

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

DOUGLAS EDUCATION ASSOCIATION,

HF No. 6 U, 2003/04

Petitioner,

DECISION

vs.

**DOUGLAS SCHOOL DISTRICT 51-1
and BOARD OF EDUCATION,**

Respondent.

This matter came before the Department of Labor based on an unfair labor practice complaint filed by the Douglas Education Association (DEA) pursuant to SDCL 3-18-3.1. A hearing was held before the Division of Labor and Management on April 13, 2005, in Box Elder, South Dakota. Anne Plooster represented DEA. Craig A. Pfeifle represented Douglas School District and Board of Education (District). The sole issue presented was whether an email sent to all District employees by Superintendent Joseph Schmitz on May 25, 2004, constituted an unfair labor practice.

FACTS

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

1. On February 13, 2004, Sean Gholson, DEA President and chief negotiator, notified Superintendent Schmitz and the District of DEA's intentions to enter into negotiations for the 2004-05 contract year.
2. Superintendent Schmitz was the chief negotiator for the District.
3. The parties agreed to utilize "Protocols Governing the Contract Development Program Between the Douglas Education Association and Douglas School District 51-1 Board of Education." The Protocols provided ground rules for the negotiation process and had been used in previous negotiations between DEA and the District.
4. Protocol 19 provided that "Contract Matter Committee meetings are closed to all but Committee participants." Protocol 20 stated that "Contract Matter Committee participants are free to consult with or speak to any person before or after Committee meeting."
5. The Protocols were in effect during the "sequence of activity for the contract development program." The sequence of activity included from the time negotiations began until the contract was voted on and signed by the parties.
6. The Protocols did not address the situation where either party declared impasse.
7. The Protocols were not in effect once the parties have declared impasse.
8. The parties commenced negotiations for the 2004-05 contract in March 2004. The parties were able to successfully negotiate all items with the exception of salary.

9. In May 2004, DEA presented the District's last salary proposal to its general membership for a vote.
10. On May 17, 2004, Gholson, on behalf of DEA, sent Superintendent Schmitz a letter and declared impasse on the remaining issue of salary.
11. On May 18, 2004, DEA submitted its Request for Conciliation to the Department.
12. On May 25, 2004, Superintendent Schmitz sent all District employees an email concerning "EMPLOYMENT FOR NEXT YEAR." Superintendent Schmitz sent this email after impasse has been declared and before the conciliation session was conducted. The email stated:

Teachers' contract will be forthcoming with step movement indicated and salary based upon this year's (2003-04) salary schedule. The Douglas School District is at impasse with the Douglas Education Association.

The Classified Employees Handbook containing the new salary schedule was approved with a 1% addition to the salary schedule.

The Administrators Handbook and salary schedule (1% on base) were approved along with salary schedules for directors and coordinators. This amounted to a 1.56% total increase for the administrators and a 2.15% for the coordinators.

As salaries escalate it becomes increasingly more costly to raise them. The Douglas School District will be receiving approximately \$338,000 in "new State monies" for next year. This \$338,000 is meant to cover all District increases in salaries, utilities, supplies, etc. The Federal Impact Aid monies are decreasing and to complicate this situation we are expending close to the monies we are receiving.

Under our proposed 3.17% to the teachers, individuals would be receiving an increase ranging from \$443 to \$2,143. This would cost the school district an additional \$328,000. Under the approved administrators salary schedule increases from \$547 to \$1,453 can be expected (\$16,221 additional cost). Under the approved classified employees schedule increases will range from 10 cents to \$2.67 per hour for a 4.22% total increase (\$163,761 additional cost). In all cases those employees moving up on the salary schedules receive the majority of the monies expended on salaries. The teachers are the highest paid in the State this year and with the 3.17% increase may well remain the highest paid next year. The administrators (principals, directors, and coordinators) also rank at the top in the State. The superintendent's and curriculum director's salaries will remain the same next year saving the District over \$14,000 in other benefits. The classified employees continue to rank in the upper 10% of paid employees in the area.

It doesn't take a mathematician to figure out that when the District is receiving \$338,000 in growth money and is expending \$507,982 in

increased salary, it is moving backwards financially. Because the District is over-expanding a very cautious approach needs to be taken in the years to come. Rather than bemoan the fact that salary increases will be limited as compared to the past, we all should be thankful we have a great job and work environment. If anyone has a question, please call or stop by.

