



# bulletin



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*Excellence in North Dakota public education through local school board governance* ■VOL XXXIX ISSUE 8

## Agreements After Impasse Limited by North Dakota Supreme Court

*A school district may unilaterally issue a last-offer contract, but the last-offer contract is limited to contractual provisions for only the one school year under negotiation and may not contain provisions applicable to future school years.*

On July 17, 2014, the North Dakota Supreme Court issued its decision in Dickinson Education Association v. Dickinson Public School District. The Court affirmed the district court judgment granting the Dickinson Education Association's (DEA) petition for a writ of mandamus and ordering the Dickinson Public School District (District) to offer the DEA a one-year negotiated agreement for the 2013-14 school year. A writ of mandamus is an order from a court to a party ordering the party to properly fulfill their official duties or correct an abuse of discretion.

The prior negotiated agreements between the DEA and the District contained terms and conditions of employment between certified staff and the District. Terms and conditions of the prior negotiated agreement carry over to the next year unless the conditions are modified, changed, or deleted. The

DEA and the District have negotiated and agreed to a two-year negotiated agreement for the last ten years.

Between December 2012 and May 2013, the District and the DEA held collaborative bargaining team meetings. The meetings ended with the declaration of impasse, as the District determined that continued negotiations were nonproductive. Both the DEA and the District agreed they were at impasse at the May 22, 2013, meeting.

During the negotiation process, the parties discussed various issues. One of which was the parties' attempts to negotiate a two-year agreement which would cover the 2013-14 and 2014-15 school years; however, there was no agreement between the DEA and the District on the establishment of a two-year negotiated agreement. During negotiations, the DEA changed its position on the two-year agreement and informed the District negotiating team of its desire to only enter into a one-year negotiated agreement, which would cover the 2013-14 school year. DEA also informed the

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## NDSBA Annual Convention



### Features Two Keynote Speakers

#### Thursday's Keynote Speaker

Award winning teacher, entertainer, and author Juli Burney makes an amazing connection with her audiences. She is able to entertain with the ability of a headlining comedian



while either motivating or instructing with the ease of a topnotch motivational speaker. Juli has been recognized by her state as Artist of the Year because of her ability to help improve people's lives through humor and effective use of communication tools. She has worked in all 48 continental United States and Canada and has been commissioned by a variety of associations from the National Endowment of the Arts to Fortune 500 companies to develop training programs that stick. She has filmed for Showtime and HBO, along with making several guest appearances

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## IMPORTANT CONVENTION REMINDERS

### Service Award Deadline

Service Award forms must be submitted by **September 12**.

### Convention Rooms

If you have sleeping rooms reserved at the Ramkota Hotel for the 2014 NDSBA Annual Convention, you must give them a specific name for each reserved room by **October 1**, or the rooms will be released. If you have a sleeping room reserved for Friday, you need to cancel if you are not planning to stay. Contact Ramkota Hotel reservations (701)258-7700.

### Convention Delegate Designations

Convention delegates and alternates must be clearly noted on the district's registration form which must be received in the NDSBA office **no later than October 10** in order to vote at Delegate Assembly. Only those registered as alternates **BY THIS DEADLINE** will be allowed to substitute for a registered delegate. There will be no exceptions!

# Congratulations Annette!



The *Bismarck Tribune* recently named North Dakota's top 40 professionals under age 40 who work hard and make a contribution to their community. Through a competitive selection process, Annette Bendish, NDSBA Legal Counsel, was selected to join the "40 Under 40" class of 2014. She is being recognized for her leadership, professional development, and commitment to the Bismarck community. Annette is now among a distinguished group of alumni of 40 Under 40 whose ages range from 24 to 39. The complete publication can be found online at <http://bit.ly/1r5F3Eh>.

## NDSBA Seeks Candidates for Southwest Director

NDSBA Southwest Director Ben Auch will be a candidate for Vice President at our Annual Convention in October. This will create an open seat on the NDSBA Board of Directors. The successful candidate will serve the remaining year of Ben's term (2014-15) and be eligible to run for two consecutive two-year terms.

If you have an interest in serving on the board, please contact NDSBA for a Candidate Information Form. The form must be received in the NDSBA office by **Monday, August 25, 2014**.

The Nominating Committee will review applications and select

candidates to be placed on the ballot for the election held during our annual convention on October 23-24, 2014, in Bismarck. Candidates slated for election by the Nominating Committee will have time to make brief comments at the first business session on Thursday afternoon, October 23.

## Petitions to Change School Start Day Delivered to ND Secretary of State

Proponents of mandating starting school after Labor Day on a statewide basis turned in petitions to the Secretary of State's office on August 6. This initiated measure will be on the November 4 ballot. A spokesperson for the sponsor organization known as "Start ND School After Labor Day," said the measure only moves the start time of the year and keeps school board's ability to map out the schedule for the year otherwise untouched. Board members and school administrators know that North Dakota law requires 175 days of instruction plus professional development days for teachers and parent-teacher conferences with a total of 182 days overall. The consequence of starting school after Labor Day is students will get out of school in early June rather than before Memorial Day.

