

## **CHAPTER 15.1-16 TEACHER REPRESENTATION AND NEGOTIATION**

### **15.1-16-01. Definitions.**

As used in this chapter:

1. "Administrator" means an individual who is employed by the board of a public school district primarily for administration of a school or schools of the district and who devotes at least fifty percent of the individual's time in any one year to the duties of administration of the school or schools of the district.
2. "Negotiating unit" means:
  - a. A group of administrators having common interests, common problems, a common employer, or a history of common representation, which warrants that group being represented by a single representative organization in negotiations with the board of a school district; or
  - b. A group of teachers having common interests, common problems, a common employer, or a history of common representation, which warrants that group being represented by a single representative organization in negotiations with the board of a school district.
3. "Representative organization" means an organization authorized by a negotiating unit to represent the members of the unit in negotiations with a school board.
4. "Strike" means any concerted work stoppage, slowdown, or withholding of contracted services.
5. "Teacher" means a public school employee licensed to teach by the education standards and practices board or approved to teach by the education standards and practices board and employed primarily as a classroom teacher.

### **15.1-16-02. Education factfinding commission - Appointment - Terms - Quorum.**

1. The education factfinding commission consists of three members experienced in educational activities. One member is appointed by the governor, one member is appointed by the superintendent of public instruction, and one member is appointed by the attorney general. The member appointed by the superintendent of public instruction shall serve as the chairman of the commission.
2. The term of each commission member is three years staggered.
3. If a vacancy occurs, the individual who appointed the member to be succeeded shall appoint a new member to serve only the unexpired term of the member to be succeeded.
4. Two members of the commission constitute a quorum.

### **15.1-16-03. Education factfinding commission - Compensation.**

Each member of the commission is entitled to receive compensation at the rate set for a member of the legislative assembly under subsection 1 of section 54-03-20 and reimbursement for expenses, as provided by law for state officers, for attending commission meetings or performing duties directed by the commission.

### **15.1-16-04. Education factfinders - Compensation.**

Each factfinder appointed by the education factfinding commission, other than a commission member who serves as a factfinder, is entitled to receive compensation at the rate of ninety dollars per day and reimbursement for expenses, as provided by law for state officers, for attending commission meetings or performing duties directed by the commission.

### **15.1-16-05. Education factfinding commission - Rules - Powers.**

The education factfinding commission may adopt rules. The commission and any factfinder appointed by the commission have, in the performance of their duties, the powers provided in sections 28-32-33, 28-32-34, and 28-32-36.

**15.1-16-06. Factfinding - Sharing of cost.**

If an impasse is deemed to exist under section 15.1-16-14, the contending parties shall share the cost of factfinding equally.

**15.1-16-07. Representative organizations - Participation.**

1. An individual employed as a teacher may form, join, and participate in the activities of a representative organization of the individual's choosing for the purpose of representation on matters of employer-employee relations.
2. An individual employed as an administrator may form, join, and participate in the activities of a representative organization of the individual's choosing for the purpose of representation on matters of employer-employee relations.
3. Any individual employed as a teacher or as an administrator may refuse to join or participate in the activities of a representative organization.

**15.1-16-08. Representative organization - Negotiating unit - Right to negotiate.**

A representative organization has the right to represent a negotiating unit in matters of employee relations with the board of a school district. Any teacher or administrator has the right to present the individual's views directly to the board.

**15.1-16-09. Scope of representation.**

A representative organization's scope of representation may include matters relating to the terms and conditions of employment and employer-employee relations, including salary and working hours.

**15.1-16-10. Negotiating unit - Formation.**

A group of teachers or a group of administrators employed by the board of a public school district may form a negotiating unit by filing with the board a description of the job groupings or positions that constitute the negotiating unit. Upon receipt of the description, the board shall accept or reject the proposed negotiating unit. If the board accepts the negotiating unit, the teachers or the administrators within the unit may designate or select a representative organization as provided for in section 15.1-16-11.

**15.1-16-11. Representative organization - Selection.**

1.
  - a. If an organization is interested in representing a group of teachers or a group of administrators, the organization may file with the board of a school district a petition asserting that the organization represents a majority of the teachers or the administrators included within a negotiating unit.
  - b. The petition must be accompanied by evidence substantiating the assertion contained in it.
  - c. Within ten days after receiving the petition, the board of the school district shall post notice of its intent to consider the petition in each school wherein the members of the negotiating unit are employed.
  - d. No sooner than ten nor later than twenty days after posting the notice of intent to consider the petition, the board shall investigate the petition, determine the question of representation, and post notice of its determination in each school wherein the members of the negotiating unit are employed.
  - e. 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.
2. If any organization has an interest in representing a group of teachers or a group of administrators and wishes to contest the claim of representation made in the petition under subsection 1, the contesting organization must file with the board of the school district a petition containing a written statement of contest together with substantiating evidence, within ten days from the date on which the board posted the notice of intent to consider the original petition.

