

MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2227

2007 SENATE EDUCATION

SB 2227

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2227

Senate Education Committee

Check here for Conference Committee

Hearing Date: February 12, 2007

Recorder Job Number: 3353, 3354

Committee Clerk Signature

Minutes:

Chairman Freborg opened the hearing on SB 2227, a bill relating to duties of boards of reorganized school districts. All members were present.

Senator Heckaman introduced the bill. She lives in New Rockford. The New Rockford and Sheyenne school districts reorganized and are in their first year as a new school district. The method used to hire new staff for the district resulted in some very confused, angry and disappointed staff, students and community members. The method used was not the method proposed by the reorganizing board. In reorganizing meetings the board stated they would present a list of positions available, staff would have an opportunity to apply. Obviously the new district would not have as many positions as the old districts. On the night the list was to be presented, a different strategy was used by the board. A list of names of teachers who would be getting contracts along with a list of teachers who would not be getting contracts was presented. In a few days, Job Service had openings listed. This bill is written so that future districts that reorganize will have guidelines for staffing. Policy will be more distinct and will support the staff who have worked in these districts. North Dakota teachers are at the bottom of the pay scale. With more districts contemplating reorganization, we don't want them to be at the bottom of the value scale. You could work for a district for over 25 years and next day you

could be on the list of unemployed. We need to close this loophole in our laws and tell our teachers we value them. There are some proposed amendments coming forward.

Nancy Sand, NDEA, testified in favor of the bill. (Written testimony attached) The amendments included in her testimony indicate the bill is not intended to require a contract to be physically offered by April 15.

Senator Bakke asked what is done in other reorganized school districts.

Ms. Sand said teachers from the involved school districts have the opportunity for the job opportunities in the new reorganized district. There are not always the same number of jobs available.

Kevin Cartwright, former English teacher at New Rockford, testified in favor of the bill. (Written testimony attached)

Trevor Yetterboe, former teacher at New Rockford, testified in favor of the bill. (Written testimony attached)

Chairman Freborg asked how many teachers were not rehired.

Mr. Yetterboe said 10.

Senator Bakke asked how many teachers there are in the combined district.

Mr. Yetterboe said he wasn't sure, about 30.

Rena Elkins, former teacher from New Rockford, testified in favor of the bill. (Written testimony attached).

Senator Bakke asked if she was given any reason she was not hired.

Ms. Elkins said she was never told by a board member or administrator.

Senator Bakke asked what her best guess would be.

Ms. Elkins said maybe a board member or parents did not like her; maybe her salary was too high. She doesn't really know.

Senator Taylor said since she was replaced by a new teacher, would there have been a substantial salary difference?

Ms. Elkins said there would be a difference in salary, she doesn't know if that was the reason.

Mike Geiermann, legal counsel for the NDEA, testified in favor of the bill. In order to understand the impact of this bill, you can't look at it in a vacuum; you need to look at it from the perspective that this legislature has given teachers certain rights in the events their contracts are going to be terminated. Those rights have been in place for 30 plus years. Those rights give the teacher an opportunity to be put on notice as to why the school district is going to contemplate their non renewal, if its performance, if its funding. The loophole or flaw in the system is when it comes to reorganized districts. The contracts for teachers in a district that is reorganizing must be extinguished but the only reason they are given is that their district is closing. That eliminates for those teachers the rights to hearings, to some substantive discussion regarding why they are not going to come back to that district. There is a loophole here. For years, school districts have reorganized in North Dakota and NDEA has been able to work with the school board association and the local school districts and come to an understanding that those teachers, if their jobs are going to be offered in the new district, they will move the teachers into those positions. New Rockford is a glaring, tragic exception. Ten veteran teachers whose positions were going to be carried into the new district were not going to be hired. This law will close the loophole and give those teachers in reorganized districts the same rights other teachers have in the state of North Dakota. If they are going to lose their position, they are given a reasonable explanation and some hearing rights. Obviously, there was something else going on here, especially for these three teachers. Don't they deserve the same rights as every other teacher in the state? If their performance is not up to par, they shouldn't come back to the district. If their performance is up to par, as born out by

performance evaluations and letters of recommendation, then don't those teachers deserve to go back to that district? Isn't that good for kids?