Currently, the school start date is a local issue and school boards have authority to establish the start date they think is most appropriate for their community. As a proponent of local control, NDSBA strongly supports leaving the school start date as a local school board decision.

## KEYNOTE SPEAKERS

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on radio and television programs. Her humor is delightful, universal, and enlightening with whatever topic she presents. Juli will open the convention at 3:00 p.m. on Thursday, October 23.

### Friday's Keynote Speaker

Friday morning's opening session will begin with Dr. Jack Levin at 8:00 a.m. Dr. Levin is Professor of Sociology and Criminology at Northeastern University in Boston and teaches courses in

prejudice and violence. He is an authority on serial killers, mass murderers, and hate crimes. His topic of discussion at the



convention is juvenile violence and school shootings. Dr. Levin has authored or co-authored 31 books and published more than 150 articles in professional journals and newspapers including *The New York Times*, *Boston Globe*, *Dallas Morning News*, *Chicago Tribune*, and *USA Today*. He has appeared frequently on national television programs such as *48 Hours*, *20/20*, *Dateline NBC*, *The Today Show*, *Good Morning America*, *Oprah*, and *Larry King Live*. Levin has spoken to a wide variety of community, academic, and professional groups including the White House Conference on Hate Crimes, the Department of Justice, the Department of Education, and the International Association of Chiefs of Police.

## bulletin

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**EDITOR** Annette Bendish

**PUBLISHER**

North Dakota School Boards Association  
PO Box 7128  
Bismarck, ND 58507-7128

**TELEPHONE** 1-800-932-8791

**LOCAL** (701)255-4127

**FAX** (701)258-7992

**WEB SITE** [www.ndsba.org](http://www.ndsba.org)

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**2014 NDSBA Annual Convention**

October 23-24, 2014 (new two-day format!)  
Ramkota Hotel, Bismarck

**2015 NSBA Annual Conference**

March 21-23, 2015  
Nashville, TN

**2015 NDSBA Annual Convention**

October 29-30, 2015  
Ramkota Hotel, Bismarck

## ■ ND SUPREME COURT

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District negotiating team of its desire to enter into negotiations for school year 2014-15.

After the negotiation meeting held on May 22, 2013, the North Dakota Education Fact Finding Commission (Commission) was notified of the impasse between the District and the DEA. Both the DEA and the District were required to submit pre-hearing material to the Commission. On June 13, 2013, a hearing of the Commission was held to assist the parties in resolving the impasse between the DEA and the District. The Commission held its hearing in June 2013. The Commission's report recommended: 1) a two-year contract; 2) that all items previously agreed to remain in the agreement; 3) the District's final offer on salary in year one and year two of the two-year contract; and 4) the addition of one professional development day in year two of the contract. The District requested to meet with the DEA after receipt of the Commission's report, but the DEA refused to meet within the twenty-day limit established by law.

The report was then published in the *Dickinson Press*. The parties are required to meet to continue the good faith negotiation process at least once after the Fact Finders' Report has been published. On July 24, 2013, the District and the DEA collaborative bargaining team met and a two-year agreement was again discussed. After the District would not agree to the DEA's salary proposal for year two, the DEA said they would only agree to a one-year contract. On July 25, 2013, the District voted to unilaterally issue contracts based on its final offer of adopting the Commission recommendations in their entirety.

On July 29, 2013, the District notified certified staff members that packets were ready and that each packet included a memo, two copies of their 2013-14 teacher's contract, two copies of their data sheet, and a copy of the Professional Negotiated Agreement 2013-2015. The memo required each certified staff member to return his or her contract to the Central Administration Office no later than

September 3, 2013, by 4:00 p.m. On August 1, 2013, those certified staff members who did not pick up their packet from the Central Administration Office were mailed their packet. At the same time the District issued individual contracts to teachers and members of the DEA, the District also provided to the DEA a copy of the new negotiated agreement for school years 2013-14 and 2014-15.

In August 2013, DEA petitioned the district court for a writ of mandamus and filed an application for temporary restraining order --- essentially asking the district court to bar the District from issuing contracts and requiring teachers to sign them by September 3, 2013. The district court granted the DEA's request, concluding that the unilateral offer of a two-year negotiated agreement is not lawful in North Dakota and the District was required to offer the DEA a one-year negotiated agreement.

Rachel Bruner-Kaufman, attorney for the District, appealed to the North Dakota Supreme Court and argued that the DEA did not meet its burden of proof to show it had a clear legal right to the granting of the petition for writ of mandamus and the district court erred in limiting the school district's authority to unilaterally issue last-offer contracts to only one-year. The District also argued it had authority to issue contracts based on the Commission's recommendations, which contained provisions for both 2013-14 and 2014-15.

