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DECEMBER 2024

Excellence in North Dakota public education through local school board governance VOL XLIX ISSUE 12

2024 Election and Delegate Assembly Results

The following members were elected to serve on the NDSBA Board of Directors: Lucas Greff (Mott-Regent) – president; Nathan Berseth (Richland 44) – vice president; James Vannett (Nedrose) – northwest director; and Nikkie Gullickson (Fargo) – southeast director. Completing the board are Patti Stedman (West Fargo) – past president; Marlana Knudson (May-Port CG) – northeast director; and Michelle Orton (Dickinson) – southwest director.

The delegate assembly re-adopted seven resolutions as written, dropped one resolution, and adopted a new resolution. A resolution was also brought to the floor that was amended and adopted. Full text is available at www.ndsba.org.

Resolutions re-adopted as written:

1. State Aid for Growing School Districts
2. State Technology Infrastructure Maintenance and Operation
3. State Funding of Special Education and Gifted and Talented Programs
4. Business Manager Certification Program
5. Collective Bargaining
6. School Lunch Program
7. Posting Of Bills in An Alternate Format

Resolution dropped:

1. Deadline for Negotiations

New adopted resolutions:

1. Public Dollars for Public School
2. School Construction

Negotiations Seminar 2025

NDSBA's 2025 Negotiations Seminar will be held on THURSDAY and FRIDAY, Feb. 6-7. It will follow a similar agenda to last year's breakout agenda, which will be available at ndsba.org.

Registration opens on Jan. 2, and instructions will be emailed to business managers soon. Districts are encouraged to register early; fees will increase Jan. 31.



Board Members Receive Awards at Annual Convention

At the 2024 NDSBA Annual Convention, 29 former and current school board members were recognized with the NDSBA Legacy of Service Award in either the Steadfast Commitment or Profound Impact category.

The NDSBA Legacy of Service Award was created in 2024 to honor North Dakota's longest-serving school board members and the impacts they have made on local school districts, communities, and the state of North Dakota.

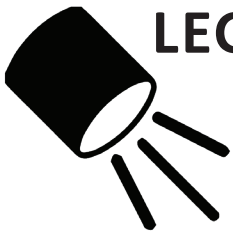
The Steadfast Commitment category honors recently retired or serving school board members that have completed 20 cumulative years of service. The Profound Impact category recognizes school board members who have completed their 15th cumulative year of school board service but leave the board prior to serving 20 years.

Recipients in the Steadfast Commitment category are Lyle Fey, Ashley School District – 21 years; Mike Schwehr, Barnes County North – 26 years; David Seyfried, Central Valley School District – 22 years; Robert Leake, Emerado School District – 30+ years; Jim Johnson, Fargo School District – 23 years; Rodger Affeldt, Garrison School District – 22 years; Dianne Hensen, Glenburn School District – 20 years; Eric Lunn – 24 years and Bill Palmiscno – 31 years, Grand Forks School District; Rick Foss – 32 years and Lavern Johnson, Grenora School District – 30 years; Matthew Asp – 20 years and David Muehler – 23 years, Hankinson School District; Cindy Stremick, Langdon Area School District – 22 years; Michael Lautenschlager, Lewis and Clark School District – 28 years; RoseAnn Johnson, Mandaree School District – 23 years; Linda MacDonald – 26 years, Will MacDonald – 36 years, and Marty Beard – 36 years, Manning School District; Dennis Erickson, Max School District – 33 years; Brian Schanilec, Midway School District – 21 years; Jim Rostad, Minot School District – 20 years; Russell Cain, St. John School District – 25 years; Benjamin Gress, Sweet Briar School District – 22 years; Rick Tweeten, Washburn School District – 20 years; Richard Koski, Wing School District – 21 years; and Neil Meidinger – 26 years and Francis Meier – 29 years, Zeeland School District. The recipient of the Profound Impact Award is Fred Fox, White Shield School District – 16 years, .

Nine school board members were recognized for professional development and service as Veteran Board Members, earning 100 points, and Master Board Members, earning 200 points. Those participating in national meetings earned certificates "with distinction."