Senator Flakoll asked, if the problem was with salary, why wasn't this handled as a violation of a protected class, based on age?

Mr. Geiermann said they could have done that but the teachers did not want to undertake it.

Litigation is not a lot of fun. The teachers chose not to do it.

Senator Bakke asked if this falls under the reduction in force policy in century code.

Mr. Geiermann said the RIF policy would be those negotiated at the local level, there is not a RIF policy in the century code. Those RIF policies can work very well when you are looking at qualifications, years of experience, so it would not be so arbitrary like you tangled with the board or you made the wrong set of parents mad. That is at the core of the continuing contract and non renewal law for all teachers. We don't want decisions in terms of teachers' futures being political or based on arbitrary reasons. We are not trying to tell school boards who they have to hire.

Senator Flakoll said if you are taking from that single pool, you are telling them who they can hire.

Mr. Geiermann said at one point, a school district thought that was a pretty good teacher and hired them in the first place. If the performance evaluations bear out their performance, they should be an asset not a liability.

Gary Thune, legal counsel to the North Dakota School Boards Association, testified in opposition to the bill. (Written testimony attached) Regarding Senator Bakke's question about the RIF policy, a newly organized school district does not have a RIF policy, each of the old districts have one, which applies? The amendment proposed by Nancy Sand creates an obligation to offer them jobs unless they are told they will not be offered jobs. Then it ties into

a performance based decision so it raises a question similar to the one on the RIF policies, whose performance based evaluations are used because the new board has never done an evaluation of the teachers. It is not simple. It is creating new contract law. Under existing law, if a school district tells a teacher they are going to not renew them and then holds a hearing, that violates all their due process rights. This bill suggests we have to tell them whether or not they are going to be hired by April 15 and if we tell them we are not going to hire them, we have to non renew them for cause. Legally this creates some significant problems for a new district that is trying to get off to a good start. The districts going out of business conduct non renewal hearings unless those teachers resign. They recommend each teacher that is not assured of a job by the new district be non renewed so there are no continuing legal rights in the existing school boards that are going out of business on July 1. That is how it has been handled for years. If we close a school board because of dissolution, is that next? That is an unfortunate part of reorganization and dissolution in North Dakota, some teachers lose their jobs.

Senator Bakke asked if every teacher that was rehired by the reorganized district was interviewed.

Mr. Thune said Dr. Piper would be better able to answer that question. Those teachers who were told they would have a job were not interviewed, they never are. The reorganized district board meets before April 15 and says who they are going to hire and who they are not going to hire so the old districts can go through their non renewal process with the teachers who are not going to be offered a job by the new district.

Senator Bakke asked if other reorganized districts have not followed this process, why? Why did New Rockford do it differently than the other districts?

Mr. Thune says he doesn't know. Reorganization plans are more unlike than they are alike, teachers are protected as much as necessary to get the plan approved. He has not written a plan. Dr. Piper has written several.

Senator Taylor said he mentioned the gray area in a dissolution, doesn't the language of the bill and the law refer specifically to reorganization?

Mr. Thune said that is correct, he asked what is next. Its not in this bill. The principle is the same with dissolution.

Senator Taylor said the new school district has not performed evaluations yet in the reorganization plan, it recommended use of teacher personnel files.

Mr. Thune said good question, he believes that says it is a way to simplify the application process for teachers currently in the system, so their record can be transferred without filling out a bunch of paperwork. It was to facilitate the application. It doesn't make sense the district that is doing a non renewal can use another district's evaluation. We can't do it in any other arena.

Senator Bakke asked if every single person on the new school board had not been on the previous school board, if the administration was all new, no one knew any of these teachers?

Mr. Thune said he apologizes if he left that impression. The new reorganized district is a separate legal entity.

Senator Flakoll asked the typical length of a contract that both districts offered prior to being reorganized.

