BEFORE THE SECRETARY OF THE
KANSAS DEPARTMENT OF HUMAN RESOURCES

U.S.D. 312 Education Association (Employee Organization) Complainant,	)	
vs.	)	Case No. 72-CAE-2-2001
Haven, U.S.D. 312 (Employer) Respondent	)	

INITIAL ORDER

NOW on this 6th day of August, 2001, 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 November 3, 2000, the U.S.D. 312 Education Association, (hereinafter "Association"), filed a prohibited practices complaint against Unified School District 312, Haven, (hereinafter "District" or "Respondent"), with the Kansas Department of Human Resources' Division of Labor Relations office. *See* Complaint Against Employer, filed November 3, 2000. The complaint alleged that the District had committed a prohibited practice against the Employee Organization within the meaning of the Kansas Professional Negotiations Act, at K.S.A. 72-5430(b)(5). As the basis for the prohibited practice, the complaint alleged that the District unilaterally changed a portion of the negotiated agreement between the Association and Respondent. *Id.* That portion of the 1999-2000 agreement, Article IV, Section B, Subsection 2, concerned compensation and provided for teacher step placement on the District's salary schedule as follows:

> "Placement on Step: Step placement may not correspond with actual years of experience. Beginning teachers will be placed on the first step. Experienced teachers will be placed upon the appropriate step based upon years of experience."

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See Exhibit 2, Transcript of Hearing, April 2, 2001. The complaint alleged that at the beginning of the 1999-2000 school year, the Respondent placed a beginning teacher on step 2 of the salary schedule instead of step 1, contrary to the Association's understanding of the terms of the negotiated agreement. By placing the beginning teacher on step 2, the complaint asserts, the Respondent unilaterally changed an applicable provision of the negotiated agreement and committed a prohibited practice. The Association requests that this agency determine that a prohibited practice has been committed, order that a notice be posted containing the district's acknowledgment of the said commission of prohibited practice, order that Respondent participate in good faith negotiations with Petitioner, and order either that all other teachers under contract for the 1999-2000 school year be advanced one step or that all beginning first year teachers who began on step one during school years 1999-2000 or 2000-2001 be advanced one step.

Respondent filed its Response to Complaint with this office on December 6, 2000. Said Response requested that the Association's Complaint be dismissed for lack of jurisdiction and for failure to state a claim upon which relief can be granted. *See* Respondent's Response to Complaint. Respondent urges that the complaint be dismissed for lack of jurisdiction because the complaint was not filed within six months of the date the alleged prohibited practice occurred. *Id.* Respondent also counters that the Association has no standing or authority to act in a manner benefitting one or more of its professional employees at the expense of the interests of one or more other professional employees represented by the Association, and that its complaint must be dismissed for this reason, as well.

A motion to stay fact-finding proceedings was subsequently filed and granted. Other motions, including motions to dismiss, were also filed. *See* Motion for Reconsideration of Order Staying Fact Finding Proceedings, filed March 14, 2002; Respondent's Motion to Dismiss Complaint, filed March 27, 2001; Respondent's Supplemental Motion to Dismiss Complaint, filed April 3, 2001. The Presiding Officer elected not to grant said motions and the issues raised therein will be addressed, expressly or by implication, in this initial order.

ISSUE OF LAW

The legal issue presented for determination in this matter can be summarized as follows:

Did the Respondent's placement of a beginning teacher on step two of the negotiated agreement's salary schedule constitute a prohibited practice in violation of Kansas law?

This order will also address other issues raised by the parties.

FINDINGS OF FACT

1. The Association is the duly recognized exclusive representative of the professional employees of Unified School District 312 for the purpose of negotiating the terms and conditions of the District's professional employees' services.

2. The parties' negotiated agreement for school year 1999-2000 contained a provision regarding compensation. Article IV, Section B, Subsection 2, entitled "Placement on Step", read as follows: "Step placement may not correspond with actual years of experience. Beginning teachers will be placed on the first step. Experienced teachers will be placed upon the appropriate step based [upon] years of experience." Exhibit 2.

3. The terms "beginning teacher" and "experienced teacher" were not defined in the parties' negotiated agreement and were left to their commonly understood meanings. Transcript, p. 28. A beginning teacher is "simply someone who was going to teach their first year as a certified teacher." Transcript, p. 50.

