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ROLL NUMBER

DESCRIPTION

1177

2007 HOUSE EDUCATION

HB 1177

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. **HB 1177**

House Education Committee

☐ Check here for Conference Committee

Hearing Date: **15 January 2007**

Recorder Job Number: **1085**

Committee Clerk Signature



Minutes:

Representative Frank Wald, District 37, introduced HB 1177. The bill before you allows the local school board to hire positions that are difficult to fill without negotiation. This comes out of a court decision in Kenmare. We need to apply some free enterprise and supply and demand concepts in hiring school personnel as we do in the world of commerce. Everything we do should place the student first. I would like to have Mr. Paul Stremick, Supt in Dickinson speak to the bill.

Stephanie King, parent of a specials needs child, spoke in favor of the bill. (Testimony Attached.)

Dave King, parent of a special needs child and President of the Kenmare School Board, testified on behalf of the bill. (Testimony Attached.)

Gary Thune, appearing on behalf of the ND School Board Association, spoke in favor of the bill. I was the counsel for the Kenmare School District in this particular case. When I was a teacher, there were people competing for teaching positions. Today we have a significant shortfall of teachers. At college and university level almost all hiring is done based on market place. That is a problem for public schools today that didn't exist 30 years ago. The fact-finding commission twice ruled on matters at Kenmare and we litigated this case in the Supreme Court. During those two years paid \$60.0 for a consultant hired from a special ed

contractor. The second year they paid \$45.0 to get a four day a week teacher to come to their school from Minot. Over those two years they paid \$105.0 for \$60.0 worth of services if they could have hired it on the salary schedule. There were no objections that \$22.0 more than the salary schedule were paid per year as long as we were not hiring teachers directly in Kenmare but rather through a contract for services for a special ed unit. I think this case was more about control than it was about money. You cannot hire SPLs on a signing bonus because it ends after a couple of years and they will then leave and go to the private sector where they are paid substantially more and it's not just a signing bonus situation. The argument in the Supreme Court was that the NDEA was the only and exclusive bargaining agent for the teachers. The Supreme Court rejected that noting that in 2001 rejected the language that sought to have exclusivity. After two years the Kenmare School District was able to compete with supply and demand for positions.

Representative Haas: In your opinion, what would be the applicability of that Supreme Court decision to any other teaching position in any other school district?

Thune: The court's decision was limited to the instance in front of them. They don't rule prospectively on lawsuits. What they found that Kenmare did negotiate in good faith and therefore had met the requirements of the negotiations law and were permitted to offer "off the salary schedule" for that position. Their ruling on exclusivity was much broader than that because that removes that argument.

Representative Haas: That Supreme Court decision then would not be precedent setting to any other teaching position in any other school district in broad terms.

Thune: I believe that is accurate. It does rule that the NDEA and affiliates are not exclusive bargaining agents. That has universal application.

Chairman Kelsch: That court case could potentially be cited and used as historical perspective if another school district did the same thing or the same lawsuit came forward.

Thune: That is correct.

Vice Chairman Meier: Are you aware of any other districts that are having these problems.

Thune: Across the state there are districts that in a broad range of subject matters that are not able to hire teachers today. We have a shortage of hard to fill positions as declared by the Educations Standards and Practices Board in almost all areas except elementary and maybe social studies. The problem is there and the problem is going to get worse as more and more of our teachers reach retirement age. The problem is getting greater not lessening.

Representative Hunsakor: Certainly the Kenmare School District did exhaust all means in searching for a SLP, so as I read this bill it appears open ended. A school district could recruit a teacher from another district by making a couple of phone calls and say they had exhausted all means. If there could be some safeguards put in here that all means have been exhausted it would make this bill a little more authentic. Do you have any suggestions?

Thune: We would not have a problem at looking at amendments that would still permit school districts to find qualified teachers for students. This is by no means the only solution. This will address the problem and I suspect opponents of the bill will have suggested amendments and we certainly will work with the committee to entertain amendments.

Representative Herbel: In the final decision by the court, the fact that it was a special needs students become one of the deciding factors or was it the fact that it was a position in itself?

Thune: The fact that both state and federal law placed a liability on the school district if they did not provide an appropriate education for special needs children was a factor in this lawsuit. It was a factor, but I think the court's ruling would have been the same had there not been liability.

Representative Herbel: What recourse if the school district have if they were unable to find anyone even off the salary scale?

Thune: Under special ed law, you must recommend placement outside of the school district at a great expense to the school district.

Bev Nielson, ND School Board Association, testified in favor of the bill (**Testimony Attached.**) We are open to suggestions that would make the bill better and are willing to work on amendments.

Representative Mueller: Regarding amendments, we have some language that says "hard to fill" positions. The challenge for me is to be is how we define that.

Nielson: We talked about using the standard and practices information that knowing full well that it's almost all position. Any position you have tried to fill and can't, is hard to fill. If you think that boards just can't wait to pull \$20.0 to \$30.0 out of their pocket to find someone they could pay it for. I don't see that happening. If they don't get applicants or know someone in the medical position, they may call them and offer them a supply and demand salary. If the board tried and can't fill a position and they believe offering a higher salary may help them, that's a hard to fill position.

Representative Mueller: We all understand that. In your opinion would it be appropriate in your opinion to put some criteria together that speaks to the process. I am supportive of what it is they have to do but I'm not sure all school boards are going to go through that. I feel that we need to nail down pretty stringent requirements to determine if we are in a position that we can't hire these people and here are the things we did and we still can't get them. Then I think we have a product that could work. Would you help develop those?

Nielson: We would help.

Representative Wall: How would passage of this bill assure that we have adequate teachers in hard to fill positions? Is there a concern about creating a domino effect?

Nielson: I don't know that it would. It's a tool that boards would have if they needed to use it. There is nothing to guarantee that we would be fully staffed. As far as the domino effect, we are willing to look at the language which says they can't have taught in ND in the last year.

Representative Herbel: Are you aware of how many schools have used the signing bonus?

Nielson: Two years ago we did a survey and there were about 8 – 10. I know they have been used effectively for new teachers and some that have been out for a couple of years.

Representative Herbel: Have they made the offer and no one signed?

Nielson: I'm not aware of that. I do know that people who come out of a medical facility, etc., are interested in having the wage not the bonus.

Representative Herbel: If this bill passed, would there really be a need for a salary schedule?

Nielson: I don't see this abolishing the salary schedule. I see it being used in extreme cases. Just as I don't think the signing bonus has been abused, I don't think this will be abused.

Representative Hanson: Say you and I taught in the same school district for 20 years, and I quit and they can't hire someone for my position unless they pay them \$10.0 more than you are getting. Would that make you very happy? How would you solve that problem?

Nielson: I can't say it would make me happy but as a professional I would try to act as one. Higher Ed has done it for years. They have to pay what the current market is to get that person in. What we said in higher ed is the way you make a big salary jump is to leave. Part of the morale issue is that for 40 years we have lived with every one being the same. As human beings that's true, but a specific skill set makes a difference. In specific cases of

required positions, we are asking for a departure from current law. That's why we're asking for a change in the law. In 2007 it does not provide enough flexibility for school boards to be able to comply with statutory requirements that they have for course offerings and for student services. I won't argue that it will be something different to get used to.

Representative Herbel: Do you have a problem with the way we define critical areas.

Nielson: I don't know how they decide those. What we have always contended is that if you tried to fill a position and you can't, it's hard to fill.

Paul Stremick, superintendent of Dickinson Public Schools, spoke on behalf of the bill. (Testimony Attached.) He also presented written testimony from Dean **Rummel, president of the Dickinson School Board.** (That testimony is attached.)

Representative Herbel: How many unfilled positions did you have this year. Do you know offhand what those numbers are across the state?

Stremick: Dickinson has none. Across the state, I don't know. I know the district I left has one and they are still dealing with it. That's in the area of Spanish.

Representative Hunsakor: The Kenmare district exhausted all means. Do you have any expertise that could be put into this bill to assure that all means have been exhausted?

Stremick: I don't have any concrete suggestions. I know that a counselor position was a problem in Grafton. It took us a year to get that through the contract. It also took us a year without a counselor. The concern is that then the students go without. It does need to be a process that can be worked through rather quickly so the students do not go without.

Representative Wall: You said signing bonuses were not enough to entice to candidates. Do you find that due to supply and demand they simply want more money?

Stremick: It really does come down to supply and demand. As far as hiring from another district, that is happening today. They are moving around and money does have something to

do with it. My hope is that if we were able to offer more money, more people would go into the profession.

Chairman Kelsch: Try living in Mandan when Bismarck is just across the river. I was looking at Dean Rummel's testimony and he talks about having to hire a SLP for the next school year and the entry level salary statewide is about \$34.0. The industry level entry is \$44.0 and Dickenson would be offering the position at \$24.1.

Stremick: That is accurate. We really are competing with other districts. There is just not enough room to manipulate to compete with supply and demand.

Representative Herbel: On your salary schedule are you allowed to hire teachers based on previous experience or are you capped at the number of years they can bring in?

Stremick: In Dickinson we are capped at the number of years that they can bring in. In Grafton we were capped except for hard to fill areas where we could then offer years of experience. Sometimes they are new to the profession and must be at Step 0.

Representative Herbel: Would it be of aid to have all caps for experience removed?

Stremick: That definitely could assist. But if someone doesn't have experience, you can't grant them experience they don't have. In every district, that means teaching experience not as working in a related field.

Bruce McComish of Riverdale testified in support of HB 1177. **(Testimony Attached.)** His daughter, Christina, became legally blind after surgery in the second grade. He discussed the difficulties the district had in providing instruction for Christina. She was eventually sent to a residential institution in Aberdeen South Dakota for four years. The district saved money because it was cheaper to send Christina to an institution.

Representative Karls: Is there a reason your daughter was not sent to the ND School for the Blind?

McComish: ND does not have a school for the blind. It was disbanded/discredited in 1993. It is not a residential institution. There are no classes taught there. The school provides only an outreach program for other school districts. If you are over 21 and lose your vision, you can go to the school and they will help you with techniques.

