

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

MEADE EDUCATION ASSOCIATION,

HF No. 4 U, 2005/06

Petitioner,

DECISION

vs.

**MEADE SCHOOL DISTRICT #46-1
and BOARD OF EDUCATION,**

Respondent.

This matter came before the Department of Labor based on an unfair labor practice complaint filed by the Meade Education Association (MEA) pursuant to SDCL 3-18-3.1. A hearing was held before the Division of Labor and Management on March 24, 2006, in Sturgis, South Dakota. Anne Plooster represented MEA. Bruce A. Hubbard represented Meade School District (District) and Board of Education (Board).

At the hearing, two witnesses testified live including Mary Maher and James Heinert. Exhibits 1 through 44 were offered and received into evidence. The sole issue presented was whether the District committed an unfair labor practice when the Board reviewed the newly developed Professional and Technical Staff Handbook and when the Handbook was developed without negotiating the Handbook.

FACTS

The following facts were established by a preponderance of the evidence.

Prior to August 2005, the District had three classifications of employees, including Certified Staff, Support Staff and Administrators. The Negotiated Agreement between MEA and the District (Agreement) governed the employment of the Certified Staff. Superintendent James Heinert determined "over the years, another classification has evolved, and certain negotiated agreement policies have been applied to such employees as well as support staff policies." Therefore, Superintendent Heinert unilaterally created the Professional and Technical Staff classification of employees. Superintendent Heinert also developed the Professional and Technical Staff Handbook (Handbook) specifically for the Professional and Technical Staff.

The Professional and Technical Staff consisted of the General Operations Manager, High School Operations Manager, Communications Specialist, Computer Specialist, Assistant Computer Specialist, Drug-Free Schools Coordinator, GED Instructor, Capable Kids Site Coordinator, School Social Worker, School Nurse and MJROTC Program Instructor. Prior to development of the Handbook, the Professional and Technical Staff were members of the Certified Staff and were part of the bargaining unit represented by MEA. As such, these employees' employment was governed by the Agreement between MEA and the District. The Handbook created by Superintendent Heinert contained terms and conditions of employment that differed from the Agreement.

The District's Policy for "Approval of Handbooks" stated, "District administrators shall publish and distribute staff and student handbooks providing information about pertinent policies and regulations affecting staff and students. The superintendent shall approve all handbooks prior to their publication. All published handbooks will be made available to the Board for informational purposes." At its August 16, 2005, meeting, the Board reviewed the newly developed Handbook and "accepted" the Handbook. On August 17, 2005, the District distributed the Handbook to the Professional and Technical Staff. Neither Superintendent Heinert nor the District negotiated the development or the contents of the Handbook with MEA at any time. Thereafter, MEA timely filed its Petition for Hearing on Unfair Labor Practice.

Other facts will be developed as necessary.

ISSUE

WHETHER THE DISTRICT COMMITTED AN UNFAIR LABOR PRACTICE WHEN THE BOARD REVIEWED THE NEWLY DEVELOPED PROFESSIONAL AND TECHNICAL STAFF HANDBOOK AND WHEN THE HANDBOOK WAS DEVELOPED WITHOUT NEGOTIATING THE HANDBOOK?

SDCL 3-18-3.1 defines unfair labor practices by an employer 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.

MEA alleged that the District committed an unfair labor practice when it failed to negotiate with MEA the development of the Handbook, which contained changes to the terms and conditions of employment for the Professional and Technical Staff. Specifically, MEA argued the District violated SDCL 3-18-3.1(3), 3-18-3.1(5) and 3-18-3.1(6). The burden of proof is on MEA, the party alleging the violation. Rininger v. Bennett County Sch. Dist., 468 N.W.2d 423 (S.D. 1991).

SDCL 3-18-3 provides, in part:

Representatives designated or selected for the purpose of formal representation by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all employees in such unit for the purpose of representation in respect to rates of pay, wages, hours of employment, or other conditions of employment[.]

At the hearing, the Agreements between the District and MEA for the 1996 through 2005 school years were received into evidence. According to the Agreements, MEA has been the continuous and exclusive bargaining representative for all regularly employed certificated personnel for the past ten years, if not longer. MEA is the exclusive bargaining representative for all certificated personnel with respect to rates of pay, wages, hours of employment or other conditions of employment. The District's employee classification for all certificated personnel is the Certified Staff.

The District argued that the Professional and Technical Staff were not members of the Certified Staff; therefore, not subject to the Agreement. This District's argument is rejected. Before the District unilaterally changed the employee classification and developed the Handbook, the Professional and Technical Staff were members of the Certified Staff. In addition, these employees were part of the bargaining unit represented by MEA.

Although the District disputed whether the Professional and Technical Staff were part of the Certified Staff, the District treated these individuals as members of the Certified Staff. Prior to the 2005-2006 school year, the individual employment contracts for the Professional and Technical Staff contained the following language:

The party of the first part is to perform all duties assigned by the party of the second part under the supervision of its Superintendent of Schools and in accordance with the provisions of the laws of the State of South Dakota, school policy, the applicable Negotiated Agreement between the Meade Education Association and Meade School District 46-1, and all administrative directives relating to the duties of the party of the first part.¹

(emphasis added). Further, Article 10, Effect of Agreement, Section 10.2 of the Agreement stated, "Individual Contract – The terms and conditions of this Agreement shall be reflected in individual contracts or employment agreements. The contract document shall be set forth in Appendix F attached hereto and made part hereof. This document shall be issued to each teacher hired."