4. At the beginning of the 1999-2000 school year, the Respondent hired a recently-certificated beginning teacher, with no experience in public schools as a certificated teacher, but with other workplace experiences, on step 2 of the salary schedule. Transcript, pp. 18-9, 51.

5. Upon learning on or around May 20, 2000, that the beginning teacher had been placed on step two, instead of step one, of the bargained-for salary schedule, the

Association attempted through negotiations to resolve what they viewed to be a misplacement, and unilateral change of the bargained agreement. Transcript, pp. 51-2.

6. According to the sworn testimony of the Association's chief negotiator, Mr. Tom Beal, when the issue of misplacement of the beginning teacher was raised at the bargaining table, the District Superintendent's response was to the effect of "Frankly, it's none of your business where we place someone on the salary schedule." Transcript, p. 52. Sworn testimony of the Association's President, Susan Hill, was substantially the same, that when the Association asked about what they felt was misplacement of the beginning teacher on step two, "they said it was none of our business where teachers were placed." Transcript, p. 72.

7. During the course of attempting to resolve through bargaining the issue of the beginning teacher's misplacement on the salary schedule, members of the Association's bargaining team suggested offering a bonus, contingent on the length of service, to new hire teachers in academic disciplines difficult to secure, such as math and science. Transcript, pp. 64-5. This suggestion was rejected by Respondent. *Id.*, p. 65. The Association's negotiation team then suggested using a committee, composed of a Board member, an administrator and a teacher, to evaluate a prospective hire's prior service and experience, for the purpose of step movement to entice teachers to the district. *Id.* This idea was also rejected, and the Association's President, Susan Hill, testified that "they [the Board] almost laughed at us with that idea". *Id.*

8. The Association filed a grievance regarding the matter on June 7, 2000. Exhibit 6. The remedy sought by the Association in filing the grievance was that "[a]ll teachers new to the district will be placed on the salary schedule according to the terms of the contract." *Id.*

9. At the meeting when the grievance was presented, Superintendent Chadwick told the Association's bargaining team members that if there were any expenses incurred through the grievance proceedings, cost of attorneys and court fees and so forth, that money would be taken from the teachers' salaries. Transcript, p. 72.

10. Superintendent Chadwick responded by letter dated June 14, 2000, to the grievance filed June 7, 2000, referenced above in Finding of Fact 9. *See* Exhibit B, Superintendent's Response, attached to Respondent's Motion to Dismiss Complaint, filed

March 27, 2001. Following the response, the parties continued negotiations in an attempt to address the step placement issue. Transcript, p. 85.

11. The Association and Respondent were unable to resolve the issue of the beginning teacher's misplacement on the salary schedule through bargaining. Transcript, pp. 52, 65-6.

12. On September 29, 2000, the Association filed another grievance regarding the step placement issue, seeking consideration of the matter by the Board of Education. Transcript, p. 85; Exhibit C, September Grievance Report, attached to Respondent's Motion to Dismiss Complaint, filed March 27, 2001.

13. A conference was conducted in executive session by the U.S.D. 312 Board of Education on October 16, 2000, to consider the matter. *See* Exhibit C, Board Decision, October 26, 2000 letter, attached to Respondent's Motion to Dismiss Complaint, filed March 27, 2001. The Board's response to the Association's negotiation team was that they had the right to place the teacher wherever they desired on the salary schedule. Transcript, pp. 53, 66. The Board confirmed the Superintendent's previous decision to hire the beginning teacher at step two of the bargained agreement salary schedule. Exhibit C, Board Decision, October 26, 2000 letter, attached to Respondent's Motion to Dismiss Complaint, filed March 27, 2001.

14. Following their inability to redress this issue through negotiations or through the grievance procedure, the Association directed their legal counsel to file this prohibited practice proceeding. Transcript, p. 53.

CONCLUSIONS OF LAW/DISCUSSION

THE MOTIONS TO DISMISS

As previously noted, Respondent makes several objections to Petitioner's complaint. First, Respondent argues that this agency lacks jurisdiction to consider this matter for Petitioner's failure to file this action within six months of Respondent's placement of the beginning teacher on Step Two of the bargained agreement's salary schedule. *See* Respondent's Motion to Dismiss Complaint, filed March 27, 2001, pp. 3-

4. Respondent alleges that the complained-of action occurred on June 14, 1999, but that the prohibited practice complaint was not filed until November 3, 2000. Kansas law requires that a prohibited practice complaint under the Professional Negotiations Act be brought "within six months of the date of the alleged practice by service" upon the Secretary. K.S.A. 72-5430a.