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LEGAL SPOTLIGHT

RECENT NORTH DAKOTA SUPREME COURT RULING and its Impact on Schools

By KrisAnn Norby-Jahner, NDSBA General Counsel

The North Dakota Legislature permits select public employees, including teachers, to collectively bargain with their employers. However, determining which positions fit within the statutory definition of “teacher” has been an issue of contention. The North Dakota Supreme Court issued a new ruling in *Fargo Education Association v. Fargo Public School District*, 2024 ND 201 (ND 2024) that addresses this issue.

BACKGROUND OF THE CASE

The Fargo Public School Board entered into a negotiated agreement with the Fargo Education Association outlining a specific wage matrix that applied to anyone hired by the district in the position of a “teacher,” effective for 2023-2025. Although the agreement did not specifically outline a wage matrix for those employed in the position of “school psychologist,” the district had historically paid its directly-employed school psychologists consistent with the wage matrix of past negotiated agreements for administrative ease. In April 2023, the district posted an opening for a special education position. Because the district did not receive any applicants by June 14, 2023, the district accepted bids to fill the position by an independent contractor. The bid was awarded to Full Circle Pediatric Solutions (Full Circle), and the parties entered into a services agreement for a “Special Education Teacher for the 2023-2024 school year.” The agreement was clear that Full Circle was an independent entity

(not an employee), and the district agreed to pay more than it would pay a teacher under the negotiated agreement.

The education association filed grievances with the board, asserting: (1) the district could not offer school psychologists compensation above and beyond the negotiated agreement without negotiating such change, and (2) the district could not contract with a third-party to provide special education services because special education teachers are covered by the negotiated agreement. The board denied the grievances, and the education association filed a lawsuit requesting the district court to order the district to rescind its service agreement contracts with Full Circle and offer new contracts in compliance with the negotiated agreement. The district court denied the association’s petition. The association appealed the decision to the N.D. Supreme Court.

N.D. SUPREME COURT DECISION

The education association argued to the N.D. Supreme Court that *all* school psychologists fall within the definition of “teacher” under N.D.C.C. § 15.1-16-01 (5) and, therefore, are in the negotiating unit and subject to the wage matrix in the negotiated agreement. They argued it did not matter if the district hired school psychologists directly as employees or independently contracted with an outside entity because the agreement still applied. The district argued that a

negotiated agreement, by definition, does not apply to outside independent contractors who are not employed directly by a school district. In addition, school psychologists do not fall within the definition of “teacher” because they are not employed primarily as a classroom teacher.

In its decision, the Court noted under N.D.C.C. § 15.1-16-01 (5), a “teacher” who is entitled to collective bargaining rights under the law is defined as: (1) a school employee, (2) licensed or approved to teach by ESPB, and (3) employed primarily as a classroom teacher. The district court concluded school psychologists are licensed to teach by ESPB (satisfying the second element), but they are not “employed primarily as a classroom teacher” (failing at the third element). The N.D. Supreme Court agreed with the lower court’s conclusion that school psychologists do not fall within the statutory definition of “teacher.”

The Court expressly overruled an important case that has had a stronghold in North Dakota education law for more than 20 years: *Hilton v. North Dakota Education Association*, 2002 ND 209, 655 N.W.2d 60 (ND 2002). In *Hilton*, the court determined whether a school counselor was a teacher within the meaning of N.D.C.C. § 15.38.1-02 (6) (1969) (the definition of “teacher” prior to the enactment of N.D.C.C. § 15.1-16-01 (5)) and found the term “employed primarily as classroom teachers” was

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intended to distinguish “teachers” from the term “administrators.” As such, the *Hilton* court found that school counselors who were clearly not “administrators” would be, therefore, considered “a teacher...for purposes of the negotiation law.” In the recent *Fargo* case, the Court found that *Hilton* is “distinguishable” because of updates to the law. The Court specifically determined *Hilton* incorrectly ignored the statutory requirement a teacher be “employed primarily as a classroom teacher” by finding that any non-administrator employee was a teacher (regardless of whether the employee taught primarily in the classroom): “We overrule *Hilton* to the extent it holds a licensed school district employee who is not an administrator is a teacher irrespective of the employee’s assigned teaching duties.”