The language in the individual employment contracts and the Agreement is clear and unambiguous. The individual employee contracts clearly stated these employees' employment will be governed by the applicable negotiated agreement between MEA and the District. The District cannot ignore the fact that those employees Superintendent Heinert placed into the Professional and Technical Staff were subject to all terms and conditions of the Agreement, including that MEA is the exclusive bargaining representative for them.

¹ The individual employment contracts for the Professional and Technical Staff for the 2005-2006 school year did not contain this language as this was the same year that Superintendent Heinert developed the Handbook.

In addition, Superintendent Heinert recognized that the Professional and Technical Staff had been treated as members of the Certified Staff when he unilaterally developed the Handbook. In his rationale to the Board, Superintendent Heinert acknowledged that “certain negotiated agreement policies have been applied to such employees[.]” The District was bound by the fact that the Professional and Technical Staff were subject to the terms and conditions of the Agreement.

Pursuant to SDCL 3-18-3 and the Agreement, MEA is the duly recognized, exclusive and continuous bargaining representative for all regularly employed certificated personnel of the District, including the Professional and Technical Staff. As the Professional and Technical Staff were part of MEA, the District could not unilaterally create a new employee classification and develop a handbook that changed terms and conditions of employment without negotiating with MEA.

The District should have requested the Department’s intervention pursuant to SDCL 3-18-2 and SDCL 3-18-5 before unilaterally changing the employee classifications and developing the Handbook. It was the District’s position that the Professional and Technical Staff were not part of the Certified Staff and MEA’s bargaining unit. However, MEA has been the duly recognized and continuous bargaining representative for the Certified Staff, which includes the Professional and Technical, for well over ten years. SDCL 3-18-2 states:

Public employees shall have the right to form and join labor or employee organizations, and shall have the right not to form and join such organizations. Public employees shall have the right to designate representatives for the purpose of meeting and negotiating with the governmental agency or representatives designated by it with respect to grievance procedures and conditions of employment and after initial recognition by the employer, it shall be continuous until questioned by the governmental agency, labor or employee organization, or employees, pursuant to § 3-18-5. It is a Class 2 misdemeanor to discharge or otherwise discriminate against an employee for the exercise of such rights, and the governmental agency or its designated representatives shall be required to meet and negotiate with the representatives of the employees at reasonable times in connection with such grievance procedures and conditions of employment. The negotiations by the governmental agency or its designated representatives and the employee organization or its designated representatives 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. It shall be unlawful for any person or group of persons, either directly or indirectly to intimidate or coerce any public employee to join, or refrain from joining, a labor or employee organization.

(emphasis added). SDCL 3-18-5 provides:

When a question concerning the representative of employees is raised by the governmental agency, labor or employee organization, or employees, the department of labor or any person designated by it shall, at the request of any of the parties, investigate such question and certify to the parties in writing, the

name or names of the representatives that have been designated or selected. The filing of a petition for the investigation or certification of a representative of employees by any of the parties shall constitute a question within the meaning of this section. In any such investigation, the department may provide for an appropriate hearing, and shall take a secret ballot of employees to ascertain such representatives for the purposes of formal recognition. If the department has certified a formally recognized representative in a unit of employees as provided in § 3-18-4, it shall not be required to consider the matter again for a period of one year unless it appears to it that sufficient reason exists.

Superintendent Heinert unilaterally decided the District needed more than three classifications of employees. Thus, the District unilaterally moved the Professional and Technical Staff out of MEA in violation of SDCL 3-18-2 and 3-18-5. The District failed to acknowledge that MEA was the exclusive bargaining representative for the Professional and Technical Staff in violation of SDCL 3-18-3. Superintendent Heinert created the Professional and Technical Staff classification without properly following the requirements of SDCL 3-18-2 and 3-18-5. The District committed an unfair labor practice when it failed to follow the mandates of SDCL 3-18-2 and 3-18-5.

The District also committed an unfair labor practice when it created the Handbook. The Handbook contained terms and conditions of employment different from the Agreement. Although the District had the authority to publish and distribute handbooks that provided information about pertinent policies and regulations, the District, in this instance, cannot create a handbook that alters terms and conditions of employment already negotiated in the Agreement without negotiating such changes with the bargaining representative as required by SDCL 3-18-2 and 3-18-3. The Superintendent's power to approve a handbook does not extend to changing bargaining units, changing terms and conditions of employment and ignoring the requirements of good faith negotiations.

The Handbook changed language contained within the Agreement. For example, the Handbook changed such provisions as sick leave availability and amount, sick leave buyout monetary amount, criteria for use of sick leave bank, restrictions on use of personal leave, availability of personal leave, availability and criteria for leave without pay, probationary status, evaluation procedures, reduction-in-force procedures, resignation procedures, early retirement benefits, suspension and dismissal of employees and grievance procedures. The District must negotiate any changes to the terms and conditions of employment with MEA, the exclusive bargaining representative for the Professional and Technical Staff. The District failed to negotiate changes when Superintendent Heinert unilaterally changed the employee classification and created the Professional and Technical Staff and Handbook. The District committed an unfair labor practice by developing and "accepting" the Handbook. The District must rescind the Handbook.

MEA demonstrated by a preponderance of the evidence that the District committed an unfair labor practice pursuant to SDCL 3-18-3.1(1), (2), (3), (5) and (6). MEA's request for relief as set forth in paragraphs one through four on page two of its Petition for Hearing on Unfair Labor Practice is granted.

MEA shall submit Findings of Fact and Conclusions of Law, and an Order consistent with this Decision, and if necessary, proposed Findings and Conclusions,

within ten days from the date of receipt of this Decision. The District shall have ten days from the date of receipt of the Findings and Conclusions to submit objections thereto or to submit its own proposed Findings and Conclusions. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, MEA shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 29th day of August, 2006.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge