

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

MITCHELL EDUCATION ASSOCIATION,

4 U, 2011/12

Petitioner,

v.

DECISION

**MITCHELL SCHOOL DISTRICT #17-2
AND BOARD OF EDUCATION,**

Respondent.

This matter came before the Department of Labor and Regulation when Petitioner, Mitchell Education Association, filed a Petition for Hearing on Unfair Labor Practice, dated October 31, 2011, alleging that Respondent, Mitchell School District #17-2 and Board of Education had not negotiated in good faith. The Mitchell School District filed an Answer and motion for summary judgment, dated November 30, 2011. The Department denied Mitchell School District's motion for summary judgment. The matter was heard by Donald W. Hageman, Administrative Law Judge on April 4, 2012, at Mitchell, South Dakota. Anne Plooster represented the Mitchell Education Association. The Mitchell School District #17-2 and Board of Education were represented by Rodney Freeman.

Issue:

Whether the Mitchell School District #17-2 and Board of Education committed an unfair labor practice when it eliminated the guaranteed minimum planning time for its art, music and physical education teachers?

Facts:

The following facts are found by a preponderance of the evidence:

1. The Mitchell Education Association (Association) and the Mitchell School District #17-2 and Board of Education (District and Board) pursued a course of collective bargaining for the terms and conditions of employment for the 2011-12 school year.
2. At the first negotiating session on May 10, 2011, Association representatives met with the Superintendent of Schools, Dr. Joseph Graves, and two Board members.

3. The parties met again on May 12 and May 16, 2011.
4. At the conclusion of the three negotiation sessions the parties had still not reached an agreement on a few items.
5. Among the items about which the parties disagreed was the District's proposed change to Policy 723, Teaching Assignment. That proposal stated:

Add the following sentence to the policy, immediately prior to the last sentence of the policy: "Regardless of the foregoing, teachers in the areas of art, music and physical education shall have no guaranteed minimum number of blocks, periods, or minutes for planning purposes and, thus, also not eligible for extra pay for seventh class assignments, 4th block assignments, or an additional number of contact minutes."
6. The parties were unable to reach agreement and impasse was declared by the Board on May 20, 2011.
7. District imposed its last offer, including its proposed changes to Policy 723, on September 12, 2011.
8. District has been following the new language to Policy 723 since its implementation.
9. Dr. Graves testified at the hearing that, he went through each of the 18 Board proposals and gave specific rationale for each, at the first meeting on May 10, 2011, including the elimination of planning time for the art, music and physical education teachers.
10. Dr. Graves testified that the rationale he provided at the May 10, 2011, meeting was a financial necessity and that the planning time for the art, music and physical education were eliminated because those areas were more peripheral to the core curriculum: Math, Reading and English as related to the No Child Left Behind Act.
11. Dr. Graves also testified that the Association never asked any questions about the elimination of guaranteed planning time for art, music and physical education teachers during the remainder of the May 10, 2011, meeting or those thereafter.
12. Curtis Smith, chief negotiator for the Association, testified at the hearing that he did not remember Superintendent Graves providing a rationale for two items including the elimination of planning time for the art, music and physical education teachers at the May 10, 2011 meeting.
13. Curtis Smith also testified that had Dr. Graves stated the rationale, "I wouldn't be saying that he – that the District didn't give rationale."

14. Both hearing testimony of Dr. Graves and Curtis Smith was honest and sincere.
15. The District and Board did not discriminate against the art, music and physical education teachers to discourage membership in the Association.
16. Additional facts may be discussed in analysis below.

Analysis:

Good Faith Negotiations:

Association argues that the District committed an unfair labor practice because it did not negotiate in good faith. SDCL 3-18-3.1 describes what constitutes an unfair labor practice by a governmental entity. SDCL 3-18-3.1 states:

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;
- (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) (6) Fail or refuse to comply with any provision of this chapter.

SDCL 3-18-3.1.

In addition to SDCL 3-18-3.1 SDCL 6-18-2 requires public entities and public employees to enter into collective bargaining in good faith. Bon Homme County Comm'n v. AFSCME, Local 1743A, 699 N.W.2d 441, 452 (S.D. 2005). “[H]owever, such obligation does not compel either party to agree to a proposal or make a concession.” Rapid City Educ. Assn. v. Rapid City Sch. Dist. No. 51 4, 522 N.W.2d 494, 497 (S.D. 1994) citing SDCL 3-18-2, 3.1, & 3.2.

SDCL 3-18-2 requires “that parties to negotiations who neither agree nor concede to a proposal must present a legitimate and specific rationale for their positions.” Bon Homme County Commission v. AFSCME, 2005 SD 76, ¶ 22, 699 NW2d 441, 452. Additionally, good faith negotiations “require a meaningful statement of rationale for each position taken.” Id. at ¶ 25. Failing to do so can result in the conclusion an unfair labor practice has been committed. Id. Association, as Petitioner, has the burden of proof in this matter. Rininger v. Bennett County School District, 468 NW2d 423 (SD 1991).

The first question involved in this issue is whether Dr. Graves stated the rationale for eliminating guaranteed preparation time for the art, music and physical education teachers. Despite the fact that Dr. Graves and Curtis Smith’s testimony cannot be accurate, they both honestly believed that their version of events was correct. Under these circumstances, the Department is unable to determine whose testimony is factual.

The burden of showing that a rationale was not provided falls on the Association. Absent that factual determination here, the Association has failed to meet its burden of proof.

The question then becomes whether that rationale was legitimate and specific. The Department deems that it was.

Discrimination:

Association also argues that District’s elimination of preparation time for art, music and physical education teachers is discriminatory. SDCL 3-18-3.1 (3) states:

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;

SDCL 3-18-31 (3). Whether discrimination has taken place is a question of fact. Myers v. Eich, 2006 S.D. 69, ¶21, 720 N.W.2d 76. As reflected in Fact 15 above, no evidence was presented at hearing to show that the District or Board discriminated against the art, music and physical education teachers to discourage membership in the Association.

Conclusion:

The Association has failed to meet its burden of proof by showing that the Mitchell School District # 17-2 and Board of Education committed an unfair labor practice when it eliminated the guaranteed minimum planning time for its art, music and physical education teachers. This case is dismissed with prejudice. The District shall submit proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within twenty (20) days from the date this Decision is received. The Association shall have twenty (20) days from the date of receipt of the District’s

proposed Findings of Fact and Conclusions of Law to submit objections thereto or to submit Proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, the District shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 22nd day of June, 2012.

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