Doug Johnson, ND Council of Education Leaders, testified in favor of the bill. The ND Council has had a resolution supporting incentives such as paying off the schedule, paying for housing, or signing bonuses to attract and retain licensed teachers. We maintain that position. We are available to work with the Committee on amendments.

Dean Bard, executive director of ND Small Organized Schools, testified in favor of the bill. I continually hear from members of our organization that they do have problems in getting teachers to fill certain slots. To be able to pay off the schedule to attract those people is something that would be an advantage. It's more difficult to hire teachers in rural areas and this would be an incentive.

Mike Geiermann, legal counsel for the NDEA, testified in Opposition. **(Testimony Attached.)** He urged the Committee to use the current system of negotiations between school districts and the education association. About 50 school districts have already done so.

Representative Haas: Could you outline for us what procedure actually takes place in those districts that have already negotiated this matter. What time periods are involved and what must a board do before they can negotiate individually with a teacher.

Geiermann: The best example is down in Wishek. Wishek allows their school board to pay off the schedule but in order to do that they need to come and keep the education association fully informed of the efforts they are making, the number of candidates they have, and they go through that entire process so the Wishek education association knows that there is a need there and concerns there as opposed to scenario where the teachers show up for the first day

of school and here comes the new kid on the block and he's making 15 grand more than every body else. The process works okay. The beauty of it is that they have negotiated it and agreed to it.

Representative Hunsakor: What if the school board and the teachers cannot reach an agreement? Then the children involved are going to suffer. Maybe all groups can reach an agreement. That would be wonderful but I assume it's not going to happen every time.

Geiermann: You are right. They don't always come to an agreement. When you consider there are 200 school districts in the state and 2-3-4 impasses. The majority of educators and school boards come to an agreement on these issues. If they cannot come to an agreement because of what the Supreme Court ruled, the district can go forward then and implement individual bargaining scenarios with an individual outside of the normal bargaining agreement. That can tomorrow.

Representative Herbel: After the local association has seen the search information for a position, is that used by them in any way to determine if they are going to adopt the schedule or does the school board simply give them that information and then hire.

Geiermann: There is a requirement under the contract that the school board keep the education association informed of what they are doing. The processes work very well if there is good communication. This bill creates Free Agency.

Representative Herbel: Would you suggest there be a negotiated agreement between the school board and the association to allow them to hire off the schedule by agreement between the two parties?

Geiermann: Yes. There are at least 50 school districts have done so.

Representative Haas: If we could look at some amendments that would set up a process maybe similar to one of those negotiated agreements, do you think that would be appropriate to do that at the state level? Or is it better to have the ability to do that negotiated locally.

Geiermann: I think it better to leave it at the local level. There may be concerns in Bowman that they don't have in Dickinson, etc. Because salary schedules differ depending on many factors, I think it would be better at the local level. The overriding concern here is that we are going to have a teacher shortage and this bill doesn't solve that. What will solve it is increasing the funding for all of education, making it more attractive, putting it up where it should be and that's a different committee and different bill. That concern is the paramount concern—we raise everybody up. This bill won't solve the teacher shortage.

Representative Hanson: Could you get us a list of the 50 districts that have those agreements?

Geiermann: I'm sure I can.

Chairman Kelsch: This is an interesting discussion we're having. I think the way the bill is currently written is open ended. It could be tightened up. I am planning to put together a subcommittee to work on it. Obviously there is a common issue. We have had these conversations in the past. We need to start thinking about how we can do this and make it work so we don't have students that aren't getting the necessary services. We don't want to cause morale issues. We need a process that can actually work and unfortunately I think it will have to come from the state level. Start thinking about how can we craft a piece of legislation that appeases both sides and does not become such a burdensome process along the way that we are still causing problems.

As we look at the work force in ND we don't have enough workers, period. That's going to fall into teachers. Every day more and more people are unable to hire to fill positions

in their business. We know it's the same thing in school. New businesses pay more than teachers are making and they attract them away.

So start thinking about this and remember there has to be some give and take in order to make this work.

Donna Schmit, sixth grade teacher and president of the Kenmare Education Association, testified in opposition to the bill. **(Testimony Attached.)**

Representative Haas: Has the Kenmare Association had any discussions with the board that would allow them to deviate from the salary schedule under certain conditions?

Schmit: We have with the SLP position.

Representative Herbel: If you could negotiate a satisfactory salary would that do away with the problem. Would it help?

Schmit: Where would we come up with the extra dollars?

Representative Haas: Let me understand this. The Kenmare district contracted with Cirrus Valley for two speech pathologists, did they choose to not continue with them because they thought they would save money. Then, because they were not going to contract with them, Cirrus Valley had to release those two teachers. Then the Kenmare School District turned around and hired them at lower salary then what it was costing them to contract with Cirrus Valley. And the two people stayed there because they were both place bound.

Schmit: Yes, that is correct.

Gloria Lokken, president of the NDEA, testified in opposition to the bill. **(Testimony Attached.)** Her testimony included a copy of the NDEA policy statement for compensation systems. **(Also Attached.)** NDEA encourages compensation systems that meets the needs of staff and the district.

Representative Haas: In your negotiation workshop, has your organization done any sample contract language for negotiations on this subject?

Lokken: We have discussions on this. I don't know if we have put out any sample language. We have looked at things around the nation. We're not the only rural area. We are constantly looking for ways to help our people negotiate contracts that protect themselves but also meet the needs of the district.

Chairman Kelsch closed the hearing of HB 1177. She appointed a subcommittee to work on the bill and bring recommendations to the Committee as a Whole. Serving on the committee are: Representative Herbel, Chair, Representative Sukat, and Representative Hunsakor.

2007 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HB 1177

House Education Committee

☐ Check here for Conference Committee

Hearing Date: 23 January 2007

Recorder Job Number: 1696

Committee Clerk Signature



Chairman Kelsch opened the discussion of HB 1177. Representatives Herbel, Sukat and Hunskor served as a working group to refine the amendments to this bill. She asked Representative Herbel to go over the amendment they would like to present.

Representative Herbel: Everyone agrees we have a problem and must address the issue.

The difficult part was how to define what the "hard to fill" positions would be. I think we have come to something that everyone thinks is about the closest we can get to what might work. This amendment does four things. 1) Defines what makes a hard to fill position and defines the mechanics of the school board must do and what conditions they must meet. 2.) Defines the process if a teaching position comes vacant during a school year. 3.) If an individual resigns, they are not eligible to be hired off the schedule. 4.) Addresses the issue of recruiting from other districts.

Representative Hunskor: We have done everything possible to reach the best solution. There is oversight by DPI and they have to get approval from DPI to go over the salary schedule. Also in 2.b, if the position is open 45 days before the school year commences, the DPI must be notified and then contact all the education associations in the state to assist them in locating someone to fill that position. My last comment is that if this does not pass we can go back to the Kenmare situation and perhaps on to the Supreme Court.

Representative Johnson: If someone is highly qualified in two areas, hired in one area and the school down the road wants them to come teach in the other area has that been considered.

Representative Herbel: It really gets back to the same problem. If you can teach chemistry and physics and are teaching chemistry here and you want to recruit them for physics over there. We don't want that happen.

Representative Karls: At one point we were talking about the 50 schools that already have an agreement with their teachers. Would this make it more stringent for them?

Representative Herbel: This would apply to all schools. If they want to go beyond that, that's their prerogative.

Representative Myxter: On section b, the last sentence: "the compensation paid to a successful applicant . . . may not be reduced in future years." Is that person put on a schedule in the next year does he go up. What if there isn't a step schedule in that district? If it's a one line schedule with a percentage, does he still move up?

Representative Herbel: That is correct. He must stay on the scale.

Chairman Kelsch: The intent is to assure that school district not be allowed to drop them back down. They would be eligible for increases.

Representative Herbel: If they bring them in at the top, that's where they stay.

Representative Mueller: What happens if the were teaching physics and they go back to social studies, can they still not go back.

Representative Herbel: There is nothing that says they can not be hired back at the salary schedule. This does not take employment away from anyone. For example, if I would resign and try to renegotiate or a school consolidates and some were non renewed. Those people

could be hired on a regular schedule. They just would not be allowed to be hired at a higher scale.

Chairman Kelsch: Let's say Mandan hired them as a Math instructor, a hard to fill position, and they were a highly qualified person in both Math and Social Studies. They don't want to teach Math any longer, they want to teach Social Studies. Do you need to keep them at the same level that you hired them at Math or do they drop to a different fee schedule for Social Studies? If they were going to get a pay decrease, they would start loving to teach Math.

Representative Myxter: What if a district non renewed them? Could they hire them back at a lower level?

Chairman Kelsch: As this part about "you cannot have taught in the state of ND . . ." that takes care of that.

Representative Herbel: I move the amendment.

Representative Hunskor: I second.

Representative Hanson: What if there was one applicant and he was a lousy teacher. Would the board have to hire him?

Representative Herbel: It says they have to highly qualified and meet the reasonable criteria established by the board. You need to leave the option for the school boards to hire a good person rather than just a warm body.

Representative Hunskor: Number two and three on the back page limits the pool of teachers. There aren't going to be as many teachers available for the boards, but it does at the same time minimize recruiting.

Representative Herbel: The reason for implementing this is that if someone is 53 years old could have met the rule of 35 and be in a hard to fill position, wants to resign, and renegotiate their contract. This would eliminate that possibility as well.

Chairman Kelsch: I didn't want to open it up as the bill was introduced. It is an issue of the kids. Personally, I would rather that we put out a program that is the same across the state rather than having each district school board come up with some new and different ideas. We might not have gotten to this point if it wasn't for some of the rural areas getting smaller and smaller. Safeguards are built in. I would like to thank the committee. I think this will be good for small communities and for kids.

A voice vote was taken: Yea: 13, Nay: 0, Absent: 0.

Representative Herbel: I move a DO Pass as Amended.

Representative Sukat: I second.

Chairman Kelsch: There is another bill introduced on the Senate side that would leave it wide open as well. I did talk to the individual sponsoring it telling him this committee has done a nice job in compromising and putting together something workable with safeguards built into it.