Mr. Thune said state law for teachers is contracts can be no more than one year, there can be negotiated agreements that cover more than a year. The only multi year contracts that are authorized to be offered by school boards is three year contracts to superintendents.

Dr. Don Piper testified in opposition to the bill. (Written testimony attached) He helped the New Rockford Sheyenne school district develop their plan. He regrets the testimony this morning has turned into the New Rockford Sheyenne situation rather than the bill. This bill is grudge legislation and grudge legislation usually provides more problems than it does solutions and this bill will provide more problems than it does solutions. In the last 15 years there have been about 55 school districts in North Dakota that have reorganized into about 22 reorganized districts so we are not talking about New Rockford Sheyenne, which is over anyway, we are talking about districts that will reorganize and there will be more and more of them. He believes the primary purpose of all school districts is to provide the best possible education for our students. The persons who put together this bill think the primary responsibility of the school district is to provide job security for teachers.

Senator Bakke said if the new district has no right to hire or function until July, when were the teachers who were going to be kept offered contracts?

Dr. Piper said in a transition year, the new board has no faculty, the plan gives the new board the power to tell teachers who will be offered a position with the new district. He reviewed the plan in New Rockford Sheyenne and their progress through the transitional year (meter 65:35)

Senator Flakoll asked if the handout provided to the committee is typical language for these plans.

Dr. Piper said it's a little different than usual.

Senator Flakoll asked if adoption of the plan is by voice vote or roll call vote.

Dr. Piper said they usually do it by raising hands or standing at the local level. At the county and state level, it is done by roll call vote.

Senator Flakoll asked if notice to teachers that they were not going to be hired was sent by certified or registered mail.

Dr. Piper said they were hand carried by the business manager.

Preston Meier, New Rockford Sheyenne school board member, testified in opposition to the bill. A reorganization is a gut wrenching series of decisions. One community is going to lose a school, a center of activity. The school represents the future of a community. No one wants to lose its school. Districts reorganize because the patrons and parents realize that by pooling their resources, they can offer their kids the best possible education. Their school board was responsible for assembling a staff. The plan said they should accept and consider applications from any qualified teachers from within or outside the two existing districts. Their board decided that in order to provide the best possible education, they must hire some teachers outside the former districts to replace underperforming teachers. They are thrilled with the results. Their students are benefiting from better instruction. Every one of the staff from the former districts was given the opportunity to apply. They neither terminated or dismissed anyone because they were a new district. This bill is designed to protect teachers' jobs without consideration for kids and their educations. We cannot reasonably assume the best teacher is the one currently employed in the old district. This bill would have a negative impact on our schools, a negative impact on our kids and a negative impact on our state. The only beneficiary would be the teachers.

Senator Bakke asked if low performing teachers were ever told they were low performing.

Mr. Meier said not to his knowledge, that was the administration's responsibility.

Senator Flakoll asked in this case if any applicants had worked at school district A and had worked at school district B before that.

Mr. Meier said not that he is aware of.

Senator Taylor said along with performance based decisions, was salary an issue when making the hires?

Mr. Meier said no.

Senator Bakke asked if the decisions were made by the board or recommended by administration.

Mr. Meier said they were recommendations by administration to the board.

Lisa Longnecker, Eddy county farmer, school board member and mother of three, testified in opposition to the bill. She and her husband try each day to teach their children values. They trust the school district to meet the academic educational needs of their children. The school district needs the latitude to hire the best teachers. Their children will suffer if this bill passes.

Chairman Freborg closed the hearing on senate bill 2227.

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 2227

Senate Education Committee

Check here for Conference Committee

Hearing Date: February 13, 2007

Recorder Job Number: 3436

Committee Clerk Signature

Minutes:

Chairman Freborg opened the discussion on SB 2227. All members were present.

Senator Bakke moved an amendment to remove the overstrikes on page 2, lines 5-7 and on page 2, line 7 after district insert: and shall be obligated to offer, seconded by Senator Taylor.

