibited practice within the meaning of Kansas law.

It is a closer call whether the calendar change involved herein is within the purview of the statutory topic of "vacation allowance, holiday, sick, extended, sabbatical, and other leave, and number of holidays". Changing the return-to-school date from Friday, August 13, 1999 to the preceding Monday, August 16, 1999, however, would have the effect of cutting short the teachers' summer vacation time. In view that the original calendar was negotiated and agreed to by the parties, and subsequently adopted by Respondent in January, and Respondent's unilateral revision of the calendar was not made until almost July, such a change has the effect of disturbing the expectations of those who had relied upon the negotiated, agreed school year calendar. Based upon these facts, and the obvious adverse impact of the board's actions upon the deliberate and carefully structured balance between the school district and its professional employees, it is the presiding officer's conclusion that the implicated unilateral calendar change is within the purview of each of the two statutory mandatorily negotiable topics asserted by Petitioner and constitutes a prohibited practice. While the presiding officer does not doubt or question Respondent's purpose in scheduling the inservice day, nor its good faith in "polling" teachers at its schools, such does not excuse Respondent's failure to perform its legislatively mandated duty to negotiate such proposals with Petitioner association. The presiding officer notes, further, that Respondent's direct polling of its professional employees for their preferences has the effect of undermining Petitioner in its role as the teachers' exclusive bargaining representative. Should Respondent wish to seek its professional employee preferences and opinions as they relate to mandatorily negotiable topics in the future, they should do so through Petitioner teachers' association.

IT IS THEREFORE DETERMINED that Respondent, Unified School District No. 506, Altamont, Kansas, by waiving the resignation fee, has unilaterally changed a mandatorily negotiable term of professional service, and has thereby committed a prohibited practice in violation of K.S.A. 72-5430(b)(5).

IT IS FURTHER DETERMINED that Respondent, Unified School District No. 506, Altamont, Kansas, by unilaterally changing the 1999-2000 District school year calendar has unilaterally changed a mandatorily negotiable term of professional service, and has thereby committed a prohibited practice in violation of K.S.A. 72-5430(b)(5).

IT IS THEREFORE ORDERED that Unified School District No. 506 cease and desist from making any further unilateral changes to the parties' negotiated agreements.

IT IS FURTHER ORDERED that a copy of this order shall be posted in a conspicuous location in all facilities where members of the professional employee unit are employed for a period of 30 days.

IT IS SO ORDERED.

Dated this 12th day of June, 2000.

Douglas A. Hager, Presiding Officer
Div. of Labor Relations & Dispute Resolution
1430 SW Topeka Blvd.
Topeka, Kansas 66612
(785) 368-6224

NOTICE OF RIGHT TO REVIEW

This is an initial order of a presiding officer. It will become a final order fifteen (15) days from the date of service, plus 3 days for mailing, unless a petition for review pursuant to K.S.A. 77-526(2)(b) is filed within that time with the Secretary, Department of Human Resources, Division of Labor Relations and Dispute Resolution, 1430 SW Topeka Blvd., Topeka, Kansas 66612.

CERTIFICATE OF SERVICE

I, Sharon L. Tunstall, Office Manager for Labor Relations, of the Kansas Department of Human Resources, hereby certify that on the 14th day of June, 2000, a true and correct copy of the above and foregoing Initial Order was served upon each of the parties to this action and upon their attorneys of record, if any, in accordance with K.S.A. 77-531 by depositing a copy in the U.S. Mail, first class, postage prepaid, addressed to:

Mr. David M. Schauner
Kansas National Education Association
715 SW 10th Avenue
Topeka, KS 66612
Attorney for Petitioner

Mr. Richard G. Tucker
LAW OFFICES OF RICHARD TUCKER
P.O. Box 875
Parsons, KS 67357
Attorney for Respondent

And, on this 14th day of June, 2000, a true and correct copy of the above and foregoing Initial Order was deposited in the building mail, addressed to:

Secretary Richard E. Beyer
Kansas Department of Human Resources
401 SW Topeka Blvd.
Topeka, Kansas 66603

Sharon L. Tunstall

EXHIBIT A

Labette County U.S.D. 506
1999-2000 Calendar

August 1999

M	T	W	T	F
2	3	4	5	6
9	10	11	12	13
16	[17]	(18)	19	20
23	24	25	26	27
30	31			

September 1999

M	T	W	T	F
		1	2	3
(6)	7	8	9	10
13	14	15	16	17
20	21	22	23	24
27	28	29	30	

October 1999

M	T	W	T	F
				(1)
4	5	6	7	8
11	12	13	14	15
18	19	20	21	(22)
25	26	27	28	29

November 1999

M	T	W	T	F
1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	(24)	(25)	(26)
29	30			

December 1999

M	T	W	T	F
		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	(23)	(24)
(27)	(28)	(29)	(30)	(31)

August
16 Staff development day
17-18 Work days (1/2 day on 18th)
18 School starts (1/2 day)

September
6 Labor Day

October
1 LCHS: 1/2 day inservice
1/2 day work day
22 K-8: 1/2 day inservice
1/2 day work day

November
24 1/2 day instruction &
1/2 day vacation
25-26 *Thanksgiving vacation*

December
23 - 1/2 day instruction &
1/2 day vacation
24-31 Christmas vacation

January
3 Classes resume
14 End of first semester

February
4 Staff development day
25 LCHS: 1/2 day inservice
1/2 day work day

March
17 K-8: 1/2 day inservice
1/2 day work day
20-24 Spring Break

May
25 Last day
26 Work day
29 Memorial Day
30-31 Snow days

January 2000

M	T	W	T	F
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28
31				

February 2000

M	T	W	T	F
	1	2	3	(4)
7	8	9	10	11
14	15	16	17	18
21	22	23	24	(25)
28	29			

March 2000

M	T	W	T	F
		1	2	3
6	7	8	9	10
13	14	15	16	(17)
(20)	(21)	(22)	(23)	(24)
27	28	29	30	31

April 2000

M	T	W	T	F
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28

May 2000

M	T	W	T	F
1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	24	[25]	[26]
(29)	<30>	<31>		

Student contact days	184.5
Inservice/work days	6.5
Contract days	191.0

Key

BOLD = Staff development
( ) = Begin/End School
□ = Work Day
( ) = No School
< > = Snow days
[ ] = 1/2 day 8:00-12:30 (lunch served)

A maximum of two parent-teacher conference days may be scheduled throughout the year. A total of 18 hours may be scheduled as staff development time during the school year.

Adopted by the Board of Education on 1-11-99.

EXHIBIT B

Labette County U.S.D. 506
1999-2000 Calendar

August 1999

M	T	W	T	F
2	3	4	5	6
9	10	11	12	13
16	[17]	(18)	19	20
23	24	25	26	27
30	31			

September 1999

M	T	W	T	F
		1	2	3
(6)	7	8	9	10
13	14	15	16	17
20	21	22	23	24
27	28	29	30	

October 1999

M	T	W	T	F
				(1)
4	5	6	7	8
11	12	13	14	15
18	19	20	21	(22)
25	26	27	28	29

November 1999

M	T	W	T	F
1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	(24)	(25)	(26)
29	30			

December 1999

M	T	W	T	F
		1	2	3
6	7	8	9	10
13	14	15	16	17
20	21	22	(23)	(24)
(27)	(28)	(29)	(30)	(31)

August
13 Staff development day
16 Staff development day
17-18 Work days (1/2 day on 18th)
18 School starts (1/2 day)

September
6 Labor Day

October
1 LCHS: 1/2 day inservice
1/2 day work day
22 K-8: 1/2 day inservice
1/2 day work day

November
24-26 Thanksgiving vacation

December
23-31 Christmas vacation

January
3 Classes resume
14 End of first semester

February
4 Staff development day
25 LCHS: 1/2 day inservice
1/2 day work day

March
17 K-8: 1/2 day inservice
1/2 day work day
20-24 Spring Break

May
25 Last day
26 Work day
29 Memorial Day
30-31 Snow days

January 2000

M	T	W	T	F
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28
31				

February 2000

M	T	W	T	F
	1	2	3	(4)
7	8	9	10	11
14	15	16	17	18
21	22	23	24	(25)
28	29			

March 2000

M	T	W	T	F
		1	2	3
6	7	8	9	10
13	14	15	16	(17)
(20)	(21)	(22)	(23)	(24)
27	28	29	30	31

April 2000

M	T	W	T	F
3	4	5	6	7
10	11	12	13	14
17	18	19	20	21
24	25	26	27	28

May 2000

M	T	W	T	F
1	2	3	4	5
8	9	10	11	12
15	16	17	18	19
22	23	24	[25]	[26]
(29)	<30>	<31>		

Student contact days	183.5
Inservice/work days	7.5
Contract days	191.0

Key
BOLD = Staff development
[ ] = Begin/End School
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( ) = 1/2 day 8:00-12:30 (lunch served)

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Revised 6/28/99