Representative Herbel: It would behoove both sides of this issue to monitor it well. If we need to change it in the next session we can do that. I respect the integrity of the negotiation process so when we submit this, there is some heartburn that goes with it but I think we have to do it.

Chairman Kelsch: You bring up a really good point because I think this Committee has been very receptive in hearing reports back on some of these changes that we have made. If they haven't worked out the way we hoped that they would, we have not hesitated to make changes to make it better.

Vice Chairman Meier: I think this is a very good compromise.

Representative Wall: I too commend the subcommittee. They have addressed many of the problems I had with the original bill. One of the problems I'm struggling with, I don't think the

Supreme Court decision was a sweeping mandate. I don't think it's going to be an ongoing fight and that bothers me. I hate to see a bargaining law which has worked extremely well for 35 years basically get tossed out on one Supreme Court decision. That's something I'm really struggling with.

Representative Myxter: Again I want to say I truly appreciate the work of the subcommittee, but I'm going to vote no. It's not because of anything they did. From my point of view it only adds power to the school boards who from my point of view maybe have too much power now. But I appreciate what you have done.

Representative Herbel: In response to Rep Wall. I really didn't take into consideration the Kenmare issue when I was trying to put some information together. I took into consideration what was given to us that day regardless of what the Kenmare situation was because I'm not sure that was an issue. I really thought we do have a problem that we need to address as best we can and we've tried to do that. We need to monitor this and if there is a problem and we find the school board is violating it, we need to come back and take some of that power away again. We need to see how this is going to work.

Chairman Kelsch: The other thing is that when you talk about accountability, any of the interim committees that deal with education is not prohibited from asking agencies and organizations from coming in and reporting to us how many cases they have had.

Representative Haas: Gary Thune specifically said that the Kenmare case could not be used as a sweeping mandate.

A roll call vote was taken: Yea: 10, Nay: 2, Absent: 0.

Representative Herbel will carry the bill.

House Amendments to HB 1177 (70351.0103) - Education Committee 01/24/2007

Page 1, line 6, replace "Notwithstanding the provisions of any contract" with:

- "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."

Page 1, remove lines 7 though 13

Renumber accordingly

Date: 23 Jan 07
Roll Call Vote #: _____

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1177

House Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 70351.0103

Action Taken _____

Motion Made By Herbel Seconded By Hunskor

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch			Rep Hanson		
V Chairman Meier			Rep Hunskor		
Rep Haas			Rep Mueller		
Rep Herbel			Rep Myxter		
Rep Johnson			Rep Solberg		
Rep Karls					
Rep Sukat					
Rep Wall					

Total Yes 13 No 0

Absent 0

Floor Assignment _____

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

See attached

Date: 23 Jan 07
Roll Call Vote #: 2

2007 HOUSE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 1177

House Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 70351.0103

Action Taken Ap Pass as Amended

Motion Made By Herbel Seconded By Sukat

Representatives	Yes	No	Representatives	Yes	No
Chairman Kelsch	✓		Rep Hanson		✓
V Chairman Meier	✓		Rep Hunskor	✓	
Rep Haas	✓		Rep Mueller	✓	
Rep Herbel	✓		Rep Myxter		✓
Rep Johnson	✓		Rep Solberg		✓
Rep Karls	✓				
Rep Sukat	✓				
Rep Wall	✓				

Total Yes 10 No 2

Absent 0

Floor Assignment Herbel

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

70351.0103
Prepared by LC for Rep Herbel

REPORT OF STANDING COMMITTEE

HB 1177: Education Committee (Rep. R. Kelsch, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (10 YEAS, 3 NAYS, 0 ABSENT AND NOT VOTING). HB 1177 was placed on the Sixth order on the calendar.

Page 1, line 6, replace "Notwithstanding the provisions of any contract" with:

- "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."

Page 1, remove lines 7 though 13

Renumber accordingly

2007 SENATE EDUCATION

HB 1177

2007 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 1177

Senate Education Committee

☐ Check here for Conference Committee

Hearing Date: February 26, 2007

Recorder Job Number: 3811, 3891

Committee Clerk Signature

Minutes:

Chairman Freborg opened the hearing on HB 1177, a bill relating to salary increases for unfillable positions. All members were present.

Representative Herbel introduced the bill. When Representative Wahl brought him the bill he said he would sign on but he wouldn't support the bill because he thought we needed the discussion. When they got done with the bill, he supported it and it passed the House 80 something to 7. The difficult part was the "hard to fill" definition. A job that is hard to fill in Grand Forks is totally different than a job that is hard to fill in Elgin. They did not want to use ESPB's definition so they defined hard to fill based on what is in the bill which is in section 1a. (meter 3:28) In discussion they found other parts that needed to be defined as well, sections 2a and b do that for positions that become vacant during the school year or less than 45 days prior to the start of the school calendar. Section 3 prevents renegotiation by teachers. For example there are three math teachers in Grafton, If one resigned making a hard to fill position and a new candidate was hired, this would prevent the other 2 teachers from resigning and the renegotiating their contracts. In Grafton, their Spanish teacher retired a year and a half ago. They were unable to fill the position. A couple of weeks before school started, the school board came to the retired teacher and asked her to fill in the following year and she

agreed but said that would be it. Last fall they still did not have an applicant for Spanish. They had a student teacher from UND who said she would student teach and sign a contract after she had finished her student teaching if she could get certified. They needed someone to certify her so they got the retired Spanish teacher to sign on for the fall. Come this spring, the new Spanish teacher should not be able to decide she is in a hard to fill position and renegotiate her contract. We need to keep some credibility in the negotiation process. That is why section 3 was put in. Section 4 was put in to prevent schools from recruiting teachers from another North Dakota school, they want to do away with free agency. They were very concerned with Bismarck Mandan, it would be easy for someone to stay in the area and be recruited from Mandan to Bismarck or Bismarck to Mandan or Fargo to West Fargo. No one benefits from those conditions. They have the utmost respect for what has happened for the negotiation process over the years and think it has been good for schools and the education system. They don't want to see it jeopardized. The bottom line is they are concerned about the kids. They need to have a highly qualified teacher within that school. This process will improve the situation we have now. They worked with the School Board Association and NDEA and the Small Schools. For the most part, they all felt they could live with this. Senator Gary Lee asked in subsection 4, does that limit it to a new teacher or someone coming from out of state? Is that the pool of applicants?

Representative Herbel said yes, it is ok to recruit from out of state but not from within the state. Senator Bakke asked if there are limits on how far above the salary schedule they would go or is that up to the discretion of the school district?

Representative Herbel said it would be up to the discretion of the school board, depending on what the conditions are.

Senator Bakke asked if the teacher would stay at the elevated level. Or will they continue to be significantly above all the other faculty?

Representative Herbel said if they have to take them to the sixth step to get them, the next year they would go to the seventh. They couldn't jump to the ninth, they would then follow that schedule.

Senator Bakke asked if it is possible they would come in significantly above every faculty member in the school?

Representative Herbel said that is correct. It wouldn't do any school district any good to have that person for just one year and then leave again. Once they are hired, they are under a contract and they can't renegotiate it.

Senator Bakke asked if there is any limit to how many steps above they can start.

Representative Herbel said it is up to the school district. No district is willing to spend any money they don't have to spend. They will try to make it as conservative as possible and still get someone.

Chairman Freborg said on line 20, page 1 was there discussion made about time certain for the Superintendent of Public Instruction to make that decision or could he take six weeks?

Representative Herbel said the intent is to get it done right away.

Chairman Freborg said #4, line 26 on page 2, that previous 12 months would mean a teacher could not have taught for 2 years?

Representative Herbel said that is correct. They did not want someone to resign, sit out for a year and come back. This takes care of that because no one can go without a job for two years.

Bev Nielson, North Dakota School Boards Association, testified in favor of the bill. (Written testimony attached)

Senator Gary Lee said in section 2b, in terms of process and keeping it moving, does that burden the issue?

Ms. Nielson said that was one of the compromise amendments. They are assuming it could move along quite quickly. If everyone is notified those phone calls can be made very quickly. They are not asking those associations to take a week or two weeks to do their own search because that would take too much time. Sometimes you know of someone who is looking for a job and they want to be sure they have done their due diligence before they jump off schedule.

Senator Bakke said we have an aging population of teachers, 60 – 65% will be retiring in the next 10 years. We are going to have hard to fill positions in every corner of the state. Has the North Dakota School Board Association considered instead of just raising the salaries for the few that come along now, raising salaries across the board so we don't have this problem?

Ms. Nielson said school boards are always concerned about the salaries of their teachers for recruitment and retention. Senator Bakke may not agree with that. From the school boards standpoint, they will pay within the resources available to them what they have to do to maintain their staff and provide for student services. They are as concerned as everyone else about the shortages that are likely to occur in the state. We don't know what is coming 10 or 15 years down the road. They believe 1177 allows them to see if this will be effective.

Someone asked in House Education if this will guarantee to fill the position. It is another tool. Perhaps they can get a speech therapist out of the clinic.

Senator Bakke said her concern is will we have more teachers being paid off the schedule than on the schedule?

Ms. Nielson said she does not have a crystal ball but it is certainly not beyond the scope of reason that 20 years from now our salary schedules may look different, they may be based on skill sets.

Chairman Freborg said wouldn't that be wonderful if a majority of teachers were far above the schedule?

Senator Bakke said as long as it is based on the right thing.

Chairman Freborg asked if she would prefer that majority would be on the schedule.

Senator Bakke said if the schedule is where it should be and people are paid according to their profession, she is fine with that. But to say we put more value on a teacher that teaches math than a teacher who teaches art, she has a problem with that.

Chairman Freborg said he thinks we are putting the value on the student, we need that teacher.