13. On June 23, 2004, DEA filed a Petition for Hearing on Unfair Labor Practice with the Department.
14. The Department conducted the conciliation session on July 30, 2004.
15. The parties were unable to reach an agreement on the salary issue during the conciliation session.
16. Thereafter, DEA timely submitted its Request for Fact Finding to the Department.
17. The Department conducted the fact finding session on September 21, 2004, and issued the Fact Finder's Report of Issues and Recommendations on September 24, 2004.
18. Other facts will be developed as necessary.

ISSUE

WHETHER THE DISTRICT COMMITTED AN UNFAIR LABOR PRACTICE WHEN SUPERINTENDENT SCHMITZ SENT THE MAY 25, 2004, EMAIL TO ALL DISTRICT EMPLOYEES?

SDCL 3-18-2 grants public employees the right to form and join labor organizations and to designate representatives for the purposes of negotiating with the governing agency. Unfair labor practices on the part of an employer are specifically defined by statute. 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; 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.

DEA alleged that the District violated SDCL 3-18-3.1(2), (5) and (6). The burden of proof is on DEA, the party alleging the violation. Rininger v. Bennett County Sch. Dist., 468 N.W.2d 423 (S.D. 1991).

Subsection (2)

DEA argued that the email had a negative impact on the negotiation process and interfered with DEA's ability to negotiate. Gholson testified the email made DEA more determined to participate in the conciliation and fact finding process. This testimony is insufficient to prove an unfair labor practice.

Superintendent Schmitz sent the email after DEA declared impasse. Negotiations between the parties had been completed. The parties were able to resolve all outstanding issues with the exception of salary. The email did not have a negative impact on the negotiation process. There was no evidence presented to demonstrate that the email undermined DEA's ability to bargain effectively. Further, the record was devoid of any evidence to suggest that the email was an attempt by the District to bypass the authorized DEA bargaining representatives. The evidence failed to show that the email dominated or interfered with the administration of DEA. The District did not violate SDCL 3-18-3.1(2).

Subsection (5)

DEA argued the email demonstrated that the District refused to negotiate in good faith with a formal representative. The South Dakota Supreme Court has interpreted subsection (5) to mean "that the parties must seriously work to resolve differences and reach a common understanding." Bon Homme County Comm'n v. AFSCME, 2005 SD 76, ¶ 13.

DEA presented the District's last best offer to its general membership for a vote. Impasse was then declared on May 17, 2004. The salary proposal shared by the DEA negotiating team was the same salary package referenced by Superintendent Schmitz in the May 25th email. Gholson admitted that the District continued to participate in the conciliation and fact finding process before the Department. There was no evidence presented to show that the parties did not work to resolve their differences. If anything, the parties worked diligently as they were able to resolve all issues except one.

DEA also argued that the email was a violation of the agreed upon negotiation Protocols. The Protocols were silent as to whether they applied when the parties reached impasse instead of a signed contract. Therefore, the Protocols ceased to be in effect once impasse was declared.

The evidence did not demonstrate that the District refused to negotiate in good faith. The District did not violate SDCL 3-18-3.1(5).

Subsection (6)

The parties fully participated in the negotiation process. When an agreement could not be reached on the remaining salary issue, DEA declared impasse. If negotiations are not successful, SDCL 3-18-8.1 permits either party to request the Department's involvement. DEA was afforded the opportunity to participate in the entire

negotiation process, the conciliation session and the fact finding session as provided by Chapter 3-18. The email did not cause the District to fail or refuse to comply with any provision of this chapter. The District did not violate SDCL 3-18-3.1(6).

CONCLUSION

DEA failed to present sufficient evidence to support a finding that the email sent by Superintendent Schmitz on May 25th constituted an unfair labor practice pursuant to SDCL 3-18-3.1(2), (5) and (6). DEA's request for relief is denied and its Petition for Hearing on Unfair Labor Practice must be dismissed with prejudice.

The District 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 (10) days from the date of receipt of this Decision. DEA shall have ten (10) 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, the District shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 6th day of July, 2005.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge