

BEFORE THE SECRETARY OF HUMAN RESOURCES
OF THE STATE OF KANSAS

SANTA FE TRAIL EDUCATION)	
ASSOCIATION,)	
)	
Complainant,)	
)	
vs.)	Case No. 72-CAE-6-1987
)	
U.S.D. 434 - Carbondale,)	
Kansas,)	
)	
Respondent.)	

Comes now on this 20th day of March, 1987, the above captioned case for consideration by the Secretary of the Department of Human Resources. The Secretary has appointed Mr. Jerry Powell as his designee to act in his behalf in this matter.

The case comes before the Secretary on petition of the Santa Fe Trail Education Association alleging that certain actions of the Board of Education of U.S.D. 434 violate the provisions of K.S.A. 72-5430 (b).

APPEARANCES

For the Complainant, Mr. Steve Lopes, UniServ Director for Sunflower UniServ District, Box 409, 116½ South Main, Ottawa, Kansas 66067.

For the Respondent, Mr. Fred W. Rausch, Jr., Attorney at Law, Suite 202, Ambassador Building, 220 Southwest 33rd Street, Topeka, Kansas 66611.

PROCEEDINGS BEFORE THE SECRETARY

- 1) Complaint filed on November 19, 1986 under the signature of Steve Lopes, UniServ Director.
- 2) Answer received from Respondent School District 434 under signature of Fred W. Rausch, Jr., on December 9, 1986.
- 3) Pre-hearing conference scheduled for December 16, 1986.
- 4) Hearing scheduled for January 7, 1987.

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- 5) Parties agree to cancel January 7, 1987 hearing in an attempt to resolve the issues by agreement.
- 6) Hearing rescheduled for February 16 and 17, 1987.
- 7) Hearing conducted on February 16, 1987.
- 8) Brief of Complainant union received on March 2, 1987.
- 9) Brief of Respondent school district received March 2, 1987.

FINDINGS OF FACT

1) That the matter is properly and timely before the Secretary.

2) That Mr. Herbert M. Stultz is the president of the Board of Education U.S.D. 434. Mr. Stultz also served as the spokesperson for the Board negotiating team during negotiations with the teachers for the 1986-87 contract. (T-17)

3) That there was a meeting between the district and the Association on approximately May 21, 1986, during which the district decided that the negotiations had reached the stage of impasse. (T-20)

4) That a meeting was had between the district representatives and the teachers' representatives on approximately August 6, 1986, which was attended by a federal mediator, Mr. Harold Walton. This meeting commenced at approximately one o'clock and culminated in a "tentative" agreement between the parties. (T-23)

5) That Mr. Stultz then took the "tentative" agreement back to the Board for their consideration. The Board, in executive session, then informed Mr. Stultz that the Board would support the percentage of increase in salary agreed upon providing that the agreement was a two-year agreement, but that they would not agree to additional reopeners. (T-24)

6) That it was Mr. Stultz's understanding that the Board would, then, meet in open session to consider ratification of any agreement after the teachers had ratified the agreement. (T-25)

7) That Mr. Stultz recalls a meeting on August 13, 1986 at one o'clock, wherein he and Dr. Clarence Hickman, Superintendent of U.S.D. 434 met with representatives of the Santa Fe Trail Education Association. As a result of that meeting, Mr. Stultz believed that the parties would have to proceed to fact-finding in order to settle their differences over the contract. (T-26, 27)

8) That Mr. Stultz believed that the August 6, 1986 meeting with the mediator culminated without a "tentative" agreement inasmuch as the parties only agreed to the percentage of increase based upon other conditions. The Board representative (Mr. Stultz) agreed to the percentage increase based upon the contract being extended to a two-year contract. (T-29, 30)

9) That Mr. Stultz recalled, as spokesperson for the Board team, that the Board team asked the teachers to negotiate the subject of "zero hour". This subject or topical heading was not contained within the notice as required to be given for negotiations by the statute. (T-44)