Stephanie King, parent of a special needs student, testified in favor of the bill. (Written testimony attached)

David King, parent and president of the Kenmare School Board, testified in favor of the bill. (Written testimony attached)

Gary Thune, legal counsel for the North Dakota School Boards Association, testified in favor of the bill. When Kenmare attempted to correct this problem at the negotiations table, the end result was a two year delay in the process as they went through negotiation and impasse and also the district court and the North Dakota Supreme Court. During that two year period, they were not able to hire a qualified teacher. There had been a decision several years ago that a collective bargaining agreement cannot waive the rights of students under the individuals with disabilities education act to a free appropriate public education. In order to do that, you need a qualified teacher. The district was at risk during that period of time for liability and was trying to

meet it and actually spent during those two years \$22,500 per year beyond the schedule to contract with people from special education units which was acceptable to the union but contracting above the salary schedule was not. The money was being spent anyway. Supply and demand in the 21st century is very different it was in 1969 when this negotiation was first adopted. He taught math in 1969 and all positions got filled. Today that isn't the case in many fields. What is the salary schedule going to look like in the future? We may well have more off it than on it. Supply and demand is how we staff all our colleges, it's a market price situation. Rather than resolving this matter in the courts or attempting to resolve it at the negotiation table where it just doesn't work without impasse, this legislation is a good start.

Senator Gary Lee said the special education student was mentioned as being a consideration when the case was brought to the Supreme Court, if this had not been a special education student, how would the case have played out?

Mr. Thune said it would have been the same result. The bottom line argument was one of exclusivity. The argument of the NDEA was they were the exclusive bargaining agent. The Supreme Court of North Dakota rejected that idea and pointed to legislation of four years earlier where NDEA attempted to gain language to that effect and did not get it. The bottom line is final authority rests with the school board. The legislation back in 1969 recognized that school boards are the ones that are liable to provide education to children and liable to provide qualified teachers. Today, which was not anticipated in 1969, those teachers must be highly qualified and the obligation remains with the school board to provide it. Federal and state law now require us to provide education to children with special needs such as the King's daughter and the school district couldn't do it.

Senator Taylor said with the Supreme Court decision, what is the precedence that is set? Is it just with special education teachers and negotiation?

Mr. Thune said the precedent of this case is school boards, if they go through the entire negotiation process, through impasse and fact finding, unilateral issuance of contract and the courts if necessary so long as they negotiate in good faith, would be entitled to do the same thing that occurred in Kenmare. The problem with the process is in Kenmare it took two years, two years without that school district being able to employ the teacher, while going outside and hiring through other entities that cost substantially more money. In Kenmare they were asking for \$15,000 a year for the one position. They had a consultant the first of the two years and paid \$30,000 more than the negotiated agreement would allow. The second year it was down some but it averaged \$22,500 per year and that is not practical.

Senator Taylor asked if the local education association would be apprehensive about pursuing it all the way through based on this decision.

Mr. Thune said he has no input on what cases the NDEA brings. They bring a lot of cases he would have thought common sense wise would not have been brought. They are protecting the interests of their teachers. It is an impressive organization with a substantial budget, they are not at all opposed to litigation. They will litigate cases that are in the best interest of their members and he respects their right to do that. It doesn't work when you have the rights of kids involved. No one litigates for children unless parents sue school districts.

Senator Bakke asked if it is fair to say that if the Kenmare school district had a salary schedule that had every teacher \$15,000 more than they have right now, you wouldn't have had this problem getting the special education teacher.

Mr. Thune said he negotiated for the Grand Forks school district in 1983, the legislature gave them 22% increase in revenue, they spent it all on teachers. The legislature can't help us fund \$15,000 increases per teacher in this state. We can't afford it. We recognize we are going to be in crisis mode as more teachers retire so we are going to have to be able to recruit new

teachers into the field, and recruit them away from other school districts and from industry.

Until such time as we can reach ideal conditions, we have to deal with what is real.

Mary Wahl, North Dakota Council of Educational Leaders, testified in favor of the bill. They have a position that states the NDCEL supports legislation for incentives such as signing bonuses, housing and pay off the salary schedule to attract and retain certified personnel.

School districts need to be able to serve their students. They believe this problem will grow as more requirements are placed on school districts to increase offerings to all students. When we talk about all students being required to have 4 years of math and 4 years of science we think the problem will grow. This bill will provide uniform, statewide flexibility to pay off the schedule if necessary and will help meet the challenge. It is not the total answer. She distributed a survey Doug Johnson put together when this bill was heard in the House (attached).

Paul Stremick, superintendent of the Dickinson Public Schools, testified in favor of the bill. (Written testimony attached) He also distributed the written testimony of Dean Rummel, president of the Dickinson School Board. (attached) In Dickinson, last year they could not fill a speech pathology position and so they reconfigured their speech department so all services could be met. They have an early retirement this year and they will have another speech pathology opening and if they encounter the same problems, they will not be able to shift duties again. Dickinson is the seventh largest district in the state and they are having problems in hiring teachers. Think of the problems that will be encountered by some of the smaller districts.

Dean Bard, North Dakota Small Organized Schools, testified in favor of the bill although he said when he finishes Chairman Freborg may think he is not in favor of the bill. He testified in the House in favor of the bill. It is a necessary piece of legislation. He represents 75 schools.

He hears from them the trouble they have obtaining teachers for certain positions, art, math, music, there is a whole litany. He worked with the subcommittee on the House side and did not see the final draft. The current language could cause some problems. Line 2 says the board has done all things necessary and proper. What does that mean? How do they know when they have done enough? What do we mean by highly qualified? Are we taking the No Child Left Behind definition? That is not clear. On the first page it refers to a suitable and highly qualified individual, who is that? On page two, all things necessary and proper, minimal disruption, quickly as possible, requirement for school approval, and all reasonable efforts are not defined and we will not know in the future. He supports the concept. He liked the original bill. This was an attempt to create a horse and all we got was a camel.

Senator Flakoll asked if all questions are answered in the findings of the Supreme Court, and/or ESPB language and/or the code.

Mr. Bard said no, that decision does not go anywhere close to answering his questions. It is a matter of definition of language.

Senator Flakoll asked if the bill is part of chapter 15 and should not be the entire chapter 15?

Mr. Bard said he is not sure what he means. It's a part of title 15.1. There is nothing in title 15.1 to solve these problems.

Senator Bakke asked if the state of North Dakota had done their job and provided adequate funding for special education and schools we would not have this problem.

Mr. Bard said he would have to agree. If the money was there, we wouldn't have these kinds of problems but the money isn't there and we don't expect it to be there. We need legislation to allow us to pay off schedule.

Nancy Sand, NDEA, testified in opposition to the bill. (Written testimony attached)

Senator Gary Lee said she says the process is there yet NDEA opposed it quite vigorously in Kenmare, why oppose it when the need was there?

Ms. Sand said the Kenmare case confirmed that if the issue is brought to the table, that following the process, boards can impose it. Now that the Kenmare case has confirmed that, 1177 is not needed. The question in Kenmare was relative to the progress of what the board wanted to do though the negotiations process. The teachers there did not want to give up that right. The board's initial proposal was different from what it ended up to be. They negotiated and changed position through the process. The teachers, however, still did not want to give up their right to be the bargaining agent and allow individual negotiations. The court said if the board brings it to the table and it is negotiated in good faith, which the Kenmare board did do, they can do it. So all you have to do is go through the negotiation process. This bill allows a board to do this without having that conversation at the table.

Senator Taylor asked how much time will elapse to go through the negotiation and impasse process.

Ms. Sand said the time line for negotiations is not set in North Dakota. Sometimes it will go into the summer or fall, depending on what is on the table.

Senator Bakke asked if 1177 passes, will it be in direct conflict with the negotiation part of the Century Code?

Ms. Sand said no, it will not because this takes it away.

Senator Bakke said it will change the negotiation piece.

Ms. Sand said yes.

Senator Flakoll said higher education doesn't have a shortage problem when you look at people with similar skills and calendar requirements and they are paid less than a person of similar degree and length of service teaching in K-12. Can she explain the dichotomy?

Ms. Sand said she cannot because she does not know much about higher education salaries.

Chairman Freborg closed the hearing on HB 1177.

Senator Taylor said this has been through a lot of consensus building. Even those who were part of the consensus building are still opposed. What was the bill like before it was engrossed? Has as much been done as possible? He can see the situation some schools are in.

Senator Bakke said her bias is evident. If the state had been doing its job and adequately paying teachers we would not have the need for this bill. She has a problem paying people off the schedule just because their position is hard to fill. It is not fair to the teacher who has been there 25 years to all of a sudden find themselves \$10,000 less than a brand new teacher. She has a philosophical problem with it and can't support it.

Senator Flakoll said there has been an evolution of the bill, it has become more specific.

Senator Gary Lee said he talked to Representative Herbel after the hearing about the concern with the language and the terms highly qualified and suitable, and he indicated he checked with legislative council and they felt the language was appropriate and was defined in code.

Senator Bakke said we heard if a school district wants to hire off the pay schedule, they can take it through the negotiations process and they can do that. Why aren't we making them do that rather than using this bill? The power to do that is already there, they are trying to circumvent that process. There are some school district doing this and the reason they are doing it is because they put it in their negotiated agreement.

Chairman Freborg said it is perhaps because of the time it takes.

Senator Bakke said everything takes time.

Chairman Freborg said he understands Senator Bakke's philosophy but the fact is we can't pay everyone another \$10,000, we know that. What do we do about the students that don't have a teacher?

Senator Bakke said a school board could tell the teacher's group that they want to open the negotiated agreement specifically to deal with this issue and make that sort of agreement with the negotiated agreement.

Chairman Freborg asked what happens if they refuse?

Senator Bakke said we don't have binding arbitration, we don't have collective bargaining so they are in a position where if the teacher's association refuses, the school district could still open it up. You'd like to think teachers have some rights but they don't.

Chairman Freborg asked why didn't that happen in the district that ended up in a couple of different courts and it took two years?

Senator Bakke said she doesn't know the particulars.

Senator Gary Lee said he works in the largest industry in the state outside of state government. A nurse in a clinic makes less than a nurse in endoscopy who may make less than a nurse in intensive care; that is just a fact of the ability to recruit in some of the more challenging areas. They understand in their business if you work in certain areas you are going to be paid more. That is just a reality of the real business world and how a competitive market is dealt with. That is not much different than what is being asked for here. They are looking for an opportunity to give instruction to students when it's needed.