3. If the board of a school district fails to make and post notice of its determination or if the board's determination has been contested, the board shall call an election to determine the question of representation not sooner than twenty nor later than thirty days after the posting of the notice of intent to consider the original petition.
4. If the board of a school district receives a petition that is signed by at least twenty-five percent of the members of the negotiating unit and which calls for an election to determine the question of representation, the board shall call the election.
5. The election must be conducted in the manner agreed to by the interested parties. If the interested parties cannot reach an agreement, the election must be conducted in the manner determined by the education factfinding commission under its rules.
6. Once a representative organization has been selected, its authority to represent the negotiating unit continues for at least one year from the date of the selection.

**15.1-16-12. Representative organization - Payroll deduction - Dues.**

If an individual who is employed as a teacher, and who is a member of a representative organization as defined in this chapter, signs a petition requesting that dues for the representative organization be deducted from the individual's regular paycheck, the board of the school district shall comply with the petition. Nothing in this section may be interpreted to mean that the dues of a nonmember must be deducted in that manner.

**15.1-16-13. Good-faith negotiations.**

1. The board of a school district or its representatives and the representative organization or its representatives shall, if requested by either entity, meet at reasonable times and negotiate in good faith regarding:
  - a. The terms and conditions of employment.
  - b. Employer-employee relations.
  - c. Formation of a contract, which may contain a provision for binding arbitration.
  - d. The interpretation of an existing contract.
2. The board of a school district and the representative organization, at the request of either party, shall execute a written contract incorporating any agreement reached.
3. Either the board of a school district or the representative organization may modify or terminate the contract on its annual anniversary date by giving notice of its desire to modify or terminate the contract to the other party not less than sixty days before the annual anniversary date.
4. Nothing in this section compels either the board of a school district or a representative organization to agree to a proposal or to make a concession.
5. Good-faith negotiations must begin no later than the thirtieth day after the representative organization is recognized by the board of the school district, in accordance with section 15.1-16-11, unless otherwise agreed to by the board of the school district and the representative organization.

**15.1-16-14. Impasse - Existence.**

1. An impasse exists if:
  - a. After a reasonable period of negotiation, an agreement has not been formulated and a dispute exists.
  - b. The board of a school district and the representative organization both agree that an impasse exists.
2. An impasse may exist if:
  - a. A written contract entered into between the board of a school district and the representative organization under section 15.1-16-13 does not contain a procedure for resolving a dispute.
  - b. A written agreement entered into between the board of a school district and the representative organization under section 15.1-16-13 contains an inadequate procedure for resolving a dispute.

#### **15.1-16-15. Impasse - Resolution.**

1. If an impasse exists, the board of a school district and the representative organization may agree to seek mediation. The board and the representative organization shall jointly select a mediator and agree to a distribution of the mediation cost. If mediation fails or if mediation is not attempted, the board or representative organization may request that the education factfinding commission provide assistance.
2. If the education factfinding commission is asked to provide assistance under subsection 1 and if the commission determines that an impasse exists, the commission shall act as a factfinding commission or appoint a factfinder from a list of qualified individuals maintained by the commission. A factfinder appointed under this section has the powers designated by the commission. Upon completion of all duties, the factfinder shall make a recommendation to the commission.
3. The education factfinding commission shall:
  - a. Consider the facts, make its findings, and issue a recommendation; or
  - b. Consider the report and recommendation of its factfinder and, after any further investigation the commission elects to perform, make its findings and issue a recommendation.
4. Within forty days from the date the commission is asked to provide assistance, the commission shall deliver its findings and recommendations to the board of the school district and to the representative organization. No sooner than ten nor later than twenty days after its findings and recommendations are delivered to the board and the representative organization, the commission shall make its findings and recommendation public if the impasse is not resolved.
5. If facts are established or a recommendation made in accordance with factfinding procedures agreed to by the board of the school district and the representative organization and the impasse continues, the education factfinding commission may consider the findings and recommendations without instituting its own factfinding procedure and the commission may issue its own findings and recommendations based on the information available. No sooner than ten nor later than twenty days after these findings and recommendations are delivered to the board and the representative organization, the commission shall make its findings and recommendations public if the impasse is not resolved.

#### **15.1-16-16. Participation in a strike - Prohibition.**

Teachers and administrators employed by school districts may not participate in a strike. The board of a school district may withhold some or all the wages otherwise due a teacher or an administrator who elects to participate in a strike in violation of this section.

#### **15.1-16-17. Discrimination - Prohibition.**

Neither the board of a school district nor any administrator employed by the district may discriminate against any individual employed as a teacher or administrator because the individual exercises rights available under this chapter.

#### **15.1-16-18. Representative organization - Recognition - Withdrawal of recognition.**

A contract between the board of a school district and a representative organization bars another representative group from petitioning for recognition and bars the withdrawal of recognition from the representative organization for the duration of the contract or three years, whichever is less.

