



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 86- 44

David G. Shriver
Attorney for U.S.D. No. 418
1016 North Main Street
P.O. Box 1313
McPherson, Kansas 67460

Re: Schools -- Teachers' Contracts -- Due Process
Procedure; Notice to Discontinue Contract;
Negotiability of Date

Synopsis: Terms of teachers' contracts which are mandatorily negotiable are listed in K.S.A. 72-5413(1). Other matters are permissively negotiable if the parties agree they are properly related to professional service, the parties are willing to negotiate, and the matter is not controlled by statute. Pursuant to K.S.A. 72-5437, a teacher must give timely notice of his intent not to return the following school year. Accordingly, the date by which a teacher must notify the board of education of his decision not to continue is not negotiable and cannot be modified by contract. Cited herein: K.S.A. 72-5411; 72-5413(1); 72-5414; 72-5437.

* * *

Dear Mr. Shriver:

As the attorney for Unified School District No. 418, McPherson, Kansas, you ask our opinion regarding the negotiability of a term in a teacher's contract. Specifically, you ask whether the date (specified in K.S.A.

72-5437) a teacher must notify the school board of his intent not to return the following school year is negotiable.

You inform us that the contract in question is worded as follows:

"1. PROCEDURE FOLLOWING A BINDING AGREEMENT RATIFIED ON OR BEFORE May 10.

"In the event of failure to give notice that the teacher does not desire continuation of the contract in accordance with K.S.A. 72-5437, the Board may report said default to the Professional Teaching Practices Commission for action pursuant to K.S.A. 72-8506 and K.S.A. 72-8507.

"2. PROCEDURE FOLLOWING A BINDING AGREEMENT RATIFIED AFTER MAY 10.

"In the event that a negotiated agreement had not been reached by May 10, the penalty clause described in paragraph II.B.1. above shall commence fifteen days following ratification of the negotiated agreement, or June 15, whichever occurs first."

Under Kansas law, a teacher's employment contract is deemed to continue for the following school year unless the board of education notifies the teacher in writing of its intention to terminate or not renew the contract, or the teacher gives written notice of his desire not to continue the contract. K.S.A. 72-5411; 72-5437. Notice given by a teacher must be timely, as specified in K.S.A. 72-5437:

"A teacher shall give written notice to the board that the teacher does not desire continuation of the contract on or before May 10 or, if applicable, not later than 15 days after final action is taken by the board upon termination of professional negotiation absent a binding agreement under article 54 of chapter 72 of Kansas Statutes Annotated, whichever is the later date." See K.S.A. 72-5411.

By statute, teachers have the right to join employees' organizations which negotiate with the board of education "for the purpose of establishing, maintaining, protecting or improving terms and conditions of professional service." K.S.A. 72-5414. The phrase "terms and conditions of professional service" is defined by K.S.A. 72-5413(1) as follows:

". . . (1) salaries and wages, including pay for duties under supplemental contracts; hours and amounts of work; vacation allowance, holiday, sick, extended, sabbatical, and other leave, and number of holidays; retirement; insurance benefits; wearing apparel; pay for overtime; jury duty; grievance procedure; including binding arbitration of grievances; disciplinary procedure; resignations; termination and nonrenewal of contracts; reemployment of professional employees; terms and form of the individual professional employee contract; probationary period; professional employee appraisal procedures; each of the foregoing is a term and condition of professional service, regardless of its impact on the employee or on the operation of the educational system; and (2) matters which relate to privileges to be accorded the recognized professional employees' organization, including but not limited to, voluntary payroll deductions, use of school or college facilities for meetings, the dissemination of information related to the professional negotiations process and related matters to members of the bargaining unit on school or college premises through direct contact with members of the bargaining unit, the use of bulletin boards on or about the facility, and the use of the school or college mail system to the extent permitted by law, reasonable leaves of absence for members of the bargaining unit for organizational purposes such as engaging in professional negotiating and partaking of instructional

programs properly related to the
representation of the bargaining unit
. . . ."

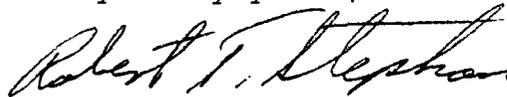
Items included under K.S.A. 72-5413(1) are mandatorily negotiable contract terms. U.S.D. No. 501 v. Secretary of Kansas Department of Human Resources, 235 Kan. 968 (1984). When proposed by either party, mandatorily negotiable items must be negotiated in good faith by both parties. Tri-County Educators' As'sn. v. Tri-County Special Ed., 225 Kan. 781, 783 (1979). "Permissively negotiable" items are those which the parties to collective negotiations mutually agree are properly related to professional service and are willing to negotiate. NEA-Parsons v. U.S.D. No. 503, 225 Kan. 581, Syl. ¶1 (1979). Matters controlled by statute, however, are not negotiable. Id. at 586; Tri-County Educators' As'sn. v. Tri-County Special Ed., 225 Kan. at 784.

The contract provision that you submitted to us provides that, if a negotiated agreement is not reached by May 10, a teacher has fifteen days following ratification of the negotiated agreement, or June 15, whichever occurs first, to notify the board of education that he does not desire to continue the contract. In our opinion, the date by which a teacher must give notice is not mandatorily negotiable, as it is not an item listed under K.S.A. 72-5413(1). In addition, this term is not permissively negotiable because the time that notice must be given is set by statute. K.S.A. 72-5437 provides that a teacher must give notice by May 10 or not later than fifteen days after final action is taken by the board upon termination of professional negotiation absent a binding agreement, whichever is the later date. Parties to the negotiation of teachers' contracts, therefore, can not modify this rule by providing that teachers must notify the board by June 15, even though negotiations have not terminated.

In summary, terms of teachers' contracts which are mandatorily negotiable are listed in K.S.A. 72-5413(1). Other matters are permissively negotiable if the parties agree they are properly related to professional service, the parties are willing to negotiate, and the matter is not controlled by statute. Pursuant to K.S.A. 72-5437, a teacher must give timely

notification of his intent not to return the following school year. Accordingly, the date by which a teacher must notify the board of education of his decision not to continue is not negotiable and cannot be modified by contract.

Very truly yours,



ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS



Rita L. Noll
Assistant Attorney General

RTS:JSS:RLN:crw