Senator Gary Lee moved a Do Pass on HB 1177, seconded by Senator Flakoll.

Senator Taylor said there is probably a cause for pause on this. He realizes there are situations in schools, even in his own district, and it's something we should try. It's not an easy

decision. It may not help but it's worth the effort. There has been a lot of work done on it in terms of dealing with free agency.

Senator Flakoll said we have done some important work to set up additional academic requirements before graduation. This may help to be sure those students have access to the instructors they need to get the coursework they want in a variety of disciplines. He read the Kenmare Supreme Court decision and they cited the open market system. Schools are competing with private industry.

The motion passed 4-1. Senator Gary Lee will carry the bill.

Date: 2/26/07
Roll Call Vote #: /

2007 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 1177

Senate Education Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken Roll 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 4

No 1

Absent 0

Floor Assignment Sen. Lee

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

REPORT OF STANDING COMMITTEE

HB 1177, as engrossed: Education Committee (Sen. Freborg, Chairman) recommends DO PASS (4 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). Engrossed HB 1177 was placed on the Fourteenth order on the calendar.

2007 TESTIMONY

HB 1177

Madame Chair and members of the committee, for the record, my name is Stephanie King and I am a parent of a special needs child. I am here to ask for your support for HB1177.

What happened in our school district should not have to happen. When teachers cannot be hired, it's the children who suffer.

Our daughter was diagnosed with a thought-language disorder involving areas of understanding vocabulary, cognitive communication impairments in short-term memory, problem solving, critical thinking and organizational skills along with a 5% reading fluency rate. The speech language pathologist services the Kenmare School System offered was essential to her development and education.

Critical circumstances arose in the Kenmare School System when the SLP decided to relocate and leave the community. Reasons for her leaving included: too high of a caseload for one person to handle, under-funding by the federal government, and competitive job opportunities with higher salary offers from the medical related fields, universities, rehab centers, etc. These other opportunities create such strong competition that our school system's salary schedule was unable to compete thus not attracting any applicants for this SLP position. However, the district was still required to provide the necessary services to my daughter.

*Speech
Language
Pathologist*

In our daughter's Junior year there was no SLP to work with her or other children needing that service, so a credentialed SLP paraprofessional was sought and hired only to find out three fourths into the year that this person did not possess the qualifying credential. A regular ed speech teacher was credentialed but did not have the specialized training to qualify to teach in the area of our daughter's disabilities, as well as the other children needing this service. This inability to provide necessary services to children caused the Kenmare School Board to take crucial action knowing that they would have to fight for a possible salary offer above and beyond the hiring schedule and that this would possibly cause conflict with the existing salary schedule. I understood the dilemma facing both sides financially, but when it comes down to the real issue, it is about the children and always will be about the children. At this time, I would like introduce my husband, David, who is president of the Kenmare School Board to explain the steps the districts had to take to serve the needs of these children.

Thank you for your time.

HB 1177
15 Jan 07

Madam chair and members of the committee:

For the record, my name is Dave King and I am a parent of a child with special needs, and am also President of the Kenmare School Board.

In the summer of 2004 after the resignation of the former SLP, the superintendent of the Kenmare School System researched the availability of special ed teachers by contacting colleges for both SLP and SLP paraprofessional graduates, contacting the Souris Valley Special Education Unit of Minot, and advertising nationwide discovering there were no teachers available. Our school district then spent approximately \$60,000 in the fall of 2004 and spring of 2005 for 2 part-time speech language pathologists (being paid by the hour) and a regular education teacher for children with special needs.

In the fall of 2005 Souris Valley contracted out SLP services to the Kenmare School District at a cost of approximately \$45,000 for four days a week. Our salary schedule at the time permitted services five days a week for this position at approximately \$30,000.

Knowing that IDEA and NCLB were clearly violated in 2004-2005 for approximately 30 students as a result of a non-credentialed SLP paraprofessional, we felt as a school district we needed to take immediate action to resolve this issue.

In the spring of 2005 at teacher negotiations, our board decided to address this issue. We proposed adding a third supply and demand differential (hard-to-fill positions) to the existing salary schedule which consisted of two differentials: Rewarding teachers for 1) education and 2) experience. This was called the "simplified salary plan". The flexibility of this plan has helped our district raise our minimum teachers salary with a masters degree to just under \$31,000.

Four negotiation meetings were held, with the teachers rejecting all offers proposed and declining to make any counteroffers. The overall response by the teachers and the union was: 1) That the Board was breaking the 1969 Negotiation Law, 2) the teachers were not giving up their exclusive right to negotiate collectively, and 3) the teachers were not going to allow the Board to negotiate with individual teachers over and above the salary schedule in the negotiated agreement. The teachers union stated that if the Board pursued this offensive language that they would take this issue all the way to the ND Supreme Court.

Both sides declared impasse and the Fact Finding Commission was invited to help seek a resolution. The Fact Finding Commission recommended we narrow the scope from all hard to fill positions to just the SLP. Two more negotiation meetings took place with the Board accepting the Fact Finding Commissions recommendations and the teachers rejecting it. The Fact Finding Commission made their report public in the local newspaper and stated that the Kenmare Board of Education has clearly documented the vital need for an SLP; while on the other hand, the teachers have chosen to ignore the reality of today's complex hiring environment. Change is hard, it's always hard; however, when it comes to the needs of the Kenmare children, the teachers must accept that their traditional procedures cannot, and must not, trump timely reform. Nothing – Nothing whatsoever is more important than the children, and the Commission's proposal was carefully crafted to best serve the special education of the Kenmare School System. Two more negotiation meetings followed with no resolve to impasse. The Board then issued contracts unilaterally based on their last offer. The District was then sued by the Kenmare Education Association (KEA). The district court ruled in favor of the Board and this decision was appealed by KEA to the ND Supreme Court which ultimately, also, sided with the Board. This was a 15-month-long process at considerable expense of time and resources. But the ultimate decision was that the needs of the students were the highest priority. Districts should not have to go through what we did in order to provide statutory services to our students.

Gary Thune, who was our trial attorney for this case, is here and can answer any questions you may have regarding the legal determinations and implications of the Supreme Court decision. Thank you for your consideration.

HB 1177
15 Jan 07

House Education Committee

Monday, January 15, 2007

Testimony in Support of House Bill 1177

Bev Nielson, North Dakota School Boards Association

Madam Chair and members of the Committee, for the record, my name is Bev Nielson with the North Dakota School Boards Association and I am here to testify in support of HB1177. This bill comes before you because the collective bargaining law passed 38 years ago does not adapt well to the employment markets of 2007.

New mandates for course offerings and teacher qualifications, along with the number of teacher retirements will make it increasingly more difficult to recruit teachers. Teachers with specific credentials, especially in special education, math, and science are able to market themselves to much higher paying, private sector employers. The competition for these professionals will only increase.

While every human being's worth as an individual is equal, all skill sets are not equal in the employment market.

Please consider the following in your deliberations:

- Provision of educational services for students should be our main concern.
- School districts are required, by law, to provide defined course offerings and student services.
- Teacher qualification for each discipline are outlined in law and rule.
- In order to retain school approval, these requirements must be met.
- Funding is not sufficient to support raising all teachers' salaries to the level necessary to recruit the most scarce. For instance, graduates with majors in math, science, and special education have

marketable skills outside the education community at much higher wages.

- If the nature of the collective bargaining law prevents school districts from meeting their statutory obligations, it needs to be updated to reflect the realities of the market.

I'm sure you will hear from the teachers' union that every teacher with a bachelors or a masters with the same number of years experience should make the same salary, but I think we all know that, in reality, there is a surplus of teachers in some disciplines and a severe shortage in others. This creates a very real supply and demand issue that is not the fault of teachers or the school boards. The fact that we may not like having to pay some more than others does not change the reality or the market.

Opponents of this bill will likely suggest that if school boards want this authority, they can gain it through negotiations. This is interesting because that is not always their position. The union has consistently testified and lobbied heavily for state law mandating minimum teacher salaries and 70% of all new state monies going directly to them. The Kenmare case clearly showed the steadfastness of the union's opposition to any such proposals. It is counterproductive to expect every school district go to impasse, fact finding, and likely to court just to gain the authority to meet their statutory obligations to their students. When the vacancy cannot be filled at the scheduled salaries, districts need to move quickly to recruit a qualified teacher to provide services to students. When a position goes unfilled for any length of time, it is the students who suffer.

Two sessions ago boards received authority to pay signing bonuses to assist in recruitment of teachers. This is a valuable tool and in most cases would assist in hiring. However, when attempting to recruit someone from a much higher paying job in the private sector, they are looking for a salary

level not just a temporary stipend.

School boards are not likely to use this authority unless absolutely necessary. For one reason, they can't afford to and for another they are sensitive to the mood and morale of their staff.

Because it is the responsibility of the school board to appropriately staff positions to provide educational programs for their students, we believe the flexibility for hiring provided in HB1177 is necessary and would ask for your support.

NDSBA is open to suggestions that could make HB1177 a better bill and look forward to working with the committee on any such amendments.

Thank you for your consideration.

HB 1177
15 Jan 07

House Education Committee

Re: HB 1177 Salary Increases for unfillable positions.

Date: January 15, 2007

The Honorable RaeAnn G. Kelsch
State Representative
State Capitol Building
600 East Boulevard
Bismarck, ND 58505-0360

Madam Chair and Members of the House Education Committee:

I am Paul Stremick, Superintendent of Dickinson Public Schools. I am here to testify in favor of salary increases for unfillable positions as outlined in HB 1177. The ability to pay educators off of the salary schedule is necessary to provide a quality education for students. When there is a shortage of teachers, this may be the only way to hire quality, qualified personnel in hard to fill areas.

North Dakota Century Code 15.1-09-33.1 allows school districts to pay signing bonuses to teachers. However, there are limitations on who can receive them and how many years the payment can be spread over. I have personally used signing bonuses in the hiring process and at times the signing bonuses were not enough to entice prospective candidates.