10) That Mr. Stultz believed that the Board and the Association reached a tentative agreement on the subject "zero hour". (T-47)

11) That Mr. Stultz believes that in past years, the teachers had gone through the ratification process prior to the time any agreement was submitted to the Board for ratification. (T-49)

12) That there was not an agreement to implement the "zero hour" concept in the coming school year separate and apart from reaching an agreement on the total contract. (T-52)

13) That the "tentative" agreement reached between the parties with the assistance of the mediator concerned a certain amount of money, contingency of a two-year contract and a question involving the number of reopeners in the subsequent or second year of the contract. (T-57)

14) That Ms. Jan Boggs is currently the treasurer of the Santa Fe Trail Education Association and was chief spokesperson for the 1986-87 school year. (T-60)

15) That Ms. Boggs believes that as of the May 21, 1986 meeting between the parties, "tentative" agreement had been reached on work day, which was in effect the "zero hour", I.E.P.'s extra compensation and mileage. (T-62)

16) That Ms. Boggs recalled that the meeting on August 6, 1986 with the federal mediator commenced at approximately two o'clock in the afternoon and ended at approximately 6:45 that evening. She recalls that Dr. Hickman and Mr. Stultz were present as well as the mediator, Mr. Harold Walton, and that the teacher team was represented by Marge Varner, Marcia Heim, Wanda Wilhite, Peg Chrisman, Joy Clark, Larry Dider, Bob Hug and Ms. Boggs. (T-63)

17) That Ms. Boggs believes that at the end of the mediation session, Mr. Stultz was to go to the Board and ask if they would approve two additional reopeners in addition to the ones that were currently within the contract, and that if they would approve these two additional reopeners, the union would, then, agree to the two-year contract and the money that had been proffered. In the event the Board failed to agree to the reopeners, the contract would expire on June 30, 1987 and negotiations would commence again. (T-64)

18) That Ms. Boggs recalls a discussion with Dr. Hickman concerning ratification of the "tentative" agreement reached at the mediation session. (T-66)

19) That Ms. Boggs testified that she specifically recalls Mr. Stultz saying that he had to go and get approval from the Board for the two additional reopeners. It was her understanding that after mediation, there was an agreement on the money items and that the only difference between the teachers and the Board was in regard to the number of reopeners in the contract. (T-67)

20) That Ms. Boggs recalls a brief conversation with Mr. Stultz at about nine o'clock on the evening of August 11, 1986 and a subsequent telephone call later that evening at approximately 10:30. During the telephone call, Ms. Boggs recalls Mr. Stultz saying to her that another meeting was necessary. Thus, the parties agreed to meet on August 13, 1986 at one o'clock at the high school library. (T-69)

21) That Ms. Boggs recalls that on August 13, 1986, the parties met at the library and Mr. Stultz informed the union representative that the "tentative" agreement reached during mediation could only be accepted by the Board if the union agreed to a two-year contract with no additional reopeners. (T-70)

22) That Ms. Boggs recalls that after Mr. Stultz informed the union of their position, the Association team caucused and then informed Mr. Stultz that they could not accept the offer of the Board. (T-72)

23) That Ms. Boggs recalls a meeting on October 27, 1986, wherein the Board of Education team and the Association team met with Mr. Paul Dickhoff, Administrator of Conciliation Services, Department of Human Resources. Ms. Boggs believed that the meeting was for the purpose of bringing the two teams back together to see if an agreement could be reached. During that meeting, the Board representatives provided a letter that they had written to Mr. Jerry Powell, in which the "two final positions" were delineated. Ms. Boggs believed that these "two final positions" had never been presented to the Association prior to this time. (T-76)

24) That Ms. Boggs participated in the drafting of a memorandum to all certified personnel within the district inviting them to a meeting on November 5, 1986 at 6:30 p.m. in the high school building. The purpose of this meeting was to discuss the Board's position and to take a vote to determine whether the teachers wanted to accept the Board's offer. (T-79)