Senator Taylor said we can debate the merits of the bill after we act on the amendment, the amendment doesn't really change the intent of the bill.

The motion failed 2-3.

Senator Bakke said we heard a lot of testimony centered on the New Rockford incident that is unfortunate because we don't want to see this as the only reason the bill was introduced. She does think that what happened there really did not follow the intent of our rehiring practices for teachers. These individuals were never given an opportunity; they were never told why they were let go. She likes this bill. It provides some protection. It is common courtesy to tell someone why they are not going to be rehired. It should have taken place.

Senator Taylor said we are digging into contract law. You have extenuating circumstances when districts are reorganized. We have reorganized a lot of districts in the state without something like this happening in the past. The language would keep that from happening, maybe the example itself will keep it from happening in the future. The legal nuance, you can

get a lawyer on either side of it and it depends on which lawyer you want to believe. He has a problem with taking that teacher that has been employed for 30 years. He doesn't know the whole situation; they say they had good reviews and performance. To replace them because of, what seemed to him, money, he has a problem with that and he will support the bill.

Senator Bakke moved a Do Pass on SB 2227, seconded by Senator Taylor.

The motion failed 2 – 3.

Senator Gary Lee moved a Do Not Pass on SB 2227, seconded by Senator Flakoll.

Senator Bakke said this is saying a reorganized district will have the same rights and responsibilities to their employees, the teachers, as they would have in a regular school district. They have to be notified that they are contemplating non renewal of their contract.

They are not asking to be automatically rehired, they are just saying if they are not going to be renewed, they need to be told and given a reason. She doesn't think that is unreasonable.

The motion passed 3 – 2. Senator Gary Lee will carry the bill.

Date: 2/13/07
Roll Call Vote #:

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2221

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass Amendment (Bakke amendment)

Motion Made By Sen. Bakke Seconded By Sen. Taylor

Senators	Yes	No	Senators	Yes	No
Senator Freborg		✓	Senator Taylor	✓	
Senator Flakoll		✓	Senator Bakke	✓	
Senator Gary Lee		✓			

Total Yes 2 No 3

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

failed

Date: 2/13/07
Roll Call Vote #: 2

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2227

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Pass

Motion Made By Sen. Bakke Seconded By Sen. Taylor

Senators	Yes	No	Senators	Yes	No
Senator Freborg		✓	Senator Taylor	✓	
Senator Flakoll		✓	Senator Bakke	✓	
Senator Gary Lee		✓			

Total Yes 2 No 3

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Failed

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2227

Senate Education Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Do Not Pass

Motion Made By Sen. Lee Seconded By Sen. Flakoll

Senators	Yes	No	Senators	Yes	No
Senator Freborg	✓		Senator Taylor		✓
Senator Flakoll	✓		Senator Bakke		✓
Senator Gary Lee	✓				

Total Yes 3 No 2

Absent _____

Floor Assignment Sen. Lee

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 13, 2007 10:55 a.m.

Module No: SR-30-3030
Carrier: G. Lee
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2227: Education Committee (Sen. Freborg, Chairman) recommends DO NOT PASS
(3 YEAS, 2 NAYS, 0 ABSENT AND NOT VOTING). SB 2227 was placed on the
Eleventh order on the calendar.

2007 TESTIMONY

SB 2227



North Dakota Education Association

Headquarters Office:

410 E. Thayer Avenue; PO Box 5005, Bismarck, ND 58502
701-223-0450 • 800-369-6332 • fax: 701-224-8535

Eastern Office:

4357 13th Avenue SW, Suite 200, Fargo, ND 58103
701-281-7235 • 800-304-6332 • fax: 701-281-7236

**SB2227 Testimony
Senate Education Committee
February 12, 2007**

Senator Freborg and Members of the Senate Education Committee,

For the record, my name is Nancy Sand from the North Dakota Education Association.

I am here today to provide you with information as to why this bill has been introduced. It is a rather simple bill. SB2227 requires school boards to offer teaching contracts for a newly reorganized district first to those who are teaching in the districts involved in the reorganization. It provides a smooth and less disruptive transition from individual districts to one larger district.

