

February 14, 2012

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Letter Decision and Order

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Re: HF No. 4 U, 2011/12 – Mitchell Education Association v. Mitchell School
District #17-2 and Board of Education

Dear Counsel:

Submissions:

This letter addresses the following submissions by the parties:

November 1, 2011 Respondent's Answer and Motion to the Petition for
Hearing on the Unfair Labor Practice;

Affidavit of Joseph Graves:

January 12, 2012 Petitioner's Answer to Respondent's Motion for
Summary Judgment;

Petitioner's Brief in Support of Petitioner's Answer to
Respondent's Motion for Summary Judgment;

Affidavit of Curtis Smith in Opposition to
Respondent's Motion for Summary Judgment; and

January 24, 2012 Respondent's Brief in Support of Respondent's
Motion for Summary Judgment.

Background:

The facts of this case are as follows:

1. The Mitchell Education Association (Association) and the Mitchell School District and Board of Education (District) pursued a course of collective bargaining for the terms and conditions of employment for the 2011-12 school year.
2. Association and District were unable to reach agreement regarding the terms and conditions of employment for the 2011-12 school year.
3. Association alleges that the District failed to provide specific rationale for its proposal to eliminate planning time for art, music and physical education teachers during three official meetings.
4. Association alleges that the District provided specific rationales for all other proposals.
5. District alleges that it provided a rationale for its proposal to eliminate planning time for art, music and physical education teachers at the exchange of proposals on May 10, 2011.
6. Association and District met to negotiate three times before District declared impasse on May 20, 2011.
7. After impasse was declared, Association requested conciliation.
8. Conciliation was originally scheduled for August 24, 2011, but was postponed.
9. Association and District met on August 24 anyway in an attempt to come to an agreement.
10. Various Association negotiations team members also met with Superintendent Graves at various times after impasse was declared.
11. During the various meetings with Superintendent Graves after impasse had been declared, Superintendent Graves supplied reasons for the elimination of planning time for art, music and physical education teachers.
12. Association does not agree to the elimination of planning time for art, music and physical education teachers.

13. When it became apparent that the parties were not going to agree on the elimination of planning time for art, music and physical education teachers, Association and District decided that they would agree to all remaining items except for the elimination of planning time and the ability to assign locker room supervision without compensation.
14. District imposed the items of disagreement along with the tentative agreements.
15. The of elimination of planning time for art, music and physical education teachers leaves those teachers with less planning time than other high school teachers.
16. Additional facts may be discussed in analysis below.

Summary Judgment:

District filed a Motion for Summary Judgment. The authority for summary judgments in unfair labor practice cases is found in SDCL 1-26-18. That provision states in part:

Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. However, each agency, upon the motion of any party, may dispose of any defense or claim:

- (1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law;

SDCL 1-26-18. The South Dakota Supreme Court has discussed summary judgments on numerous occasions. The court stated in McDowell v. Citicorp USA, 2007 SD 53, ¶ 22, 734 N.W.2d 14, 21 the following:

The burden is on the moving party to clearly show an absence of any genuine issue of material fact and an entitlement to judgment as a matter of law. (Internal citations omitted). On the other hand, [t]he party opposing a motion for summary judgment must be diligent in resisting the motion, and mere general allegations and denials which do not set forth specific facts will not prevent issuance of a judgment. (Internal citations omitted). [T]he

nonmoving party must substantiate his allegations with sufficient probative evidence that would permit a finding in his favor on more than mere speculation, conjecture, or fantasy. (Citations omitted).

Id. at ¶ 22.

Unfair Labor Practice:

Association alleges that District committed two unfair labor practices during their negotiations. South Dakota has a statutory definition of the unfair labor practices of both public employees and public employers. SDCL 3-18-3.2 sets forth the unfair labor practices of public employers as follows:

It shall be an unfair practice for a public employer to:

- (1) Interfere with, restrain, or coerce employees in the exercise of rights guaranteed by law;
- (2) Dominate, interfere, or assist in the formation or administration of any employee organization, or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;
- (3) Discriminate in regard to hire or tenure or employment or any term or condition of employment to encourage or discourage membership in any employee organization;
- (4) Discharge or otherwise discriminate against an employee because he has filed a complaint, affidavit, petition, or given any information or testimony under this chapter;
- (5) Refuse to negotiate collectively in good faith with a formal representative; and
- (6) Fail or refuse to comply with any provision of this chapter.