25) That approximately forty-five (45) staff members attended the November 5, 1986 meeting. This meeting was for the purpose of discussing the Board's offer as was referenced in the previous Finding. (T-79)

26) That the members in attendance at the meeting referenced in the previous two Findings, after consideration of the Board's offer, unanimously rejected that offer and directed the officers in the Association to continue with fact-finding. In addition, those in attendance recommended that the officers in the Association file a prohibited practice charge with the Kansas Department of Human Resources. (T-81)

27) That Ms. Boggs recalls that during the October 14, 1986 Board meeting, Mr. Johnston, the high school principal, recommended to the Board that Gary Blosser be hired as the head wrestling coach. Further he recommended Mr. Blosser be compensated for the period of time that he was not teaching between sixth hour and practice time because he is a "zero hour" teacher. Further, Ms. Boggs recalls that someone on the Board then made a motion to hire Mr. Blosser as the wrestling coach, but said nothing about the amount of money that he would be paid. Ms. Boggs then asked the Board how much money they would be paying Mr. Blosser and why they were taking this action. Mr. Johnston then answered that question by saying that Mr. Blosser would be paid for the extra hour at the same rate they paid their concessions director. Ms. Boggs then asked how much money that equaled and was informed that the figure was Ten and 00/100 Dollars (\$10.00) per hour. Ms. Boggs then asked the reason behind the granting of the Ten and 00/100 Dollars (\$10.00) per hour and was told that the Ten and 00/100 Dollars (\$10.00) per hour was to compensate Mr. Blosser for dragging out the wrestling mats and disinfecting them. (T-90)

28) That Ms. Boggs is not aware of any language in the contract which would allow for additional payment after a "zero hour" as outlined in the previous Finding. (T-91)

29) That subsequent to the Board meeting referenced in the above Findings, Ms. Boggs went into the office and asked Dr. Hickman how much money the wrestling coach was going to be making over and above his normal salary. Dr. Hickman informed Ms. Boggs that he had computed the extra hour to compute to fifty (50) practices at Ten and 00/100 Dollars (\$10.00) a practice for a maximum of Five Hundred and 00/100 Dollars (\$500.00) extra. (T-91)

30) That it was Ms. Boggs' understanding at the conclusion of the mediation session between the parties, in which Mr. Walton was present, that the terms proffered by the mediator consisted of: 1) those items upon which the parties had previously tentatively agreed; 2) certain salary increases; 3) two-year contract; 4) two more reopeners in addition to the seven reopeners that were included within the current agreement. (T-94)

31) That Ms. Boggs believes that it was the Association's intent to agree to the terms as set out in the previous Finding, if, in fact, that was the totality of the agreement. However, in the event that the Association could not get the concession of two additional reopeners, it was the intent of the Association to let the contract expire on June 30, 1987. (T-94)

32) That Ms. Boggs feels that the Association has never conducted a "ratification" vote on any of the offers made by the Board of Education to the teachers during the contract negotiations. (T-111)

33) That Ms. Boggs believes that the meeting called by the Association to discuss the Board's offer, wherein approximately forty-five (45) teachers were in attendance, was for the purpose of determining whether or not a "ratification" vote should be taken. (T-113)

34) That Ms. Boggs is not aware of the amount of money being paid Mr. Blosser to coach wrestling. However, it is her belief that Mr. Blosser is being paid more than the supplemental salary schedule provides. Further, Ms. Boggs is not aware of the duties that are included within the position description for a wrestling coach. (T-114)

35) That the "zero hour" was implemented when school started for the 1986-87 school year. (T-160)

36) That there are two different teacher schedules at the Santa Fe Trail High School for the 1986-87 school year. Those teachers who teach "zero hour" come in early and leave early. Those teachers who are teaching periods one through seven then maintain the traditional schedule. (T-161)

37) That those teachers working the "zero hour" schedule do not have any longer work day than those teachers working hours one through six. (T-162)

38) That the principal of the high school requested volunteers to teach the schedule for "zero hour" and that he received numerous volunteers to fulfill that teaching schedule. (T-162)

39) That "zero hour" consists of an "hour" of class prior to first hour or the normal starting time of school.