SB2227 gives continuing contract rights to individuals who are teaching in the districts that are reorganizing -- unless the position currently held by the teacher will not be staffed in the reorganized district or unless the documented performance of the teacher is not what it could be.

The bill means that teachers who might not have positions in the new reorganized district would have a right know the reasons and a right to a hearing. If there are simply more teachers than jobs, the bill does not tell boards how to determine which teacher(s) get those jobs. We believe that is still a local decision to be negotiated like regular Reduction In Force (RIF) policies are negotiated.

In the history of reorganizations, new districts have hired from within—until New Rockford-Sheyenne. In that reorganization, several teachers were not offered positions in the new district, but there were jobs for them. Those positions were advertised and filled with other teachers. The New Rockford and Sheyenne teachers who didn't get jobs were not informed of the reasons why. They all had good evaluations.

The New Rockford-Sheyenne reorganization board did not violate any law; however, their actions affected the lives of many individuals. Students and parents wondered why long-time teachers were let go. Students picketed the school. Community members came to board meetings.

We know reorganized districts make decisions about curriculum and positions. Reorganizations frequently expand curriculum opportunities for students, and that is good. Sometimes the curriculum is different from what has been available previously in the districts involved in the reorganization.

SB2227 does not mandate a reorganization board hire every teacher, it only mandates that if the board is not going to hire a current teacher, then the board must notify the teacher of the reasons by April 15 and give the teacher a right to a hearing.

This is the way it works for teachers in regular school districts. There is no good reason for it to be any different for teachers in districts that are reorganizing.

Members of the Committee, you are fair and honorable people. I ask for a Do Pass recommendation on SB2227. This is a fair and decent thing to do.

Attachments:

Amendment

NDCC 15.1-15-05

NDEA Education News article, March 2006.

SB2227 – AMENDMENT

Page 2, Lines 5-7 Remove overstrikes

Page 2, Line 7 After district insert: and shall be obligated to offer

15.1-15-05. Contracts - Contemplated nonrenewal - Reasons - Notice.

1. If the board of a school district contemplates not renewing the contract of an individual employed as a teacher, a principal, or as an associate or assistant superintendent, the board shall, no earlier than March first nor later than April fifteenth:
 - a. Provide written notification of the contemplated nonrenewal to the individual.
 - b. Schedule a hearing to be held on or before April twenty-first for the purpose of discussing and acting upon the contemplated nonrenewal.
 - c. Provide written notification of the date, time, and place for the hearing to the individual.
 - d. Provide written notification of the reasons for the contemplated nonrenewal to the individual.

2. The reasons for the contemplated nonrenewal of the individual's contract must not be frivolous or arbitrary. The reasons must be sufficient to justify the contemplated nonrenewal and must:
 - a. Originate from specific findings documented in the report of the individual's performance required by section 15.1-15-01 and relate to the individual's ability, competence, or qualifications; or
 - b. Originate from the needs of the district in justifying a reduction in the staff.

Students and Community Support New Rockford and Sheyenne Teachers

■ By Jane Rupprecht, NDEA UniServ Director

New Rockford High School students made the news on February 27 when they conducted a demonstration in support of their teachers by picketing and spending the day outside in front of their school building. Although their action was covered by media, the point was missed. Their teachers' jobs were not being cut due to the reorganization of the New Rockford and Sheyenne school districts as reported. The teachers were being cut, not their jobs.

When two school districts reorganize, one of the unfortunate results is that there may be fewer teaching positions. However, when the New Rockford-Sheyenne reorganized school board released the list of teachers who would be rehired for the new district on Feb. 20, there were only 28 names listed for 38.45 teaching positions. The positions currently held by the 10 teachers whose names were not on the list appeared on www.jobsnd.com two days later as openings. That's what sparked the student protest and the community response that has patrons in New Rockford and Sheyenne asking questions. During the planning process, committee members and teachers were repeatedly told that the teachers would have to "trust" that they would be rehired if positions were available. Students, community members and teachers were blind-sided by the board's actions, and many feel that "trust" has been violated.