Also notable, is the Court did not determine whether Full Circle in the *Fargo* case was properly classified as an “independent contractor” rather than an “employee” (which is the first prong of the three-part test identified above). This is because the

association did not argue Full Circle’s independent contractor status. Rather, the association argued school districts should not be allowed to circumvent N.D.C.C. ch. 15.1-16 (and collective bargaining requirements) by providing services through independent contractors. The Court refused to address whether or not “school districts may provide teaching services through independent contractors” because this was not an issue before the Court. The Court also indicated this may be an issue for the legislature to address if the intent of the law in N.D.C.C. ch. 15.1-16 is not being fulfilled.

IMPACT FOR SCHOOL DISTRICTS

This is the first time the N.D. Supreme Court has addressed the definition of “teacher” in more than 20 years and since, the law was revised to clarify the definition. Previously, schools were held to the standard set forth in *Hilton* and were more likely to apply the term “teacher” liberally and to find any non-administrator licensed employee was a teacher covered

under the negotiated agreement. Now, school districts may apply the standards identified in the three-prong test laid out in the *Fargo* case and N.D.C.C. § 15.1-16-01 (5) to determine who has collective bargaining rights and is entitled to a continuing contract.

Identifying who falls within the definition of “teacher” will be important for all school boards entering into negotiations under N.D.C.C. ch. 15.1-16 when considering petitions from representative teacher organizations, making appropriate determinations and recognitions of negotiating units, and identifying which licensed employees fall under the terms of the negotiated agreement (and must be paid accordingly). This ruling also provides school districts who are having difficulty in filling special education positions with some potential flexibility in exploring outside options.

Please feel free to contact the NDSBA for further information regarding the impact of this ruling on school districts in North Dakota.

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VETERAN BOARD MEMBERS

Levi Bang, Killdeer School District
 Scott Bice, Killdeer School District
 Dan Obrigewitch, Belfield School District
 Stuart Coleman, Bottineau School District
 Michael Haberman, Bottineau School District
 Todd Yahna, Larimore School District
 Karlene Wyman, Newburg United School District

MASTER BOARD MEMBERS

Larinda Velure, Litchville-Marion School District
 Anthony Roorda, Montpelier School District

Superintendent Vacancies

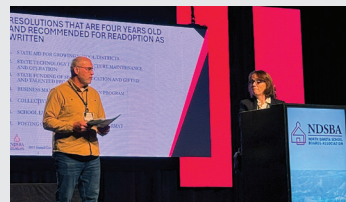
SOUTH HEART SCHOOL DISTRICT

Contact: Amy De Kok, NDSBA • Phone: 701-255-4127
 Email: amy.dekok@ndsba.org • Website: ndsba.org
 Deadline: Open Until Filled • Position Begins: July 1, 2025

GLEN ULLIN SCHOOL DISTRICT

Contact: Michael Heilman or Dr. Mike Bitz, Dakota Leadership Solutions • Phone: 701-527-4621
 Email: mikeheilman1190@gmail.com or burrobbrave@gmail.com
 Website: www.dakotaleadershipsolutions.com
 Deadline: January 10, 2025 • Position Begins: July 1, 2025

Congratulations to all award winners and thank you for your dedicated service!

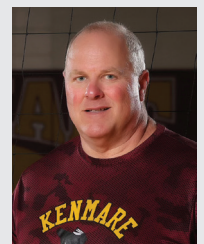


Three NDSBA board members were recognized for their service.

Past president Karl Lembke (formerly Bismarck) received an honorary clock plaque for completing his board service.



Kenmare School Board member Jason Zeltinger received the 2024 Barb Norby Scholarship Award.



Patti Stedman (West Fargo) completed her term as board president and received a gavel plaque.



Jim Rostad (Minot) was recognized for his service as NDSBA Northwest Director, NDSBA officer, and school board member.



2025 NDSBA Negotiations Seminar

February 6-7, 2025
BSC National Energy Center of Excellence,
Bismarck

2025 Local Government Capitol Connection

February 18-19, 2025
Bismarck Event Center | Capitol, Bismarck

2025 COSSBA National Conference

March 21-23, 2025
Atlanta, Georgia

2025 NDSBA Annual Convention

October 9-10, 2025
Bismarck Event Center, Bismarck

**BUSINESS MANAGERS HONORED AT
Graduation and Recertification Ceremony**

Twelve North Dakota business managers were honored for completing the North Dakota School Business Manager Certification Program. Thirty-three students were recognized for recertification.

