

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

**BROOKINGS EDUCATION
ASSOCIATION,**

Petitioner,

vs.

**BROOKINGS SCHOOL DISTRICT #5-1
and BOARD OF EDUCATION,**

Respondent.

HF No. 5E, 2015/16

Decision

The Department considers this case pursuant to its authority under SDCL 3-18-

4:

When a governmental agency declines to grant formal recognition or when a question concerning the designation of a representation unit is raised by the governmental agency, labor or employee organization, or employees, the Department of Labor and Regulation or any person designated by it shall, at the request of any of the parties, investigate such question and, after a hearing if requested by any party, rule on the definition of the appropriate representation unit. The department shall certify to the parties in writing the proper definition of the unit. In defining the unit, the department shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the principles and the coverage of uniform comprehensive position classification and compensation plans in the governmental agency, the history and extent of organization, occupational classification, administrative and supervisory levels of authority, geographical location, and the recommendations of the parties.

The question before the Department is whether the Brookings School District's (District's) secretaries group should be added to the Brookings Education Association's (BEA's) bargaining unit. (The superintendent's secretary handles confidential negotiation information, and is therefore not eligible to be in the unit.)

The secretaries approached BEA about joining the association in the spring of 2015. A majority of the secretaries voted to join them that fall. In November, 2015,

BEA and the secretaries formally requested the District's Board recognize the secretaries as part of the bargaining unit. In January, 2016, the Board voted against recognizing the combined unit, and the petition in this case followed.

Not all the factors in SDCL 3-18-4 need to be considered in every case. *Appeal of City of Aberdeen*, 270 N.W.2d 139, 141 (SD 1978). A community of interest is a consideration, i.e., when a group's duties, obligations, and responsibilities are substantially similar to groups in the existing unit. *Id.*

The existing BEA unit consists of teachers, instructional assistants (paraprofessionals or teaching assistants,) and nurses. The collective bargaining agreement between BEA and District recognizes instructional assistants, certificated staff except the superintendent, assistant superintendent, administrative assistants, and those director, principals, vice principals, coordinators and supervisors who spend less than fifty percent of their time in the classroom.

On paper, the secretaries and BEA unit members are dissimilar. Teachers need a four-year college degree and are required to be engaged in continuing education; TAs are required to have a two-year degree, secretaries a high school education. Teachers and TAs spend the vast majority of their time in the classroom, instructing students and developing lesson plans. Only a few teachers/TAs work in the summer. Secretaries always work into at least part of the summer, and the District administrators who testified said the secretaries' primary duty is to provide administrative support to those administrators.

It is also true that BEA unit members and secretaries are treated differently in benefits, hours, grievance procedures, and evaluations. However, the degree to which this a product of the truly distinct nature of their work, versus the fact that BEA members collectively bargain their conditions and secretaries do not, is unclear, nor has

the District provided information about any inherent difficulties in fusing the two groups. TAs are paid hourly (like secretaries,) and there has been no testimony that this creates undue negotiation problems for the District, or negotiations would be made more cumbersome.

The reality of the secretaries' day to day work environment is quite different from the paper version. At least one of the secretaries who testified, Jan Schallenkamp, had been a certified teacher for many years before coming out of retirement to be a secretary, so she was uniquely qualified to identify the similarities and differences between teachers, TAs, nurses, and secretaries. Beyond the many clerical and support duties they perform, secretaries are essentially part-time nurses when the nurses are off duty. (Ms. Schallenkamp was certified to administer medications, operate a defibrillator, perform CPR, and other first aid duties.) They train teachers on how to use and enter information in the district's automated grading system (and enter grades intermittently, though they do not assess student performance as such.) Infrequently, when a substitute teacher or TA does not report to work as planned, the secretary goes to the classroom and performs that job, though usually for only part of the school day. They monitor the quiet room (elementary school and middle school parlance) and the in-school suspension room (high school version) where students are sent when they have discipline problems, or are behind on their homework, and need the secretary to work them through it. This generally occurs daily. They monitor the entry doors to only allow people in who do not represent safety risks. They do lunchroom, playground, and end of day bus duty in a manner similar to TAs. When secretaries temporarily step away from their desks, TAs often cover for them.