The utilization of the ability to offer salary increases is a tool that administrators and school boards would not take lightly. In my previous position, counselors were hired off the salary schedule. No problems arose from hiring them off the salary schedule. Granting school districts the ability to offer salary increases for unfillable positions, provides school districts with the ability to provide the best possible education for students.

Thank you for the opportunity to submit this testimony. If I can respond to any questions, or if I can provide any more information that may be useful to you, I would be most happy to do so.

HB 1177
15 Jan 07

**House Education Committee Hearing
Representative RaeAnn G. Kelsch, Chair**

**House Bill No. 1177
January 15, 2007**

Madam Chair and members of the House Education Committee:

My name is Dean Rummel and I am the President of the Dickinson Public School Board. Thank you for allowing me to submit this document in favor of HB 1177 dealing with paying a higher salary than allowed by the negotiated contract for unfillable positions.

Dickinson Public Schools and the Dickinson Education Association have negotiated a traditional salary schedule of 15 steps (experience) and 8 lanes (education) and this single schedule is used to compensate all certified professionals. With one grade within this traditional salary schedule it is and will continue to be ever more difficult to fill the professional positions required to provide a quality education for our students. House Bill 1177 would allow us to compete in the market to hire professionals for those hard to fill positions.

The law of supply and demand requires School Districts to pay more for those positions in short supply or greater demand. For example, when hiring a speech-language pathologist Job Service North Dakota reports that the entry-level annual compensation is \$34,126 statewide and the average is \$44,010. Dickinson Public's entry-level starting wage per the negotiated agreement is \$24,100. Our District has a position like this to fill for 2007-2008 and it will be extremely challenging without the ability to offer a higher salary than the negotiated agreement allows.

I thank you for the opportunity to submit this testimony and strongly encourage you to support HB 1177. I apologize for not being available to deliver this testimony in person. If there is a need feel free to contact me.

Dean Rummel Phone (701) 456-6302 E-mail: dean.rummel@tmisystems.com
835 Senior Ave
Dickinson, ND 58601

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15 Jan 07

Good morning Mrs. Kelsch and committee members. My name is Bruce McComish. I am from Riverdale but am in the process of moving to Hebron.

I am here to testify in support of House Bill 1177.

Why? After a surgery in 1994, our daughter Christina, a second grade Underwood School District student, became legally blind.

Christina struggled read **36 font print** finding it very fatiguing and a strain on what vision remained.

The Underwood School District did not have a Braille teacher so the Special Education teacher took it upon herself to learn Braille through UND. Mrs. Thomas utilized her \$75/yr continuing education stipend(?) that the district provided for the books, class fees, and gas to drive to and from UND as required to learn Braille. She asked the district to reimburse her for the additional expenses above her \$75 stipend - the District refused.

Mrs. Thomas passed her classes with flying colors but was allowed to teach Christina Braille for only 45 minutes a day then it was "put away". Why only 45 minutes per day? That was all the time that Mrs. Thomas could fit into her teaching schedule as she had other responsibilities too.

According the out reach person from the North Dakota School for the Blind a student requires significantly more time than 45 minutes per day to learn Braille. The District would not allow Mrs. Thomas to teach Christina Braille for more than 45 minutes per day and another Braille teacher could not be located.

This created a problem. As another Braille teacher could not be found, Christina was sent to a residential institution in Aberdeen South Dakota to Learn Braille for what was suppose to be one year. However, as the District could not locate another Braille teacher, Christina was forced to stay at the institution for four years.

One of the reasons that the District cited that made it difficult to hire another Braille teacher was that they could NOT pay above negotiated scale for a new teacher.

This bill might have helped to remove that barrier to my daughter's education and she may never have told her parents when she was in the institution: "Some times I feel like I did something wrong and you sent me away. I feel like I'm being punished".

In closing, I would request that you consider adding a provision to allow current teachers, that take the necessary classes, obtain the necessary degree(s) to fill those impossible to fill positions, a higher salary than the current negotiated contract allows. As a teacher, Mrs. Thomas would have deserved it.....

Thank you for your time and if you have any questions, please ask.

HB 1177
15 Jan 07

TESTIMONY ON HOUSE BILL NO. 1177

My name is Mike Geiermann and I am legal counsel for the North Dakota Education Association. I provide this testimony to the committee in opposition to House Bill No. 1177. In order to understand the significance of House Bill No. 1177, the NDEA believes it is important that the committee understand the current system of negotiations between education associations and school districts.

In 1969, in response to the teacher strike which had taken place in Minot, this Legislature passed the Teacher Negotiations Law. In doing so, the Legislature declared that it was essential to the welfare of its people to establish a policy to promote the improvement of personnel management and relations between school boards and their certificated employees by providing a uniform basis for recognizing the right of public certificated employees to join organizations of their own choice and be represented by such organizations in their professional employment relationship with public school districts. Since that time, local education associations and school boards have entered into negotiations which culminate in the establishment of a negotiated agreement which sets forth the terms and conditions of employment of all of the teachers employed within the district. House Bill No. 1177 seeks to change that process and to create in North Dakota schools a process of free agency for the hiring of teachers.

In enacting the Teacher Negotiations Law, the Legislature was aware that teachers negotiating on their own, either as individuals or self-styled groups, probably were not as effective or persuasive as a representative more learned in the process of negotiations would be and therefore, provided for an organization which could undertake the causes of teachers relating to their employment and profession. Teachers who are recognized by

the school district as the appropriate negotiating unit have the right to select a representative organization. This representative organization must certify that it represents a majority of the teachers within the negotiation unit. Once the representative organization has been selected, it has the duty and authority to meet with the school board to negotiate in good faith regarding the terms and conditions of employment, employer-employee relations, the formation of a contract which may contain a provision for binding arbitration and the interpretation of an existing contract. Since 1969, local education associations and school districts have entered into numerous negotiated agreements pursuant to this process. While not perfect, the process serves to accomplish the goals set forth by this Legislature.

Pursuant to the negotiated agreements that are entered into between these parties, the parties agree to salaries which are to be paid for all teachers based upon their experience and their education. House Bill No. 1177 appears to be designed to change that process by allowing for individual negotiations between school districts and individual teachers. Such a process could have a devastating impact upon existing negotiations in school districts. First of all, under House Bill No. 1177, a school district could enter into individual negotiations with a teacher if they are unable to fill a position and the principal reason for the board's inability to fill the position is the salary limitation provided for in the negotiated agreement. This bill would allow school boards almost unlimited authority to circumvent the negotiations process. In addition, this Bill is not needed as education associations and school districts have the right to bargain language which would allow the school district to pay off of the salary schedule if certain terms and conditions were met. The NDEA believes that there are approximately 50 school districts in the state which have

negotiated agreements which allow for school districts to pay off of the salary schedule. However, these provisions have been agreed to by the teachers and the board in the local school district as opposed to being mandated by the legislature.

Another reason this law is not needed is that it has been recognized that a school district has the right to enter into individual negotiations with teachers at the conclusion of the negotiation process. Currently, under North Dakota Law, in the event that the parties cannot come to an agreement, one of the parties may declare impasse and the matter will be referred to the North Dakota Fact Finding Commission. The Fact Finders will hold a hearing and in the event that the parties can still not come to an agreement, the parties must continue negotiations until such time as the parties either agree or come to a point where the process cannot continue. If the parties cannot agree at the conclusion of the process, the North Dakota Supreme Court has recognized the right of a school district to unilaterally issue contracts based upon their last offer. If that last offer contains a proposal for individual negotiations, the school district can impose such a requirement. Last summer, in Kenmare Education Association vs. Kenmare Public School District, 2006ND35, the Supreme Court recognized that a school district did have the right to unilaterally issue contracts, after impasse, which would allow the school district to enter into individual negotiations with teacher candidates. However, this can only be done after the exhaustion of the negotiations process. House Bill No. 1177 is designed specifically to avoid the negotiation process between teachers and school districts and allow school districts to enter into individual negotiations without going through the process. The negotiation process between education associations and school districts works well and benefits all teachers through the process.

As stated earlier, House Bill No. 1177 will create free agency in North Dakota by allowing certain teachers in certain curricular areas to become free agents. In other words, a teacher in school district A could bargain with school district B, C and D for a higher salary. In the event that school district A outbids the other school districts and pays the teacher candidate \$10,000.00 more than the salary schedule would allow for, it is conceivable that such a payment could cause significant moral problems among the existing staff who have already dedicated themselves to that particular school district. House Bill No. 1177 will allow for individual negotiations and will take the state of North Dakota back to working conditions which existed prior to 1969. If individual negotiations were allowed without going through the negotiations process, teachers who are also coaches will negotiate against non-coaches, science teachers will negotiate against history teachers, secondary teachers will negotiate against elementary teachers and specialist teachers will negotiate against teachers in areas which candidates are simply more prevalent. House Bill No. 1177 flies in the face of the policy which was set by the Legislature many years ago and will negatively impact a process which has worked well between education associations and school districts. The solution to the problem of recruiting and retaining teachers to the state of North Dakota is to adequately fund education to attract qualified candidates to become teachers for our children. I urge that you give House Bill No. 1177 a DO NOT PASS recommendation.

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HB1177

Donna Schmit, KEA

Madam Chair Kelsch and members of the House Education
Committee:

For the record, my name is Donna Schmit. I am a sixth grade
teacher from Kenmare Public School and serve as president of the
Kenmare Education Association.

I stand opposed to HB1177 and would like to explain how this bill
would impact a district such as Kenmare Public School.

To start us out we need to look at the budget that exists in
Kenmare. We operate on a 2.5 million dollar budget with 47%
being allotted for salaries and benefits to teachers. This is a finite
number of dollars that is evenly distributed to educators based on

their experience and education. In the Kenmare district we have 27 teachers. In the last negotiated year our salary/benefits increase cost the district \$34,669. If a district had to plan on giving one individual \$10,000 more per year in salary, what will be left for the rest of the teaching staff? What if there were two positions? That would cost the district \$20,000 more per year and an even smaller raise would be left for the remaining staff. To the senior staff this would create the underlying feeling that their salary increase has been curtailed and given to the new individual. As we look ahead —to a 10 year period, the total take home pay would be \$100,000 more than the other teachers who had been employed by the district during that same time frame. Those educators who have ties to the community and have dedicated their careers to a district will end up at the lowest end of the pay scale. This not only affects their salary but their retirement dollars as well. With a lower salary they would have fewer retirement dollars. What a great way to say thank you to a dedicated and committed educator!

