

STATE OF NORTH DAKOTA

ATTORNEY GENERAL' S OPINION 91-23

Date issued: December 23, 1991

Requested by: Representative August Ritter

- QUESTIONS PRESENTED -

I.

Whether North Dakota Century Code chapter 15-38.1 (the Act) requires a school board to conduct negotiations with employees who do not hold teaching certificates issued under N. D. C. C. ch. 15-36.

II.

Whether a group of administrators who have had a history of common representation can be an appropriate negotiating unit under N. D. C. C. ' 15-38.1-02(2).

- ATTORNEY GENERAL' S OPINION -

I.

It is my opinion that North Dakota Century Code chapter 15-38.1 (the Act) only requires a school board to negotiate with employees who hold a teaching certificate issued under N. D. C. C. ch. 15-36.

II.

It is my further opinion that a group of administrators who have had a history of common representation can be an appropriate negotiating unit under N. D. C. C. ' 15-38.1-02(2).

- ANALYSES -

I.

N. D. C. C. ' 15-38.1-01 provides in pertinent part that it is:

The policy of this state to promote the improvement of personnel management and relations between school boards of public school districts and their certificated employees by providing a uniform basis for recognizing the right of public school certificated employees to join organizations of their own choice and be represented by such organization in their professional and employment relationships with the public school districts.

(Emphasis supplied.) The phrase "certificated employees" is not defined in the Act or elsewhere in the North Dakota Century Code. The Superintendent of Public Instruction issues credentials to persons including teachers. However, these credentials are not the certifications contemplated by the Act.

In determining the meaning of a word in a statute the commonly understood meaning is to be used. N. D. C. C. ' 1-02-02. The word "certificated" means "[t]o furnish with or attest by a certificate." READERS DIGEST GREAT ENCYCLOPEDIA DICTIONARY 233 (3rd ed. 1969). Thus, N. D. C. C. ' 15-38.1-01 contemplates negotiation with public school employees who have received a certificate. However only "administrators" and "teachers" are authorized to form "appropriate negotiating units." N. D. C. C. ' 15-38.1-02(1) and (6). Teachers are certified under chapter 15-36. N. D. C. C. ' 15-38.1-02(6) specifically refers to the certification required of teachers. The law is not so specific concerning the type of certification required for administrators however.

School administrators may take many forms (i. e., business managers, athletic department heads, principals, or superintendents). However for the reasons given below I conclude an administrator must be a certified teacher to require a school board to negotiate under the Act.

N. D. C. C. ' 15-29-08(21) requires principals to be certified by the Department of Public Instruction. N. D. C. C. ' 15-29-08(11) allows the school board to require school superintendents "to act as principal or teacher in the school system of the district." The Superintendent of Public Instruction is statutorily authorized only to certify teachers. N. D. C. C. ' 15-21-09. Previously this office concluded in a letter to the Superintendent of Public Instruction that there was "no provision for including non-certified personnel within the provisions of [the Act]." Letter to the Honorable M. F. Peterson from Gerald Vande Walle (January 3, 1975). After the Act was enacted, this office also provided the Superintendent of Public Instruction with a letter concluding that a guidance counselor was considered a teacher for purposes of the Act. In reaching that conclusion the letter relied upon the assumption that the purpose of the criteria that a teacher be "employed primarily as classroom teachers" was to distinguish teachers from administrators under the Act. The following language is helpful in understanding the conclusion.

I assume that guidance counselors are certificated as provided by Chapter 15-36 of the North Dakota Century Code. If they are not so certified they would not, of course, be considered as teachers for purposes of the negotiations law. Assuming they are certified however we note the definition of teacher adds another criteria, i. e., they must be employed primarily as classroom teachers. Both criteria must be met. However, we believe the purpose of the second criteria was to distinguish the teacher from the administrator, i. e., a person who had some administration duties but was primarily a classroom teacher would be classified with the teachers rather than the administrators. A person who was

employed for the purpose of devoting at least fifty percent of his time to the duties of administration would, on the other hand, be classified as an administrator even though he had some classroom duties. Thus, it appears to me the requirement of being employed primarily as a classroom teacher was to distinguish the individual from the administrator.

Letter to Honorable M.F. Peterson from Gerald W. Vande Walle (January 4, 1974).

Furthermore I note the only other place in the Century Code where the phrase "certificated employee" is used is in reference to student teachers. In N. D. C. C. ' 15-47-42 student teachers are "given the same legal authority and status as if the student teacher were a certificated employee of the school district in which he is assigned." I therefore conclude the "certificated employees" referred to in the Act are persons who are certified as teachers although they may be acting in administrative capacities. It is therefore my opinion that N. D. C. C. ch. 15-38.1 only requires a school board to negotiate with employees, whether administrators or teachers, who hold teaching certificates. It does not require the school board to conduct negotiations with uncertified employees. A school board may meet with uncertified employees and reach an agreement concerning employment conditions and wages however. See Letter to Clifford Rau from Gerald W. Vande Walle (February 7, 1975) (school board not required to negotiate with teacher aides, however they "presumably could agree to negotiate for teacher aides positions.")

II.

N. D. C. C. ' 15-38.1-02(2) defines an appropriate negotiating unit as "a group of administrators having common interests, common problems, the common employer or a history of common representation, which warrants that group being represented by a single representative organization in negotiations with the school board." (Emphasis supplied.) "In its ordinary sense, the term 'or' is a conjunction indicating an alternative between different things or actions." State v. Silseth, 399 N.W. 868, 870 (N.D. 1987). Thus, a group of administrators who meet any one of the four factors listed in N. D. C. C. ' 15-38.1-02(2) may be considered an appropriate negotiating unit. It is therefore my opinion that a group of administrators which has a "history of common representation" may be considered an appropriate negotiating unit under N. D. C. C. ch. 15-38.1.

- EFFECT -

This opinion is issued pursuant to N. D. C. C. ' 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.

Nicholas J. Spaeth
Attorney General

Assisted by: Rosellen M Sand
Assistant Attorney General

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