Although asserted in Respondent's pleadings, an exhaustive review of the record in this matter fails to find any competent evidence establishing that Respondent's step placement action occurred on or about June 14, 1999. Several documents, however, assert that May 24, 2000 was the date of occurrence of the misplacement in question. *See* Exhibit 6; Exhibit C, September Grievance Report, attached to Respondent's Motion to Dismiss Complaint, filed March 27, 2001. This date, according to testimony adduced at hearing, was the approximate time frame during which the Association first discovered the Respondent's complained of action in placing the beginning teacher on Step Two of the bargained agreement's salary schedule. *See* Finding of Fact No. 4.

The six month period noted above at K.S.A. 72-5430a is a "statute of limitations". The fixing of a statute of limitations is a matter of legislative discretion, particularly so where the remedy sought is itself a legislative creation and the limitation is a condition contained in the act creating the remedy. *First Nat'l Bank of Girard v. Coykendall*, 8 K.A.2d 636, 639 (1983). A statute of limitations delineates the time period within which a party must initiate an action, such as the prohibited practice complaint herein. See *Eddings on Behalf of Eddings v. Volkwagenwerk, A.G.*, 835 F.2d 1369 (C.A.11, 1988). This period does not begin to run until the wrong has been or should have been discovered. *Id.* See also, *Sims v. Boeing Co.*, 60 F.Supp.2d 1220 (D.Kan. 1999)(six month limitations period for employee action against union for breach of duty of fair representation under Labor Management Relations Act began to run when employee knows or, through exercise of reasonable diligence, should have known of union's action); *Arnold v. Air Midwest, Inc.*, 100 F.3d 857 (C.A.10 Kan. 1996)(limitation period for Railway Labor Act breach of fair representation claim against union generally begins to run when employee knows or in the exercise of reasonable diligence should have known or discovered acts constituting union's alleged violations); *Herrera v. International Union, United Auto., Aerospace and Agr. Implement Workers of America,*

858 F.Supp. 1529 (D.Kan. 1994)(in typical hybrid claim against employer and union under Labor Management Relations Act, limitations period begins to run when employee learns or should have learned that union has abandoned claim asserted against employer for breach of collective bargaining agreement). Under the facts set forth above, the Presiding Officer notes that the Association first discovered the Respondent's alleged violation of the bargained agreement's step placement provision on or about the time period from May 20, 2000 to May 24, 2000. Nothing in the record supports an assertion that Respondent's actions should have been discovered prior to this time frame. In view that there had been no previous indication that the step placement provision would be interpreted and implemented in a manner inconsistent with the parties' long history of past practices, there is no basis for finding that the misplacement should have been discovered earlier than it in fact was. This prohibited practice complaint, having been filed November 3, 2000, prior to expiration of the six month limitations period which began to run on or about May 20, 2000, was timely. Respondent's motion to dismiss for lack of jurisdiction is denied.

Respondent urges that the Petitioner herein is not a proper party to this action and lacks standing to assert its prohibited practice complaint. In support of its position, Respondent alleges that the Association's filing of this complaint conflicts with its statutory duty to represent the interests of all the District's professional employees. *See* Respondent's Motion to Dismiss Complaint, filed March 27, 2001, p. 6. Because of such conflict of interest, Respondent alleges, the Association "lacks standing under the associational representation test" used by the U.S. Supreme Court in cited cases, and adopted by the Kansas Supreme Court in *NEA-Coffeyville v. Unified School District No. 445*, 268 Kan. 384 (2000). *Id.* Standing, as that term was used in the U.S. Supreme Court cases cited by Respondent, involved a constitutional dimension, derived from the Constitution's Article III judicial power, in which "a federal court's jurisdiction . . . can be invoked only when the plaintiff himself has suffered 'some threatened or actual injury resulting from the putatively illegal action . . .'" *Warth v. Seldin*, 422 U.S. 490, 499 (1975)(citation omitted). Those otherwise barred by application of the Court's rules regarding standing, however, may either expressly or by clear implication be granted standing by Congressional enactment. *Id.*, p. 501.