Educating children is a team effort with each teacher being part of the team. If we really want the students to be the main focus of education we need to keep a unified and united team. Currently, teachers work together to share knowledge, assisting each other as mentors with what works best not only with lesson plans and technology, but with discipline as well. The team effort works because each feels they are paid fairly and equally, based on their education and experience. If a new staff member were to join the team but be compensated at a higher salary, we would have a complete break down of the team. Teachers would not be as willing to share their expertise with this highly paid individual. Ultimately, who would be the most affected? The students would!

With teacher pay already lower than other professionals in the state and larger salaries given to just a few educators, resentment among staff will increase leading to a greater number that will retire or quit. This spells disaster for North Dakota since we are seeing teacher shortages already in many areas.

To sum it up, let's keep salaries fair and equitable, a work environment that's friendly and cohesive, and keep the best interests of the students in mind.

Thank you for the opportunity to share my feelings about HB1177.

I strongly urge you to give a do not pass recommendation to this bill.

January 15, 2007
HB1177
Gloria Lokken, NDEA



Madam Chairperson Kelsch and members of the House Education Committee:

For the record, my name is Gloria Lokken. I am a fourth grade teacher on leave from Minot Public Schools to serve as President of the North Dakota Education Association.

I strongly oppose HB1177. This is a very small bill of only 13 lines, but if passed this bill could have a huge impact on our public schools.

You just heard the testimony of both Michael Geiermann and Donna Schmit as to the detriments of this bill to our public school employees and our students. This bill does not help recruit and retain staff for our students, but could promote a revolving door concept of teachers continually looking for the next best offer, which would have a devastating affect on our students.

The bill does not define the term "unfillable." What does "unfillable" mean? We do not know. Is a position "unfillable" if there are no applicants, or is it "unfillable" if the board doesn't like any of the applicants? Is a position "unfillable" as early as March, or is it "unfillable" in the middle of September? Should the definition of "unfillable" be the same for all districts, or should each school board be allowed to define the term? No matter what the definition of "unfillable" might be, NDEA believes it is important to improve the compensation of all teachers.

We recognize that all positions must be filled. Along with my testimony, I gave you the NDEA policy statement for compensation systems. It speaks to allowing compensation systems that meet the needs of the staff and district. All parties must be involved to find solutions to the unique needs of the district.

Let us bargain a solution to local staffing needs. Over 50 districts now have the ability to bargain off schedule; that represents one-fourth of our districts. We are constantly investigating compensation packages to meet the needs of our members and current professional and community demands. Let the stake holders in each district come to agreements that promote a solution without compromising the well being of the current staff.

In 2003, a bill was passed to allow a bonus for new hires in North Dakota. On Wednesday you will hear HB1249 which broadens loan forgiveness for students choosing the teaching profession. These are examples of honest and fair recruiting

efforts. We must continue to look at ways to encourage quality teachers to choose our state for their professional career.

The unintended consequence of HB1177 could be a move back to the 1950's when elementary teachers were paid considerably less than high school teachers and females were paid less than males.

We know it is everyone's intent that our schools are fully and well staffed. Currently, our students' education is enriched with a stable, dedicated staff. A free-agency concept would greatly diminish today's spirit of cooperation and collaboration that promotes excellence in our schools. We must allow the respected bargaining process to resolve the conditions related to hiring of "unfillable" positions.

The simple fact is all public school employees want their school staffed with the very best employees in every classroom and in every position. This bill does not accomplish that goal. It can only be accomplished by promoting the education profession as an attractive career choice, a profession that:

- Is respected and well compensated.
- Ensures good working conditions and the support to deliver true quality education.
- Promotes teamwork, not a profession that promotes a "what's best for me" mentality.

Let us move forward to accomplish a true rise in status of the education profession. A "do not pass" on HB1177 is a critical step in continuing the Legislatures' efforts of promoting recruitment and retention of North Dakota's teachers.

Thank you Madam Chairperson Kelsch and House Education Committee Members, I am willing to answer any questions you might have.

NDEA POLICY STATEMENT FOR COMPENSATION SYSTEMS

Compensation systems should be designed to attract and retain staff, encourage and reward the acquisition of additional skills and knowledge, enhance collegiality and collaboration, enhance self-esteem, and provide improvement in student achievement.

This, we believe, is best done through a single salary schedule. If, however, a local association considers a different compensation system, that compensation system must be:

1. capable of being implemented at the building level with staff approval and acceptance, fair and accessible to all.
2. competitive with the external market, fully funded and sustainable.
3. bargained locally.
4. clear, consistent, specific measurable and research driven.
5. designed to allow for diversity of teaching/learning styles and techniques.
6. designed to provide incentives that are valued.
7. developed by teams representative of all affected groups.

Adopted by the NDEA Board of Directors January 21, 2001

Senate Education Committee
Testimony in Support of House Bill 1177
Bev Nielson, North Dakota School Boards Association

Chairman Freborg and members of the Committee, for the record, my name is Bev Nielson with the North Dakota School Boards Association and I am here to testify in support of HB1177. This bill comes before you because the collective bargaining law passed 38 years ago does not adapt well to current employment. *Circumstances.*

The discussion of HB1177 needs to be about students and being able to provide them programs and services to which they are entitled.

New mandates for course offerings and teacher qualifications, along with the number of teacher retirements make it increasingly more difficult to recruit highly qualified teachers. Teachers with specific credentials, especially in special education, math, and science are able to market themselves to higher paying, private sector employers. The competition for these professionals will only increase and in extreme circumstances, schools need to be able to compete.

While every human being's worth as an individual is equal, all skill sets are not equal in the employment market.

Please consider the following in your deliberations:

- Provision of educational services of students should be our main concern.
- School districts are required, by law, to provide defined course offerings and student services.
- Teacher qualifications for each discipline are outlined in law and rule.
- In order to retain school approval, these requirements must be met.

- Graduates with majors in math, science, and special education have marketable skills outside the education community at much higher wages.
- Since the collective bargaining law can prevent school districts from meeting their own statutory obligations, it needs to be updated to reflect the realities of the market.

I'm sure you will hear from the teachers' union that every teacher with a bachelors or a masters with the same number of years experience should make the same salary, but I think we all know, in reality, there is a surplus of teachers in some disciplines and a severe shortage in others. This creates a very real supply and demand issue that is not the fault of the teachers or the school boards. The fact that we may be uncomfortable paying some more than others does not change the reality or the market.

Opponents of this bill will likely suggest that if school boards want this authority, they can gain it through negotiations. The circumstances of the Kenmare Supreme Court case clearly showed the steadfastness of the union's opposition to such proposals. It is counterproductive to expect school districts to go through impasse and fact finding, and then to court just to gain authority to meet their statutory obligations to provide qualified teachers to their students, as was the case in Kenmare. In addition, the union does not favor negotiating when legislating is to their advantage as evidenced by their fervent support for statutory minimum salaries and legislation requiring 70% of new money going directly to teacher compensation.

Two sessions ago boards received authority to pay signing bonuses to assist in recruitment of teachers. This can be a valuable tool and in some cases assists in hiring. However, when you are attempting to recruit someone from a higher paying job in another state or in the private sector,

they are looking for a salary level, not just a temporary stipend.

You may also hear testimony warning of "free agency" in the teaching field. The amended bill addresses this concern by making it clear that any teacher who has taught in North Dakota during the previous 12 months may not be hired off schedule.

The amended bill, also, makes it clear that hiring off schedule is only an option when districts have made every effort to fill a required position. School boards are not likely to use this authority unless absolutely necessary. For one reason, they cannot afford to and for another, they are sensitive to the mood and morale of their staff.

All interested parties were asked to meet with the subcommittee of House Education to make suggestions for areas of compromise in this bill. NDSBA agreed to the compromise amendments.

Because it is the statutory responsibility of the school board to appropriately staff positions for provision of educational programs and because it is the right of students to receive these services, we believe the flexibility for hiring provided in HB1177 is necessary. A strong 73-17 bipartisan vote in the House showed agreement and we would ask the Senate Education Committee for a Do Pass recommendation.

Thank you for your consideration.

Chairman Freborg and members of the committee, for the record, my name is Stephanie King and I am a parent of a special needs child. I am here to ask for your support for HB1177.

What happened in our school district should not have to happen. When teachers cannot be hired, it's the children who suffer.

Our daughter was diagnosed with a thought-language disorder involving areas of understanding vocabulary, cognitive communication impairments in short-term memory, problem solving, critical thinking and organizational skills along with a 5% reading fluency rate. The speech language pathologist services Kenmare School System offered was essential to her development and education.

Critical circumstances arose in the Kenmare School System when the SLP decided to relocate and leave the community. Reasons for her leaving included: too high of a caseload for one person to handle, under-funding by the federal government, and competitive job opportunities and higher salary offers from the medical related fields, universities, rehab centers, etc. These other opportunities create such strong competition that our school system's salary schedule was unable to compete thus not attracting any applicants for this SLP position. However, the district was still required to provide the necessary services to my daughter.

In our daughter's Junior year there was no SLP to work with her or other children needing that service, so a credentialed SLP paraprofessional was sought and hired only to find out three fourths into the year that this person did not possess the qualifying credential. A regular ed speech teacher was credentialed but did not have the specialized training to qualify to teach in the area of our daughter's disabilities, as well as the other children needing this service. This inability to provide necessary services to children caused the Kenmare School Board to take crucial action knowing that they would have to fight for a possible salary offer above and beyond the hiring schedule and that this would possibly cause conflict with the existing salary schedule. I understood the dilemma facing both sides financially, but when it comes down to the real issue, it is about the children and always will be about the children. At this time, I would like introduce my husband, David, who is president of the Kenmare School Board to explain the steps the districts had to take to serve the needs of these children.

Thank you for your time.

