

GEIERMANN BERGESON & GULER
LAW OFFICES, P.C.

April 2, 2015

Dr. Douglas Sullivan
Superintendent
Dickinson Public School District
444 4th Street West
Dickinson ND 59601

RE: DEA Petition for Recognition

Dear Dr. Sullivan:

For a number of years, the Dickinson Education Association (“DEA”) has submitted Petitions for Recognition for an appropriating negotiating unit and Petitions for Recognition of a representative organization pursuant to North Dakota’s Teacher – School Board Negotiations Law. These petitions have been consistent in their language and the school board has been consistent in its acceptance of those petitions. Most recently, for the 2014-15 school year, DEA submitted petitions to be recognized as the appropriate negotiating unit and the representative organization on or about September 16, 2014. As required by statute, the school board gave notice of its intent to consider those petitions. The school board recognized the DEA as the representative organization for the appropriate negotiating unit on October 7, 2014. Negotiations then started for the 2014-15 school year and concluded with the acceptance of the 2014-15 Negotiated Agreement by the DEA on December 11, 2014, and the school board on December 12, 2014.

At a school board meeting on December 8, 2014, the Dickinson school board passed several policies which mandated the use of school board forms for any group which desired to be recognized as the appropriate negotiating unit for a representative organization for purposes of teacher/administrator negotiations in the Dickinson School District. The policies required the use of specific forms with specific designations and also included the provision that the failure to use these particular forms would lead to the rejection of the petition. Specifically, the policy states, “failure by a negotiating unit to comply with the above requirements will result in the board rejecting a negotiating unit’s recognition petition(s).”

On February 4, 2015, the DEA submitted a petition for recognition of an appropriate negotiating unit and a petition for recognition as the representative organization with supporting documents for the 2015-16 school year. These documents were identical to documents which have been submitted by the DEA over a number of years and which have been accepted by the school board. On February 12, 2015, the school board, pursuant to statute, posted its notice of intent to consider the petition dated February 4, 2015 submitted

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by the DEA. At a school board meeting on March 3, 2015, the school board considered the petition of the DEA which was submitted on February 4, 2015. After discussion by board members, it was moved by Ms. Ross to reject the petition for recognition received by the DEA dated February 4, 2015, for the reason that it did not comply with the school board policy DLA-Recognition of Negotiating Units. This motion was seconded and was approved unanimously by the board. Thereafter, Mrs. Rude moved that pursuant to the Dickinson School Board Resolution recognizing the DEA as the representative organization for teacher negotiations, adopted by the Dickinson school board on October 8, 2014, and pursuant to N.D.C.C. § 15.1-16-11(6), the Dickinson school board request to negotiate with the DEA over the terms of a professional negotiated agreement. This motion was seconded and was passed unanimously.

I have been asked by the DEA to review the action taken by the school board in rejecting its petition as it was not in compliance with the school board policy and then its action of passing a motion requesting negotiations be held with the DEA. I am of the opinion that the action taken by the board on March 3, 2015, in rejecting the DEA petition is unlawful and the DEA has authorized me to take whatever action is necessary to insure the compliance by the board with the negotiations law.

There is no doubt that there has been a tremendous amount of animosity between the DEA and the school board since the negotiations sessions for the 2013-14 school year had to be resolved through the court system, which included the issuance of an opinion by the North Dakota Supreme Court in July, 2014. It is my opinion as well as the opinion of many DEA members that this board by its recent action is attempting to retaliate against the DEA for the prior court action based upon its various positions during the negotiation process not only in 2013-14, but also in 2014-15. The most recent example of that is the passage of the school board policy restricting DEA's ability to submit its own lawful petitions to be recognized as the representative organization and the negotiating unit for the licensed teachers in the Dickinson School District. Over a number of years, DEA has submitted to the school board the identical petition which was accepted by the school board in the 2014-15 round of negotiations, and for every year prior to that time. The school board, for whatever reason, appeared to have decided that it needed to control the negotiation process and passed policies which attempted to curtail the rights of the DEA when it came to petitioning and to somehow make it lawful for the board to reject petitions which did not strictly comply with the forms required by the policy. This action is unlawful for several reasons.