40) That the Board has complied with K.S.A. 72-5427 (c) by providing two positions on the issues at impasse. (See Plaintiff's Exhibit #2).

CONCLUSIONS OF LAW

The Santa Fe Trails Education Association, hereinafter called "union" has alleged that the Board of Education U.S.D. 434, hereinafter called "Board", has by certain actions violated the provisions of K.S.A. 72-5430 (b) (1), (3), (5), (6), and (7). The union has alleged that the issues to be determined by the Secretary are as follows. Did the Board violate the statute;

- 1) By offering a tentative agreement later rescinded without any good faith reason;
- 2) By instituting the "Zero Hour" at Santa Fe Trail High School prior to the consummation of a negotiated agreement;
- 3) By attempting to limit the negotiability of items in an 1987-88 agreement through the insistence on a two-year agreement thereby forcing SFTEA to waive statutory rights;
- 4) By the Board paying an employee a supplemental salary amount inconsistent with the current negotiated agreement;
- 5) By presenting the two "final positions" of the Board on October 27, a full 27 weeks after the statutory impasse date, one of which was unknown to the Association.

Three of the above listed issues relate to negotiations between the union and the Board which occurred on or after May 21, 1986 when the Board determined that an impasse existed. Items #2 and #4 above relate to certain actions of the Board involving implementation of the "Zero Hour" and the improper payment of an employee. The three items (#1, #3, and #5) shall be addressed first and the other two items (#2 and #4) shall follow.

In order to best understand the issues involved and to make a determination as to whether the allegations, if true, constitute prohibited practices, the Secretary's designee believes a brief review of the facts is in order.

The union and the Board commenced negotiations pursuant to and in compliance with K.S.A. 72-5413 et seq. Although the Board did not "notice" the subject of "Zero Hour" they requested that the union engage in bargaining over the subject. The union agreed to negotiate "zero hour" and tentative agreement was arrived at over this and other subjects. However no agreement

could be reached over some economic issues. On approximately May 21, 1986 the Board team decided that an agreement could not be reached and that an impasse existed. The parties complied with statutory impasse procedures and a mediator was assigned by the Department of Human Resources to assist in resolving the impasse between the parties.

Mr. Harold Walton of the Federal Mediation and Conciliation Services met with the parties for approximately four hours and finally announced that he believed that a tentative agreement existed. The agreement as outlined by Mr. Walton was as follows:

- 1) Zero Hour
- 2) Other areas as previously agreed upon
- 3) Salary
- 4) Two-year contract
- 5) Two additional reopeners in the second year.

Items #1 and #2 were agreed upon before Mr. Walton intervened. Items #3, #4, and #5 were items that the union could and would accept but only as a package. That is, if the union could not get two additional reopeners they would not agree to accept a two-year contract. The Board proffered the salary (item #3) contingent upon getting a two-year agreement (item #4). It appears that the mediator then put together the above listed package for both parties' consideration. Apparently the mediator labeled this package a "tentative" agreement and asked both parties to take the package back to their supervisors or constituents for their consideration. The package was put together to suit both parties' needs. This action or suggestion is not unusual and is used quite commonly by mediators in order to resolve an impasse.

Both the union representatives and the Board representatives agreed to comply with Mr. Walton's suggestion. However it appears that this suggestion did not mean the same thing to both parties. The union assumed that this suggestion meant a "formal ratification" vote, while the Board representative thought he was to simply check the package out with the Board to see if the package was a viable alternative to their previous offers.

The record reflects that in previous years any tentative agreement was first voted upon by the teachers and then submitted to the Board. In this case the Board representative discussed the package with the Board and subsequently informed the union that he was not authorized to "offer" the package as put together by the mediator. In light of past ratification practices it would seem that if the Board representative had believed that he was obligated to take the package to the Board for a formal vote, he would have waited until the teachers had the opportunity to vote.

The board representative contacted the union representative to inform her that additional meetings were needed since the Board informally rejected the two additional reopeners. During a subsequent meeting the Board representative then informed the union representative that the offer from the Board consisted of all parts of the package except for the two additional reopeners.

The union then scheduled a meeting of teachers to consider whether to submit the package for ratification or to proceed to fact-finding. It was decided by the teachers that the Board offer should be rejected and that fact-finding procedures should be requested. At that time, the teachers also decided to file a prohibited practice charge.

Once fact-finding had been requested the Board responded to the Secretary setting out its final offer to the union. That final offer consisted of two distinct salary offers contingent upon a one or two year contract. It is important to note that duration of contract was not "noticed" by the Board apparently because of the limited reopeners within the existing contract.

The union has argued that the Board is guilty of bad faith bargaining by "offering a tentative agreement later rescinded without any good faith reason". There are three fallacies in this allegation. First the record shows that the Board did not "offer" the package which was called "tentative" agreement by the mediator. Rather the mediator put together a package he believed was acceptable to the parties. This fact is clearly demonstrated

by the Board representative's testimony relative to the necessity of going back to the Board for authorization. Secondly one cannot "rescind" an "offer" which was never made. And lastly the record shows that the notification of the Board representative to the union that the Board would not "buy" the package was based upon a good faith reason. The reason was that the Board did not want to make such an offer including two additional reopeners.

Even if, however, the Board representative had proffered the package at the table, the full Board still retains the right to reject the offer of their representative. Otherwise there would be no need for the governing body to exist. This same theory holds true for the union representatives. That is, proposals or counter proposals may be put forth, in all good faith, by these union representatives at the table but the teachers still retain the right to refuse to ratify a contract if they find it unacceptable. This is the very nature of negotiations and in fact serves to insure that neither Board representatives nor union representatives "sell out" at the table.

The Secretary designee therefore finds that the allegation as set forth at issue #1 is neither supported by facts within the record nor evidence of bad faith bargaining.

The Secretary designee recognizes that the subject of "duration of agreement" may not have been noticed for negotiations by the Board since the contract was only open for negotiations on a limited basis. One must recognize however that this subject (duration - length of contract) is not a mandatorily negotiable subject. That is, if no agreement is reached the question of the duration of that "nonagreement" becomes moot since an employer can only take unilateral action for the coming year. In other words there are no alternatives available to an employer such as might be available in a dispute over wages or contract language wherein the employer might set the increase at some arbitrarily determined percentage. All "terms and

conditions of employment" are "bargained" on a year by year basis even though a contract might be a multi-year contract or a contract might be extended.

The duration or length of a contract enjoys the unique status of a permissive subject, permissively negotiable at the discretion of both parties. Neither party can, absent an agreement, shorten or lengthen a contract period from one year. It is totally logical and not unusual to see an offer or demand relative to economic issues based upon the length of the contract. Certainly both parties will experience a dollar savings if a one year contract is expanded to two years. That is, no time, effort, and money will be spent in negotiations in the second year. A savings will also be realized on a multi-year contract with limited reopeners. It is exactly this reasoning that prompts some parties to enter into multi-year agreements.

The Secretary's designee fails to understand how any rights of the employees are or could be limited by the "demand" of an employer for a two-year contract. These right to negotiate mandatorily negotiable subjects each and every year, if so desired, can be given away by the employees by agreeing to a multi-year contract but cannot be taken away by unilateral action of the employer. In this case the Board has said; if you (the union) will agree to limit negotiations next year, we will give you more money. Such an attempt to "limit" negotiations is standard fare in collective bargaining and as such cannot be bad faith. Therefore the Secretary's designee must rule that item or allegation #3 is not a violation of statute.