The 10 teachers who missed the list for rehiring include veteran teachers who have spent their careers in the New Rockford and Sheyenne schools. They include a highly-respected elementary teacher who is a year away from retirement, an award-winning speech and drama coach, a highly successful basketball coach, a Drivers Education Teacher of the Year, and another elementary teacher who recently received media recognition and a commendation from Senator Kent Conrad for her work with her students and community service. High school teachers among the 10 constitute a third of the faculty who currently teach in the dual credit program in the district. The new district curriculum plan calls for a construction trades program, but one of the 10 is actually among the few people in North Dakota who are qualified to teach building trades. In fact, every opening except the math position could be filled by one of those highly qualified people.

The New Rockford-Sheyenne School Board held their next meeting on March 6. The ten-minute public input time on the agenda lasted an hour and forty-five minutes as approximately two hundred patrons and students filled the gym at Sheyenne.

Students and community members gave testimonials on behalf of the teachers, and many asked the Board to hold a public meeting to answer the questions about restaffing. Since the Board and superintendent did not address the students' concerns and questions as the students had been led to expect, they announced another protest for the next day. However, when they tried to continue their protest, they were threatened with truancy.

The day after the March 6 meeting, teachers received a memo that stated the list of 28 names was as binding as "a contract in-hand," although earlier they were told by administration that the list was merely a preliminary list. Many feared that there could be repercussions if they continued to publicly support their 10 colleagues; however, they didn't back down, and neither did

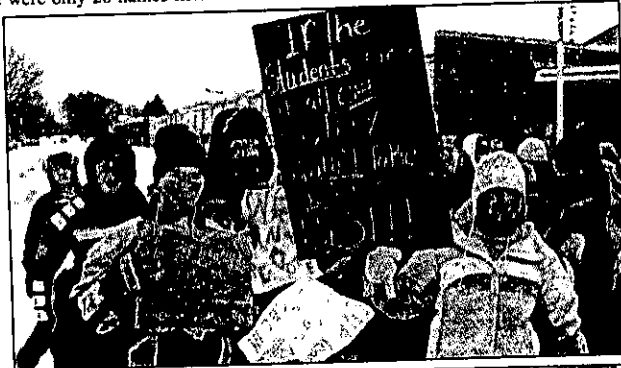
their students or their community.

The memo also stated that those teachers not on the list were "welcome" to apply for the openings by March 21. At a public meeting organized by some community members on March 14, patrons and students encouraged those people to apply, and they also made plans to continue the pressure on the board to "do the right thing." One patron asked why these people would even want to work for a board or an administration that clearly doesn't want them and has treated them so badly. The community and student answer was "because WE want them!"

The students and community plan to circulate petitions asking the board to fill all positions that can be filled from within the current teaching staffs from both schools. In addition, a recall petition drafted by the students will also be circulated. Students and community members

will continue to pack board meetings and call board members with their questions and concerns. There will be letters to the editors of newspapers that serve the communities. One community member stated that she felt somewhat responsible for this because she didn't pay close enough attention to the details of the reorganization planning process. Many others who were involved and did follow the process closely stated that they felt they were misled and misinformed. Still others want to make sure that other communities in North Dakota see what is happening in New Rockford and Sheyenne and take steps to make sure that this doesn't happen in future reorganizations.

According to Dr. Don Piper, reorganization consultant to the board, all employees in the two districts must be notified in writing as to whether or not they will have jobs in the new district by April 15.



NEW ROCKFORD HIGH SCHOOL STUDENTS PICKET... Students conducted a demonstration on Feb. 27, 2008 in support of their teachers who were not rehired in the reorganization process between the New Rockford and Sheyenne School Districts. What sparked the students' protest is that 10 of the teachers not being rehired include veteran teachers who have spent their careers in the New Rockford and Sheyenne schools. Their jobs have been posted at www.joband.com. Students picketed to rally the community and get the school district to reconsider and rehire the 10 teachers.