Illustrative is the testimony of Deb Ulvestad, a secretary at the high school for seventeen years:

“Well, I wear a lot of hats in the school district. I do substitute teachers; I do dual credit; I help with online courses, transcripts, sometimes school lunch; substitute teach in classrooms.

This week I was in – yesterday, in fact, I was in building trades, that was an adventure. I’ve done automotive project design, math this week – no, that was last week Friday, stepped into a math classroom for the teacher; study halls, if a teacher or a sub didn’t show up.”

Ms. Ulvestad has helped students get and work through their homework, or provided first aid to kids that “might have shot an air hammer through their hand just for kicks,” worked the lunchroom, assisted teachers maintaining classroom order when they step out temporarily, and dealt with oppositional, defiant students coming from the classrooms (“We’re getting more ... all the time”) including working regularly with the school resource officer assigned by the police department.

When asked why she wanted to be able to participate in the BEA unit, Ms.

Ulvestad responded this way:

“I want to have a voice that is acknowledged. I feel that we’re never asked anything, we are never told what has been changed in the certified handbook. *Well, you should have known that.* Well, I don’t – I don’t – I’m sorry, but I have a big job to do and I don’t know all the details in the certified handbook.

And when it gets changed and we’re not told and then we’re told after the fact if we’ve done something wrong or our hours have been changed or our days have been changed or – it’s disheartening because I thought we were all in the same ball game.”

(Emphasis added.)

Reviewing the 3-18-4 standards in light of these facts (and incorporating community of interest):

The principles of efficient administration of government. Adding the secretaries to the existing unit appears, if anything, to make administration of the district more efficient. Secretaries are expected to perform a mixture of the tasks done by teachers,

TAs, and nurses, and negotiating with one group instead of a group and individual secretaries allows for a consistent message.

The principles and the coverage of uniform comprehensive position classification and compensation plans in the governmental agency. For a time, because the BEA unit has different evaluation standards, grievance procedures, and the like from the secretaries, some thought will have to be given about how to work with both groups in the same unit. It is also acknowledged that teachers have funding that is earmarked for them, so what is available to meet their demands differs from others, but the District has shown itself able to deal with that in negotiating with a unit having TAs and nurses, who do not benefit from these earmarked funds. There has been no testimony that adding secretaries to the unit presents an undue or excessive burden, or does violence to the classification and compensation plans the District uses.

The history and extent of organization. The BEA unit has had its present composition since it was created. What appears to have changed, at least for the secretaries, is the liability risk they believe they face in performing their everyday duties. As students become more “oppositional and defiant,” and secretaries are increasingly charged with dealing with them in a way that overlaps what traditionally has been a teacher’s, TA’s, or even administrator’s duty, their commonality of interest with the BEA unit members is correspondingly greater.

Occupational classification. There are obvious differences between a teacher, a TA, a nurse, and a secretary. Within the District, however, those occupations share enough responsibility that the lines between them are occasionally, and in some respects frequently, blurred. The District has no problem dealing with the present BEA unit having three distinct occupations in it, and a fourth which has elements of each but still distinct should not create undue issues. The District spent a fair amount of time at

the hearing going into the differences in formal education requirements among teachers, TAs, nurses, and secretaries, and it should not be deterred from rewarding staff through negotiated compensation for the staffs' efforts in obtaining, maintaining, and expanding their education. But this should not stand in the way of recognizing a unit with an additional, distinct component; it already includes salaried teachers with hourly TAs.

Administrative and supervisory levels of authority. Secretaries will continue to answer to their administrators (as, ultimately, all District staff do.) There will be no impact to that by expanding the BEA unit.

Geographical location. All staff are located in Brookings.

The recommendations of the parties. BEA has supported the secretaries' petition, and urges an commonality of interest.

Having reviewed the statutory elements, and community of interest in particular, it is concluded the secretaries are appropriately included in the present BEA bargaining unit, and BEA's petition should be granted. Counsel for Petitioner is directed to submit findings of fact, conclusions of law, and an order consistent with this decision in twenty (20) days after her receipt of the Decision; counsel for Respondent may submit objections to Petitioner's submission and his proposals in twenty (20) days after receipt of Petitioner's submission.

Dated this 5th day of September, 2017.

James E. Marsh
Director