Item or allegation #5 concerns the taking of two positions at fact-finding, one of which was unknown by the union. First of all the Secretary's designee is not convinced by the record that both positions were unknown by the union prior to the time the Board's position was set out for the Secretary of Human Resources by the Board in order to comply with K.S.A. 72-5427 (c). At very

least it appears that a reasonable individual should have known or could be expected to know that a lessor increase might be expected if the contract was not extended another year. However, the question of exact knowledge is moot since the statutory requirement at K.S.A. 72-5427 (c) contemplates that one party or the other might not be aware of the others "final" offer or that a final offer might change from pre-impasse to mediation to fact-finding.

K.S.A. 72-5427 (c) provides in pertinent part:

" . . . Within three (3) days thereafter, each of the parties shall prepare and submit to the secretary a written memorandum containing a description of the issues upon which the impasse exists and shall include therein a specific description of the final position of the party on each issue."

The Secretary's designee finds no other reference within the Act to limit the positions taken by either party at fact-finding. Therefore, due to the nature of give and take negotiations and in light of K.S.A. 72-5427 (c) the Secretary's designee must rule that having two positions at fact-finding or having an unknown position which is not blatantly unreasonable at fact-finding is not a violation of the duty to bargain in good faith.

The next issue or allegation to be addressed relates to the payment of a salary which is not consistent with the agreement. First the Secretary's designee must state that one parties' failure to comply with a contracted term and condition of employment is not, with few exceptions, a prohibited practice. Rather such a situation, if proven, would constitute a contract violation. Contract violation determinations are not within the Secretary's authority or jurisdiction. Such violations are properly resolved through the contracted grievance procedure or district court. This allegation does not qualify as an exception to the Secretary's jurisdiction. Even if, however, the Secretary had jurisdiction to rule on such matters, the Secretary's designee would have to find that the union has failed in carrying

its burden of proof. There is insufficient evidence within the record to show the proper salary rate for a wrestling coach as impacted by extra duties for "disinfecting, set up, and take down" of mats. The Secretary's designee cannot determine whether these duties are a requirement of the coaching position or whether they are supplemental duties to a supplemental contract.

The item or allegation as listed as item #4 is not evidence of bad faith and is not a violation of K.S.A. 72-5430.

The last allegation to be addressed is item (2), the allegation concerning implementation of Zero Hour prior to the completion of negotiations. The union argues that Zero Hour is a mandatorily negotiable subject, thus an employer may not implement or change the past practice absent an agreement to do so without first noticing and negotiating the subject. The Union states that Zero Hour falls under the topical heading of hours and amounts of work within the definition of terms and conditions of professional service found at K.S.A. 72-5413 (1).

The Board argues that Zero Hour is not mandatorily negotiable and they also argue that even if it is found to be mandatorily negotiable the implementation of the concept would not violate the statute since implementation was on a voluntarily basis.

It appears to the Secretary's designee that the Zero Hour concept is simply the establishment of an "hour" of class prior to the normal or usual starting time of the first class. In essence the implementation of "zero hour" amounts to changing the starting time of school.

K.S.A. 72-5430 (b) (5) and (7) requires a board to participate in negotiations in good faith with an organization through the entire negotiations process as set out at K.S.A. 72-5423 through the impasse procedures listed at K.S.A. 72-5426, K.S.A. 72-5427 and K.S.A. 72-5428. K.S.A. 72-5428a specifically states that a board may not issue a unilateral contract until the negotiations process is fully completed. "Completed" as used in the statute means a) an agreement is ratified or b) action is taken under subsection (b) of K.S.A. 72-5428. Any implementation

of a mandatorily negotiable term and condition of professional service prior to the completion of either (a) or (b) listed previously would constitute a violation of K.S.A. 72-5430 (b) (5) and/or (7). It matters not whether the action is a voluntary action on the part of the teachers.

The key to a determination as to whether the implementation of "zero hour" violates the statute rests with a determination of the negotiability of the subject. The Union cites Chee-Craw Teachers Association v. U.S.D. 247, 225 K. 561 as controlling the question of negotiability of this subject. In Chee-Craw the Court ruled that length of day, arrival and departure time, and number of teaching periods are included within the statutory meaning of hours and amounts of work. The Secretary's designee notes that the starting and stopping time for school (classes) is not included within the Chee-Craw determination.