SDCL 3-18-3.1.

Association first asserts that District failed to negotiate in good faith in violation of SDCL 3-18-3.1 (5) and § 3-18-2. It then contends that District discriminated against the art, music and physical education teachers when it eliminated their preparation time in violation of SDCL 3-18-3.1 (3). These allegations will be dealt with in turn.

Good Faith Negotiations:

The South Dakota Supreme Court discussed the parties' obligation to "negotiate collectively in good faith" in Bon Homme, 2005 SD 76, ¶ 22, 699 NW2d at 452. There it stated:

SDCL 3-18-2 provides in part:

The negotiations by the governmental agency or its designated representatives and the employee organization or its designated representative shall be conducted in good faith. Such obligation does not compel either party to agree to a proposal or require the making of a concession but shall require a statement of rationale for any position taken by either party in negotiations.

Id. (emphasis added). Good faith negotiation requires that where a party refuses to agree to a proposal or make a concession, that party is required to provide a "statement of rationale." We do not interpret this requirement as permitting any reason to suffice. To do so would render the language meaningless, and our method of statutory interpretation requires that we find a meaningful understanding of a statute where possible. See Rapid City Educ. Ass'n, 522 N.W.2d at 498. Here, the statute sets forth a requirement that parties to negotiations who neither agree nor concede to a proposal must present a legitimate and specific rationale for their positions.

Id.

In this case, Association contends that District provided no rationale for eliminating preparation time for art, music and physical education teachers during official negotiations. District contends that a rationale was provided during the May 10, 2011 meeting. While semantics may play a role in these diverse versions of the facts, on their face, the parties' view of these events constitutes an issue of material fact. In addition, there are questions as to the legitimacy and specificity of any rationales provided. The department is unable to make an informed ruling on these questions with the scant record at hand. Consequently, District is not entitled to judgment on this issue as a matter of law at this time.

Discrimination:

The department must next consider whether District's elimination of the art, music and physical education teachers' preparation time is discriminatory. It is an unfair labor practice to "[d]iscriminate in regard to ... any ... condition of employment". SDCL 3-18-3.1 (3).

The South Dakota Supreme Court defines “discrimination” in Cain v. Fortis Insurance Co., 2005 SD 39, 694 NW2d 709. While Cain does not deal with unfair labor practices, the definition it provides is instructive, nonetheless. In Cain, the Court stated:

“Discrimination” is defined as the “failure to treat all persons equally where no reasonable distinction can be found between those favored and those not favored.” Black’s Law Dictionary 467 (6th ed 1990).

Id. at ¶ 21.

As the petitioner, Association has the burden of proof. Rininger v. Bennett Co. Sch. Dist., 468 N.W.2d 423 (S.D. 1991). However, once it is shown that District has not treated its art, music and physical education teachers as it has its other high school teachers. The definition provided above makes it incumbent on the District to show that there is a “reasonable distinction” between the two groups of teacher.

District does not dispute that it has treated its art, music and physical education teachers defiantly from its other teachers. Nevertheless, it contends that there is a “rational basis” for the distinction. Ultimately, the question of discrimination, i.e., whether a “reasonable distinction” exists, is a question of fact, not of law. See Myers v. Eich, 2006 S.D. 69, ¶21, 720 N.W.2d 76. Therefore, the department cannot rule here that District is entitled to judgment as a matter of law.

Order:

In accordance with the analysis above, issues of material fact exist in this case and District is not entitled to Judgment as a matter of law. District’s Motion for Summary Judgment is denied. This letter shall constitute the Order in this matter.

Sincerely,

Donald W. Hageman
Administrative Law Judge