Standing, in the context in which that term is used by this state's highest court, "means that a party has sufficient interest in a justiciable controversy to obtain judicial resolution of that controversy." *Joe Self Chevrolet, Inc. v. Board of Sedgwick County Comm'rs*, 247 Kan. 625, 629 (1990). Much in the same way that standing in federal court action may be granted by Congress, standing in the context of state court action may be granted by state legislative enactment. *Seaman Dist. Teachers' Ass'n v. Board of Education*, 217 Kan. 233, 243 (1975). The nature of the present action is clearly one in which the Petitioner has been granted standing.

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 grants a school district's professional employees the right to 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 "salaries and wages". K.S.A. 72-5413(l)(1). In order to make provision for the enforcement of these statutory rights, the Professional Negotiations Act declares that it shall be a prohibited practice for an employer to refuse to negotiate in good faith with representatives of a recognized professional employees' organization. K.S.A. 72-5430(b)(5). The statutory and regulatory structure for determination of whether a prohibited practice has been committed clearly provides that a recognized employees' organization, such as the Association here, has standing to pursue this cause of action. *See, e.g.*, K.S.A. 72-5432 (authorizing Secretary to adopt rules and regulations necessary to implement Professional Negotiations Act); K.A.R. 49-28-1 (allegation of prohibited practice may be filed with Secretary by a professional employee organization).

Although the Presiding Officer questions whether the three-part test set out in *Hunt v. Washington Apple Advertising Comm'n* is appropriate to the resolution of this

prohibited practice action, since Respondent urges its applicability, and in view that our state's high court has adopted its use in the context of other litigation involving state professional employees' organizations, it will be addressed.

The three-part "associational representation" test holds that an association has standing to sue on behalf of its members when: (1) the members have standing to sue individually; (2) the interests the association seeks to protect are germane to the organization's purpose; and (3) neither the claim asserted nor the relief requested require participation of individual members. *NEA-Coffeyville v. U.S.D. No. 445*, 268 Kan. 384, 387 (2000). Respondent urges only that Petitioner fails the third element of this test, see Respondent's Motion to Dismiss Complaint, filed March 27, 2001, p. 7, so the first two elements need not be addressed. According to Respondent, Petitioner fails the third element because "the remedies demanded by the Association are at the expense of at least one teacher whose interests the Association is obligated by statute to protect." *Id.* The Association may not disregard the interests of an individual teacher when it seeks to enforce the negotiated agreement in a manner for the benefit of some teachers at the expense of others. *Id.* The record of this matter fails to demonstrate support for the predication underlying Respondent's assertion. The remedies requested by the Association, advancement of other teachers by one step on the salary schedule, have no impact on the one teacher previously placed a step above that mandated by the negotiated agreement. Moreover, Respondent's argument appears to be based on the belief that because the Association is the exclusive bargaining representative of all of the professional employees in the unit, it must never act contrary to the interests of any of those employees. This premise is false, unworkable and bad public policy. As is demonstrated each year at countless negotiation sessions across the state, the distribution of limited school funds will inevitably mean that decisions will be made and funds allocated in ways that do not serve all professional employees' interests equally. And yet, once agreements are reached, an employee association has an obligation to ensure that its provisions are honored . . . or that the parties go back to the table to revise them.

Further, Respondent's assertion does not accurately represent the third prong of the test set out above. That third element, that the relief requested not require participation of individual members of the association, suggests that where the relief

requested does not require individualized proof of injury, it may be properly resolved by the association's assertion of the individual members' interests. See *Hunt v. Washington Apple Advertising Comm'n*, 432 US 333, 343-5 (1977). Here, neither the claim asserted nor the relief requested require individualized proof of injury. As the exclusive recognized bargaining representative of the teachers' collective interest in "establishing, maintaining, protecting or improving terms and conditions of professional service", the Association has a sufficient interest in ensuring that Respondent not subvert the Association's role as its members exclusive bargaining agent, nor ignore or unilaterally change the terms of its bargained agreement that this conflict may be properly resolved by the Association's pursuit of this action. Respondent's motion to dismiss for lack of standing is denied.

ISSUE 1

The substantive legal issue presented in this matter is as follows:

Did the Respondent's placement of a beginning teacher on step two of the negotiated agreement's salary schedule constitute a prohibited practice in violation of Kansas law?