K.S.A. 72-5413 (1) has been amended on numerous occasions over the years as a result of or to clarify court decisions. Currently K.S.A. 72-5413 (1) states in part:

" . . . Matters which relate to the duration of the school term, and specifically to consideration and determination by a board of education of the question of the development and adoption of a policy to provide for a school term consisting of school hours, are not included within the meaning of terms and conditions of professional service and are not subject to professional negotiations." (Emphasis Added)

In light of the above cited language "school hours" is not now, if it ever was, a mandatorily negotiable subject. School hours is, therefore, a management's right to establish (permissively negotiable). Thus school hours may be changed by a board without negotiations with the professional employee organization. This determination is not incompatible with the concept that hours and amounts of work are mandatorily negotiable. That is, once school hours are set the board must negotiate the number of periods, length of a teacher's day, and the teacher's arrival and departure time.

There are limitations placed on a board in changing school hours. An employer could not, for example change school hours if the hours were changed to the degree that the contracted arrival time of teachers was impacted. That is, if the negotiated agreement specified that teachers were to arrive at 7:45 AM, an employer could not change school hours which required teachers to arrive at 6:45 AM. Any attempt to make such a change would constitute a violation of contract which the teacher could grieve or take to district court. This principle relates to any contracted provision impacted by such a change.

On the other hand a contract might specify that teachers will report to work fifteen minutes prior to the start of school. In this case a change of school hours would not violate that provision thus the board could implement a change in school starting time without violating the "arrival time" clause within the contract.

This "impact test", if you will, must be applied to all subjects within the contract to determine whether there is a possibility of a contract violation. Once again however the Secretary's designee must state that either the individual teacher or the union must resolve a question of a contract violations through the contracted grievance procedure or district court. Contract violation charges are not within the Secretary's jurisdiction to resolve.

Any change in Board policy which results in a change of a mandatorily negotiable subject not contained within an agreement would properly be adjudicated before the Secretary.

For example, a Board might properly be charged with a violation of K.S.A. 72-5430 (b) (5) if the Board implemented a "zero hour" and; 1) implementation of "zero hour" required teachers to arrive earlier than had previously been required and 2) arrival time was not spoken to in the agreement. In such a case the allegation would be that "arrival time" (a mandatorily negotiable term and condition of professional service) was changed

without notice and negotiations of the subject. It would be incumbent upon the Secretary to then determine the facts and order relief if the allegation was upheld.

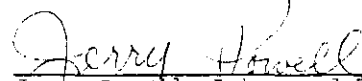
The Secretary's designee finds no allegation of a change in a mandatorily negotiable term and condition of professional service within the complaint before him. Rather the complaint alleges that the "zero hour" change itself constitutes the failure to bargain a mandatorily negotiable term and condition of professional service. The Secretary's designee has previously found in this order that "zero hour" (school hours) is not a mandatorily negotiable subject. He must, therefore, find that the Board was not required to negotiate this subject, thus the Board did not commit a prohibited practice.

In summary the Secretary's designee has found that:

- 1) A "tentative" agreement reached as a result of mediation by representatives of the parties is not binding on either party;
- 2) "Zero Hour" within the meaning as defined by the parties to this complaint is not a mandatorily negotiable term and condition of professional service;
- 3) The offer of additional funds to extend the agreement an additional year was not an attempt to limit statutory rights of the union;
- 4) The Secretary has no jurisdiction to rule on alleged contract violations; and the union failed to show that the Board is paying an employee a supplemental salary which is inconsistent with the agreement;
- 5) The Board is within its rights to offer two salary amounts based upon duration of agreement even if one such position was unknown to the union prior to the filing of position papers at the outset of fact-finding.

It is therefore the order of the Secretary that the pending complaint be dismissed in its entirety.

IT IS SO ORDERED THIS 20th DAY OF March, 1987.



Jerry Powell, Labor and Employment
Standards Administrator
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Topeka, Kansas 66603-3150