#### **15.1-16-19. Sick leave - Accumulation.**

The board of a school district shall allow a teacher to:

1. Use at least ten days of sick leave each school year without a loss of compensation; and
2. Accumulate sick leave and carry over from year to year at least thirty days of accumulated unused sick leave.

**15.1-16-20. North Dakota vision services - School for the blind - School for the deaf - Youth correctional center - Contracts of employment for teachers - Personnel policies.**

1. The superintendent of public instruction shall develop contracts of employment and personnel policies applicable to each individual employed as a teacher at North Dakota vision services - school for the blind and the school for the deaf. The director of the division of juvenile services, with the approval of the director of the department of corrections and rehabilitation, shall develop contracts of employment and personnel policies applicable to each individual employed as a teacher at the North Dakota youth correctional center.
2. The contracts required by this section may include the assignment of duties, salaries, work hours, job titles, and a school calendar.
3. The personnel policies required by this section must include job descriptions and nonrenewal, discipline, and dismissal procedures. The policies must seek to harmonize the rights of teachers with laws applicable to other state employees. The superintendent of public instruction and the director of the division of juvenile services, with the approval of the director of the department of corrections and rehabilitation, shall work together in the development of the personnel policies.
4. Each individual employed as a teacher at North Dakota vision services - school for the blind, the school for the deaf, or the youth correctional center is entitled to receive a copy of a master agreement consisting of a policy manual and an individualized contract specifying the individual's job title, contracted hours, salary schedule, benefits, and other details applicable to the individual's employment.
5. For purposes of this section, "teacher" means a contracted state employee who:
  - a. Holds a teaching license or is approved to teach by the education standards and practices board;
  - b. Is employed primarily to provide classroom instruction or individualized instruction;
  - c. Has a work schedule set in accordance with the school calendar;
  - d. Is a guidance counselor, school librarian, itinerant outreach teacher, or a career and technical resource person required to meet teaching and licensure requirements; and
  - e. Is not a superintendent, assistant superintendent, principal, supervisor, substitute, or paraprofessional.

**15.1-16-21. Salary increase - Unfillable position.**

1.
  - a. If, after the conclusion of a school calendar, the board of a school district has a teaching position vacant and if the board, having done all things necessary and proper, is unable to fill that position by the forty-fifth day prior to the start of the district's school calendar with an individual who is highly qualified and who meets reasonable criteria established by the board, the board shall notify the superintendent of public instruction that:
    - (1) A teaching position is vacant;
    - (2) The board has done all things necessary and proper after learning of the vacancy to find a suitable and highly qualified candidate; and
    - (3) The board will be unable to meet the statutory requirements for school approval if the position remains unfilled.
  - b. Unless the superintendent of public instruction has reason to believe that the information contained in the notice as provided in subdivision a is not accurate, the superintendent shall authorize the board, notwithstanding the terms of any agreement negotiated under this chapter, to increase the compensation offered for that position to the extent deemed necessary by the board in order to attract a suitable and highly qualified individual. The compensation paid to a successful applicant under this section may not be reduced in future years.
2.
  - a. If a teaching position becomes vacant during a school calendar or less than forty-five days prior to the start of the school calendar, the board of a school district shall do all things necessary and proper to ensure that the vacancy

causes only minimal disruption to the instruction of students and that the position becomes filled as quickly as possible by a highly qualified individual who meets the reasonable criteria established by the board. The board shall notify the superintendent of public instruction that the vacancy exists and that the board will be unable to meet the requirements for school approval if the position remains unfilled.

- b. Upon receipt of the notice as provided in subdivision a, the superintendent of public instruction shall contact the several education associations in this state and ask that they assist the board of the school district in any way possible to locate and employ an individual under the terms of the district's existing negotiated agreement. Only when the superintendent determines that all reasonable efforts have been unsuccessful may the superintendent authorize the board, notwithstanding the terms of any agreement negotiated under this chapter, to offer the level of compensation it deems necessary in order to attract a suitable and highly qualified individual for the duration of the school calendar.
3. If an individual resigns from a teaching position with a district, the individual may be rehired by the board of that district to fill a vacancy, but the individual is not eligible to receive a level of compensation greater than that provided for in the district's negotiated agreement.
4. If an individual has taught in this state during the preceding twelve months, the individual is not eligible to receive a level of compensation greater than that provided for in the district's negotiated agreement.
5. This section is applicable to contracts that are negotiated under this chapter and which take effect after July 31, 2007.

**15.1-16-22. Negotiation strategy and instructions - Executive session.**

The board of a school district, or any authorized subcommittee of the board, may hold an executive session under section 44-04-19.2 to discuss negotiating strategies or to provide to its representative negotiating instructions, which are applicable to anticipated or pending:

1. Litigation;
2. Adversarial administrative proceedings; or
3. Contracts.