Resolution of this question will turn on other secondary issues which will be explored in more detail below.

Respondent urges that the step placement provision of the parties' 1999-2000 negotiated agreement was not clear and unambiguous, and that it contemplated the Board's exercise of discretion in making placement decisions. Respondent's Memorandum in Opposition to the Association's Prohibited Practice Complaint, filed May 14, 2000, p. 6.

> "The Board believes the contract provision clearly envisions the exercise of judgment and discretion by the Board in determining a teacher's placement on the salary schedule. It also contemplates a distinction between 'beginning teachers' and 'experienced teachers in placement decisions. The agreement, however, does not define either term.
>
> The provision also contemplates consideration of a teacher's years of experience in making placement decisions and does not limit such experience to years of teaching. The agreement also provides specifically

> that 'step placement may not correspond to actual years of experience.' Determining the 'appropriate step' upon which a teacher is placed on the salary schedule, based on their years of experience, requires the exercise of discretion and is a matter of managerial prerogative."

Id., pp. 6-7.

Further, the Respondent argues that even if the Association's interpretation of the step placement provision is correct, the Board's action still does not constitute a prohibited practice. *Id.*, p. 8. To carry its burden of proof, argues the District, the Association must establish that placement of an individual teacher on the parties' salary schedule is mandatorily negotiable and that the Board has refused to bargain in good faith. *Id.* According to the Board, although its salary schedule is mandatorily negotiable, the evaluation of a teacher's educational and teaching experience and the placement of a particular teacher on that salary schedule is a matter within the Board's management prerogative. Id., pp. 8-9. Further, the Board asserts that although the parties were unable to resolve their differences about this beginning teacher's placement through negotiations, and although the parties' talks for the 2000-2001 negotiated agreement are at impasse, the record "clearly establishes that the District has bargained in good faith". *Id.*, p. 12. In support of this last assertion, the Respondent notes that the parties have exchanged and discussed different proposed contract provisions concerning the step placement issue. *Id.*

The Presiding Officer is not inclined to agree with Respondent's assertions. The Professional Negotiations Act, ("PNA" or the "Act"), found at K.S.A. 72-5413 *et seq.*, is the statutory framework authorizing collective negotiations between school boards and teachers in Kansas. *Teachers and the School Board—Negotiations in Kansas*, 15 WASHBURN L. J. 457 (1976). As previously noted, 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 further these goals, the statute grants a school district's professional employees the right to 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 "salaries and wages". K.S.A. 72-5413(l)(1). Such topics are mandatorily negotiable. *U.S.D. No. 314 v. Kansas Dept. of Human Resources*, 18 K.A.2d 596, 598 (1993). 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 v. Secretary of Kansas Dept. of Human Resources*, 235 Kan. 968, 969 (1984).

> "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.

The Act provides that "[i]t shall be a prohibited practice for a board of education or its designated representative willfully to: . . . (5) refuse to negotiate in good faith with representatives of recognized professional employees' organizations as required in K.S.A. 72-5423[1] and amendments thereto." K.S.A. 72-5430(b). Failure to negotiate an item that is statutorily made mandatorily negotiable is a prohibited practice. *U.S.D. 314 v. Kansas Dept. of Human Resources*, 18 K.A.2d 596, 599 (1993). Unilateral changes in mandatory subjects of negotiation may be so inconsistent with good faith in bargaining that they amount to *per se* violations of K.S.A. 72-5430(b)(5) even without an independent showing that a party lacked good faith. See *National Education Association v. Board of Education*, 212 Kan. 741, 756 (1973); *Teachers and the School Board—Negotiations in Kansas*, 15 WASHBURN L. J. 457, 463 (1976). See also, *U.S.D. 314 v. Kansas Dept. of Human Resources*, 18 K.A.2d 596, 601 (1993)(unilateral adoption of new teacher evaluation procedures was a prohibited practice without regard to Board's good faith belief their negotiation not mandatory).

