

**SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT**

**RAPID CITY AREA SCHOOLS
SECRETARIAL GROUP,**

HF No. 3 E, 2009/10

Petitioner,

vs.

DECISION

**RAPID CITY AREA SCHOOL
DISTRICT 51-4,**

Respondent.

This matter came before the Department of Labor when Petitioner filed a Petition for Unit Determination dated December 23, 2009, pursuant to SDCL 3-18-4. Petitioner seeks certification as the exclusive bargaining unit for a bargaining unit consisting of "all secretarial/clerical employees of the school district, whether part-time, full time, 12 month employees, or less."

Respondent filed an Answer to Petition for Unit Determination dated February 18, 2010, objecting to Petitioner's certification and challenging Petitioner's proposed unit definition. As a result, a hearing was conducted on June 2, 2010, before Donald W. Hageman, Administrative Law Judge. Petitioner was represented by Laura Gibson and Respondent was represented by Michael Hickey, attorney.

Issues:

The legal issues presented at hearing are stated as follows:

1. Whether this case must be dismissed because Petitioner failed to comply with the requirements of ARSD 47:02:02:02 before filing its Petition for Unit Determination?
2. Whether the unit definition should include secretaries who are seasonal employees, work less than 20 hours per week or deal with confidential collective bargaining matters?

Facts:

The Department finds the following facts by a preponderance of the evidence:

1. The Rapid City Area School District 51-4 (District) recognized a bargaining unit during the 1997-98 through 2007-08 school years which included all

2. On May 15, 2009, the South Dakota Education Association and the National Education Association (SDEA) sent a letter to the president of the District's Board of Education on behalf of the Rapid City Secretarial and Clerical Association requesting the initiation of collective bargaining negotiations.
3. The SDEA is recognized as a certified employee organization by the District.
4. Beginning in September of 2009, the District's secretaries communicated with each other as a group by email. They decided not to affiliate themselves with the Rapid City Education Association (RCEA) and attempt to organize their own employee organization called the Rapid city Area Schools Secretarial Group (Secretarial Group). Of the 127 secretarial employees contacted by email, 16 voted to affiliate with RCES, 69 voted to organize their own group and 51 did not respond or voted for neither.
5. At the time of the hearing, the Secretarial Group was not organized formally as a legal entity or association. It had not adopted any bylaws or a mission statement. The Secretarial Group was governed by a "committee of three" and made decisions on a "meet and confer basis.
6. In a letter dated November 13, 2009, the Secretarial Group asked the District's Board of Education for recognition as a certified employee group.
7. In a letter dated December 4, 2009, the District responded to the Secretarial Group's request for recognition in the negative.
8. The Secretarial Group filed a Petition for Unit Determination on December 23, 2009.
9. The record in this case contains no proof of service of the Secretarial Group's November 13, 2009 letter on the SDEA or any other employee organization prior to the filing of the Petition for Unit Determination.
10. The record contains no proof of service of the Secretarial Group's November 13, 2009 letter on the Department prior to the filing of the Petition for Unit Determination.

11. The record contains no evidence that the Secretarial Group's November 13, 2009 letter was posted on the District's premises in one or more conspicuous spots prior to the filing of the Petition for Unit Determination.
12. There is no evidence in the record that the District, its secretarial employees and all employee groups held discussions open to all parties or that all the parties had received prior notice of those discussions.
13. Addition facts may be discussed in the analysis below.

Analysis:

The first question to be answered is whether this matter must be dismissed. The analysis for this question begins with ARSD 47:02:02:02. That provision states:

Before filing a petition under this article, the petitioner must first have filed a written request with all of the parties and with the division, stating its desire to be recognized, to have a determination of a unit made, to have a representative chosen, or any combination of these. A request may be on forms approved by the division or by letter. Upon showing that the parties have in fact held discussions which have been open to all the parties and of which all the parties have been notified this section may be waived.

ARSD 47:02:02:02. ARSD 47:02:01:01(9) defines "parties" as: all employees, the employer, all employee organizations, and any other person having a special interest in negotiations between the employer and its employees.

The language used in ARSD 47:02:02:02 is mandatory. Unless Petitioner can show that discussions open to all parties were conducted, the regulation dictates that Petitioner request recognition as a representative prior to filing a Petition for Unit Determination. The request must be made in writing and served on the District, the Department, the group's employees and all employee organizations.

Served of the request can be made as follows:

Service of a document authorized or required by the Act or this article may be effected upon employees by posting the document on the employer's premises in one or more conspicuous spots where all employees have access and can see it in their general day-to-day business.

Service of a document may be effected upon all other parties and the division by personal service, by registered or certified mail, by telegraph, or by leaving a copy in the principal office or place of business of persons to be served. The verified return by the individual serving the document, setting forth the manner of the service, is proof of service. The return post

office receipt or telegraph receipt, when the document is registered or certified and mailed or telegraphed, is proof of service.

Service upon the chief administrative official of the employer is service upon members of the board. If a party appears by attorney, all papers may be served upon the attorney with the same force and effect as though served upon the party. The division may serve a document upon employees by serving an extra copy with the employer with instructions that it be posted in accordance with this rule.

ARSD 47:02:02:01.

The Secretarial Group sent a letter to the District's Board of Education dated November 13, 2009, seeking recognition as a certified employee group before it filed its Petition for Unit Determination on December 23, 2009. However, the record contains no proof of service of the letter on the SDEA or any other employee organization. There is also no proof of service of the letter on the Department prior to the filing of the Petition for Unit Determination

The record contains no evidence that the Secretarial Group's November 13, 2009 letter was posted on the District's premises in one or more conspicuous spots prior to the filing of the Petition for Unit Determination. There is also no evidence in the record that the District, its Secretarial employees and all employee groups held discussions open to all parties and that all the parties had prior notice of the discussion. Under these circumstances, the Department must determine that Petitioner failed to comply with the provisions of ARSD 47:02:02:02 and this case must be dismissed.

Conclusion:

This matter is dismissed with prejudice. Because of this determination, the second issue in this case need not be considered. Counsel for Respondent shall submit proposed Findings of Fact and Conclusions of Law and an Order consistent with this Decision, within 20 days of the receipt of this Decision. Petitioner may submit objections/proposed Findings of Fact and Conclusions of Law within 20 days after receipt of Respondents' submission. Petitioner shall have 30 days, from the date of receipt of Respondent's proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of formal Findings of Fact and Conclusions of Law. If they do so, counsel for Respondent shall submit such stipulation together with an Order consistent with this Decision.

Dated this 17 th day of September, 2010.

/s/ Donald W. Hageman
Donald W. Hageman
Administrative Law Judge