A review of N.D.C.C. § 15.1-16-11 sets forth the requirements and duties of both an education association and a school board when it comes to the process of petitioning for recognition for negotiations. Pursuant to Subsection 1, if an organization is interested in representing a group of teachers, that organization may file with the board of the school district a petition asserting that the organization represents a majority of the teachers included in the negotiating unit. That was accomplished by the DEA on or about February 4, 2015. The law then provides that within 10 days, the board shall post a notice of its intent to consider the petition. It is undisputed that the petition of the DEA was not contested. The law then provides the very specific requirement on the part of the school board in

considering an uncontested petition by an education association. The law states, "If the petition is not contested, the board shall recognize the petitioner as the representative organization of the negotiating unit, unless it finds in good faith that there is a reasonable doubt the representation exists." See N.D.C.C. § 15.1-16-11(1)(e). This language is clear and unambiguous. It permits the school board to reject a petition only on the basis that there is a reasonable doubt that the DEA does not represent a majority of the teachers employed in the district. It is my understanding that the petitions submitted by the DEA in February of 2015 included signatures of more than 80 percent of the teachers employed in the Dickinson School District. Therefore, there is no reasonable doubt on the part of the school board that the DEA represents a majority of the teachers employed in the district.

It is significant that the school board minutes from March 3, 2015 do not include a rejection of the petition by the DEA on the basis set forth in the statute. Rather, the basis for rejecting the petition is that it did not comply with the school board policy passed in December, 2014, which required the DEA to use the forms of the district. In addition, the board appears to support its rejection of the petition on the application of a statute which does not necessarily apply in this particular matter. According to the school board minutes, the board is of the opinion that under N.D.C.C. § 15.1-16-12(6) there is no need for the DEA to petition for negotiations for the 2015-16 school year as the board had accepted a petition on the part of the DEA in October, 2014. It is my opinion that subsection 6 does not provide an adequate basis for the school board to deny the petition of the DEA which was submitted on February 4, 2015. A clear reading of subsection 6 of the statute simply indicates that the authority of the DEA lasts for one year. That statute was never intended to allow the school board to reject a petition. The only statutory basis to reject a petition is found in subsection 1(e). Moreover, all of the parties know that the negotiation process in the school district was delayed to a great extent because of the successful lawsuit brought by the DEA against the district. The legislature would never have intended to allow a school board to avoid the issue of the acceptance or rejection of a petition for recognition based upon a delay caused by a lawsuit. I believe the true intent of subsection 6 is simply to clarify that the authority lasts for a year which would eliminate the potential petitioning by other groups. It was not meant to be applied to reject the petition by DEA for 2015-16.

It is also my understanding by talking to DEA negotiators and officers that this board has consistently taken the position that the DEA must petition for recognition each year it desires to negotiate. Most recently, it is my understanding that in 2009, the school board took the position that the DEA had to once again petition for negotiations notwithstanding the fact that a contract was reached after the school year had started.

The action of the school board on March 3, 2015 only creates uncertainty as to the application of the law and the school board's intent as negotiations move forward for the 2015-16 school year. It is also clear to every member of the DEA that is knowledgeable about these matters that the school board is simply trying to avoid a confrontation on the application of its school board policy which it passed in December, 2014. I am of the opinion that such a policy is unenforceable as the school board does not have the right to mandate the types of forms used by the DEA as long as those forms are lawful under N.D.C.C. Ch. 15.1-16. I am of the opinion that the acceptance of identical petitions by this

school board over the course of a number of years and the DEA's full compliance of the law are lawful actions.

I have been authorized by the DEA to take whatever actions are necessary, including the filing of a lawsuit, to address the action taken by the board on March 3, 2015. Neither party in this matter desires another lawsuit. There is a tremendous lack of trust between the DEA, the school board and the school administration. This has been borne out recently when a number of grievances had to go before the school board. There is also a tremendous feeling among DEA members I have visited with that this board lacks respect for the time, talent, and efforts put forth by DEA members in the education of children in the Dickinson School District. Actions such as the ones taken on March 3rd by the school board do not change the perception of DEA members.

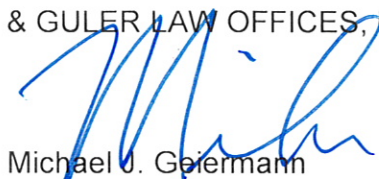
In an effort to resolve this matter and move negotiations forward, I would ask that the board do the following:

1. Rescind its policy DLA-Recognition of Negotiating Units.
2. Rescind the two motions made on March 3, 2015, rejecting the DEA petition and moving for negotiations based upon the petition filed in October, 2014.
3. Pass a motion recognizing the petition submitted by the DEA on February 3, 2015.

The action as outlined herein will move negotiations forward and the parties can once again start to rebuild the trust which is necessary between education associations and school boards. I would ask that the school board take this action within the next 10 days so negotiations can move forward. In the event they do not, the DEA has directed me to start legal action against the board concerning the petition for negotiations. I would rather not do that. If there are any questions, please feel free to contact me.

Yours Very Truly,

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cc: NDU
DEA