The record reveals that over the course of their history of negotiations, the parties had agreed to a set salary schedule and a mechanism for step placement. If, as Respondent argues, the agreement in place for school year 1999-2000 allowed for the

[1] K.S.A. 72-5423 requires that boards of education and recognized professional employee organizations enter into professional negotiations on request of either party at any time during the school year prior to issuance or renewal of annual teachers' contracts.

exercise of discretion, it was only with regard to the step placement of experienced teachers, for the agreement's provision was clear and unambiguous in stating that "beginning teachers will be placed on the first step." Respondent's rationalizations to the contrary notwithstanding, the teacher in question in this matter was a "beginning teacher" as that term is commonly understood, and, in accordance with the parties' negotiated agreement, should have been placed on step one of the District's salary schedule.

"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." *Garden City Educators v. U.S.D. No. 457*, 15 Kan. App. 187, 195 (1991). Step placement, being a topic within the purview of "salaries and wages", a mandatoriliy negotiable term and condition of professional service, is itself a mandatory topic for negotiation. By its unilateral violation of the parties' negotiated agreement's step placement provision, that is, by placing a beginning teacher on step two of the agreement's salary schedule without first amending that provision through negotiations with the teachers' association, 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 action, Respondent unilaterally rejected negotiated terms concerning salaries previously determined and memorialized by the parties in their agreement thereby undermining the negotiating process and the Association's role as the teachers' exclusive bargaining representative. Under applicable law, Respondent's unilateral change to the mandatorily negotiable step placement topic is a *per se* violation of its duty to negotiate in good faith. However, even were the law not to presume bad faith in such a unilateral violation, the record of this matter reveals independent evidence of Respondent's lack of good faith. *See* Findings of Fact Nos. 6-7, 9. Respondent's unilateral violation of the parties' negotiated agreement's step placement provision constituted a prohibited practice as defined by Kansas law.

Petitioner requests that Respondent be ordered, among other things, to advance all teachers under contract for school year 1999-2000 by one step, with the exception of the aforesaid beginning teacher previously advanced one step, or alternatively that the Respondent be ordered to advance by one step all beginning first year teachers who were

previously placed at step one during the school years 1999-2000 and 2000-2001, and that such remedy be retroactive to each teacher's hire date plus interest. Relief from the commission of a prohibited practice can be granted in whole or in part by order of the Secretary of Human Resources. K.S.A. 72-5430a; *U.S.D. 279 v. Secretary, Kansas Dept. of Human Resources*, 14 K.A.2d 248, 259 (1990), affirmed in part and reversed in part, 247 Kan. 519 (1990). The Secretary's authority is discretionary and reflects a legislative intent that the Secretary have broad powers to fashion an appropriate remedy when a prohibited practice has occurred. *U.S.D. No. 279 v. Secretary of Kansas Dept. of Human Resources*, 247 Kan. 519, 531 (1990). It is the Secretary's function to determine how to expunge the effect of a prohibited practice. *Id.* An appropriate remedy is one that is not oppressive nor contrary to the purposes of the Act. *Id.*, at 532. Considering all of the specific facts and circumstances present, it is the order of the Secretary, acting through his duly appointed designee, *see* K.S.A. 72-5413(m); K.S.A. 77-514(a), that the remedy first sought through grievance in this dispute, and detailed above at Finding of Fact No. 8, is most appropriate to the purposes underlying the Act. Ordering that other teachers be advanced by one step on the salary schedule would not expunge the effects of Respondent's actions and would do nothing to further the Act's purpose, that of encouraging good relationships between school boards and their professional employees. In fact, the Secretary's ordering of such an award, while perhaps not oppressive, would deprive these parties of the opportunity, going forward, to work together constructively to determine how best the District's limited resources can serve the parties' collective interests.

IT IS THEREFORE ORDERED that Respondent, Unified School District No. 312, shall cease and desist making unilateral changes to the parties' negotiated agreements, honoring the terms thereof as written.

IT IS FURTHER ORDERED that Respondent cease and desist refusing to negotiate in good faith, and proceed with professional negotiations, and any and all elements thereof, in accordance with Kansas law.

IT IS FURTHER ORDERED that Respondent shall, for a period of 30 days, post a copy of this order in a conspicuous location in all facilities where members of the professional employees' association are employed.

IT IS SO ORDERED.

Dated this 6th day of August, 2001.

Douglas A. Hager, Presiding Officer
Division of Labor Relations
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, 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 6th day of August, 2001, 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 Complainant

Mr. John E. Caton
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20 Compound Drive
P.O. Box 1907
Hutchinson, KS 67504-1907
Attorney for Respondent

And, on this 6th day of August, 2001, 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