The Supreme Court rejected these arguments stating that "because teachers do not have a right to strike under North Dakota law . . . this Court has recognized 'teachers are often without the ultimate bargaining weapon that could pressure their employers into agreement' and 'to compensate for the lack of a right to strike, the legislature has enacted an impasse provision that allows for mediation and a fact-finding process through the Commission.'" The Court went on to state that after the Commission has made its findings public, the law does not provide for further procedures when negotiations are still at impasse.

In *Dickinson Educ. Ass'n v. Dickinson Pub. Sch. Dist. No. 1*, 252 N.W.2d 205, 209-10 (N.D. 1977) (Dickinson

l) the Court established that a school district may give last-offer contracts to teachers following impasse and good faith negotiations. In a subsequent decision, *Dickinson Educ. Ass'n v. Dickinson Pub. Sch. Dist.*, 499 N.W.2d 120, 126 (N.D. 1993) (*Dickinson II*), the Court established limits on the school district's power to issue a unilateral last-offer contract after the good-faith negotiations process had concluded and impasse still existed. The Court also cited its decision in *Kenmare Educ. Ass'n v. Kenmare Pub. Sch. Dist. No. 28*, 2006 ND 136, ¶17 (*Kenmare*) stating: "Thus, the scope of a school district's authority is limited when an impasse exists. A school district is precluded from issuing contracts on negotiable issues for future years. A school district is limited to issuing last-offer contracts for the current period of negotiations."

The District argued the decision in *Kenmare* was clarifying this Court's holding in *Dickinson II* when it stated, "A school district is limited to issuing last-offer contracts for the current period of negotiations." *Kenmare*, 2006 ND 136, ¶ 17, (emphasis added). Further, the District contended the Court has never limited a school district's authority to issue last-offer contracts to one year when the parties were negotiating a two-year contract throughout the negotiation process.

The Court found that the District's argument was flawed and was a misreading of the decision in *Kenmare*. The Court stated: "We are mindful of the unequal bargaining power created by a school district's authority to end contract negotiations. The apparent purpose of allowing a school district to bring good-faith negotiations for an ensuing school year to an end is to permit the schools to operate with a teaching staff for that school year. Limiting a school district's authority to issue unilateral last-offer contracts to a single school year then under negotiation is consistent with that purpose."

The Court concluded the district court did not err in limiting the District's authority to unilaterally issue last-offer contracts to a one-year period and did not abuse its discretion in issuing the writ of mandamus.

**RETURN SERVICE REQUESTED**

## EEOC Issues Updated Enforcement Guidance on Pregnancy Discrimination

As reported on *eeoc.gov*, the U.S. Equal Employment Opportunity Commission (EEOC) has recently issued “Enforcement Guidance on Pregnancy Discrimination and Related Issues,” along with a Question and Answer document about the guidance and a Fact Sheet. This is the first comprehensive update of the EEOC’s guidance on the subject of discrimination against pregnant workers since the 1983 publication of a Compliance Manual chapter on the subject. The EEOC states that this guidance supersedes that document and incorporates significant developments in the law during the past 30 years.

In addition to addressing the requirements of the Pregnancy Discrimination Act (PDA), the guidance discusses the application of the Americans with Disabilities Act (ADA) as amended in 2008, to individuals who have pregnancy-related disabilities.

“Pregnancy is not a justification for excluding women from jobs that they are qualified to perform, and it cannot be a basis for denying employment or treating women less favorably than co-workers similar in their ability or inability to work,” said EEOC Chair Jacqueline Berrien. “Despite much progress, we

continue to see a significant number of charges alleging pregnancy discrimination, and our investigations have revealed the persistence of overt pregnancy discrimination, as well as the emergence of more subtle discriminatory practices. This guidance will aid employers, job seekers, and workers in complying with the Pregnancy Discrimination Act and Americans with Disabilities Act, and thus advance EEOC’s Strategic Enforcement Plan priority of addressing the emerging issue of the interaction between these two anti-discrimination statutes.”

Much of the analysis in the enforcement guidance is an update of longstanding EEOC policy. The guidance sets out the fundamental PDA requirements that an employer may not discriminate against an employee on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth or related medical conditions must be treated the same as other persons similar in their ability or inability to work. The guidance also explains how the ADA’s definition of “disability” might apply to workers with impairments related to pregnancy.

Among other issues, the guidance discusses:

- The fact that the PDA covers not only current pregnancy, but discrimination based on past pregnancy and a woman’s potential to become pregnant
- Lactation as a covered pregnancy-related medical condition
- Circumstances under which employers may have to provide light duty for pregnant workers
- Issues related to leave for pregnancy and for medical conditions related to pregnancy
- PDA’s prohibition against requiring pregnant workers who are able to do their jobs to take leave
- Requirement that parental leave (which is distinct from medical leave associated with childbearing or recovering from childbirth) be provided to similarly situated men and women on the same terms
- When employers may have to provide reasonable accommodations for workers with pregnancy-related impairments under the ADA and types of accommodations that may be necessary
- Best practices for employers to avoid unlawful discrimination against pregnant workers