Chairman Freborg and members of the committee:

For the record, my name is Dave King and I am a parent of a child with special needs, and am also President of the Kenmare School Board.

In the summer of 2004 after the resignation of the former Speech Language Pathologist, the superintendent of the Kenmare School System researched the availability of special ed teachers by contacting colleges for both SLP and SLP paraprofessional graduates, contacting the Souris Valley Special Education Unit of Minot, and advertising nationwide discovering there were no teachers available. Our school district then spent approximately \$60,000 in the fall of 2004 and spring of 2005 for 2 part-time speech language pathologists (being paid by the hour) and a regular education teacher for children with special needs.

In the fall of 2005 Souris Valley contracted out SLP services to the Kenmare School District at a cost of approximately \$45,000 for 4 days of the week. Our hiring schedule at that time permitted services 5 days a week for this position of approximately \$30,000.

Knowing that IDEA and NCLB were clearly violated in the 2004-2005 school year for approximately 30 students as a result of a noncredentialed SLP paraprofessional, we felt as a school district we needed to take immediate action to resolve this issue.

In the spring of 2005 at teacher negotiations, our board decided to address this issue. We proposed adding a third differential "supply and demand/hard-to-fill positions" to the existing salary schedule which consisted of two differentials; Rewarding teachers for: 1) Education, 2) Experience. The flexibility of this plan has helped our district raise our minimum teachers salary with a masters degree to just under \$31,000.

Four negotiation meetings were held, with the teachers rejecting all offers proposed and declining to make any counteroffers. The overall response by the teachers and the union was: 1) That the Board was breaking the 1969 Negotiation Law, 2) The teachers were not giving up their exclusive right to negotiate collectively, and 3) The teachers were not going to allow the Board to negotiate with individual teachers over and above the salary schedule in the negotiated agreement. The teachers union stated that if the Board pursued this offensive language that they would take this issue all the way to the ND Supreme Court.

Both sides declared impasse and the Fact Finding Commission was invited to help seek a resolution. The Fact Finding Commission recommended we narrow the scope from all hard to fill positions to just the SLP. Two more negotiation meetings took place with the Board accepting the Fact Finding Commissions recommendations and the teachers rejecting it. The Fact Finding Commission made their report public in the local newspaper and stated that the Kenmare Board of Education has clearly documented the vital need for an SLP; while on the other hand, the teachers have chosen to ignore the reality of today's complex hiring environment. Change is hard, it's always hard; however, when it comes to the needs of the Kenmare children, the teachers must accept that their traditional procedures cannot, and must not, trump timely reform. Nothing -- Nothing whatsoever is more important than the children, and the Commission's proposal was carefully crafted to best serve the special education of the Kenmare School System. Two more negotiation meetings followed with no resolve to impasse. The Board then issued contracts unilaterally based on their last offer. The District was then sued by the Kenmare Education Association (KEA). The district court ruled in favor of the Board and this decision was appealed by KEA to the ND Supreme Court which ultimately, also, sided with the Board. This was a 15-month-long process at considerable expense of time and resources. But the ultimate decision was that the needs of the students were the highest priority. School Districts should not have to go through what we did in order to provide statutory services to our students.

Gary Thune, who was our trial attorney for this case, is here and can answer any questions you may have regarding the legal determinations and implications of the Supreme Court decision. Thank you for your consideration.

OFF SCHEDULE MASTER CONTRACT SURVEY

Survey Summary - January 16, 2007

NDSAS Region		Response Total	Response Percent
	NW	32	35.16%
	NE	23	25.27%
	SW	15	16.48%
	SE	21	23.08%
Total Repspondents		91	

Does your district have a provision in its master agreement for paying off the negotiated salary schedule?		
Yes	24	29.63%
No	57	70.37%

Please provide specific language in your negotiated master contract that is related to paying off the pay schedule in the space below if your district has such language..		
Total Respondents	23	25.56%
(skipped this question)	67	74.44%

Please check all of the following reasons ONLY IF you currently have in your master agreement for paying off the negotiated salary schedule for unfillable positions:		
No applicants for the position.	14	31.11%
Difficult to fill positions as defined by the ESPB.	13	28.89%
Specific position(s)	6	13.33%
None of the applicants applying were qualified for the position.	3	6.67%
Did not meet specific dates for filling position(s) listed.	1	2.22%
Other (please specify)	8	17.78%
Total Responses	45	

Mary Wahl

Please check any of the following which you feel would be helpful to have in your district's master agreement for paying off the negotiated salary schedule for unfillable positions:

No applicants for the position.	51	25.00%
Difficult to fill positions as defined by the ESPB.	62	30.39%
Specific position(s)	28	13.73%
None of the applicants applying were qualified for the position.	39	19.12%
Did not meet specific dates for filling position(s) listed.	13	6.37%
Other (please specify)	11	5.39%

Total Responses 204

School Districts with Contract Language for Off Schedule Salary

	School District	District Has Off Schedule Agreement	Off Salary Contract Language	No Applicants	Difficult to fill positions as defined by the ESPB.	Specific position(s) listed in master agreement.	None of the applicants qualified	Specific dates for filling position(s) listed not met	Other
NW	TGU School District #60	Yes	Hard to Fill Positions The Board may designate a licensed staff position as a "hard to fill" position. The district may fill a "hard to fill" position by placing a new hire on the salary schedule step beyond their level of experience or retain an exist	Yes	Yes				Retention of hard to fill position.
NW	Alexander Public	Yes	The Alexander School Board reserves the right to deviate from the salary schedule.	Yes	Yes	Yes		Yes	
NW	Anamoose Public	Yes	The board may deviate from the salary schedule to compete for hard to find personnel such as speech therapists, teachers of the learning disabled, etc. The AEA would be apprised to all such deviations and good faith searches would take place prior to any	Yes	Yes	Yes			
NW	Garrison Public Schools	Yes	6. Contracting Teachers For Salaries That Are Not in Conformance With Garrison Public School District Salary Schedule 6.1 The Board of Education, when deemed necessary in order to employ a qualified teacher, may pay above the salary schedule or allow						Broad wording as stated above... no specifics or restrictions included.
NW	McClusky	Yes	The Board has a one line schedule and can set the base.						Board sets base for all positions.
NW	Tioga Public School	Yes	11. The Board of Education reserves the right to pay above the schedule for critical areas and for exceptional work.						Our language is simple. See answer to question 4.
NE		Yes	SECTION 4 2. The Board reserves the right to go above base if necessary to secure a teacher for a certain position.						No specific language....it appears to be wide open and no
NE	North Central #28	Yes	The Board of Education may, at their discretion, deviate from the master contract to aid in finding teachers in shortage areas.	Yes	Yes				
NE	Midway	Yes	The salary schedule shall be deemed a minimal pay schedule and shall no prohibit or restrict the Board of Education from hiring teachers at higher pay then set therein.						There are no specific reasons listed.
NE	Maddock	Yes	The Board reserves the right to place incoming teachers off the schedule.					Yes	No reasons or criteria listed.
NE	New Rockford - Sheyenne	Yes	Newly hired teachers will be paid no more than a similarly educated and experienced teacher on staff except in areas of critical need as determined by the Board.						
NE	Adams and Edmore	Yes	Any contract between the Boards and a teacher shall be expressly subject to the terms and conditions of this agreement, except in the case where the boards are unable to fill teaching vacancies in critical need areas, signing bonuses may be utilized as new	Yes	Yes			Yes	
NE	Hatton Public School	Yes							

School Districts with Contract Language for Off Schedule Salary

NE	Warwick #29	Yes	E. In the event the district does not attract qualified applicants for the certified positions, the Board may seek to designate the position as 'hard to fill' position. The district may attempt to fill a 'hard to fill' position by compensating the new h	Yes			Yes	
SW	Scranton	Yes	The Scranton School Board reserves the right to pay over the salary schedule to persons in critical areas of instruction. This applies to any teacher or part-time teacher the board feels would be in the best interest of the school.	Yes	Yes	Yes	Yes	
SW	Richardton-Taylor	Yes	Section B #2 The Board reserves the right to deviate up from this index schedule on a one-year basis only. The Association is to be informed of the deviation and the teacher shall return to the schedule the second year.	Yes			Yes	
SE	Lisbon School District #19	Yes	Item 3 -- Page 5 'The School Board reserves the right to hire above schedule when necessary.'					
SE	Milnor	Yes	5. The board reserves the right to place a teacher at a higher level on the salary schedule.	Yes	Yes	Yes	Yes	The reasons are not defined by the negotiated agreement nor
SE	Strasburg	Yes	If necessary for hiring purposes, the Board may pay an incoming teacher above the salary schedule.		Yes			
SE	Kulm	Yes	No returning teacher will be paid less than a new teacher 'similarly situated'. Based on educational background and years of experience The hiring line is contained in board policy.	Yes	Yes			
SE	Medina Public School #3	Yes	The board reserves the right to hire above the salary schedule in the event that teachers cannot be obtained in certain areas.	Yes	Yes			
SE	Hazleton Moffitt Braddock	Yes	The Board has authority to hire one or two teachers over negotiated pay scale if Board is unable to fill the position at the negotiated scale. However, the teacher's salary will be frozen until the salary schedule catches up to the teacher's pay.	Yes	Yes	Yes	Yes	
SE	Lidgerwood	Yes	Up to seven (7) years of experience outside the Lidgerwood Public School District # 28 may be credited to new teachers coming into the system by the School Board. However, this seven-year limitation may be waived when certain teaching positions have li	Yes	Yes		Yes	

All Respondent Survey Responses and Comments Off Schedule Salary January 16, 2007

NDSAS Region	School District	Dist Has Off Schedule Agreement	No Applicants	Difficult to fill positions as defined by the ESPB.	Specific positions listed in master agreement	None of the applicants qualified	Specific dates for filling position(s) listed not met	Other	Additional Comments
NE	Adams and Edmore	Yes	Yes	Yes		Yes	Yes		
NE	Devils Lake	No	Yes					Our school board does not wish to pay off the schedule	Our school board in Devils Lake is opposed to paying off the salary schedule. They believe that this could become a morale issue for the district if they did.
NE	Drayton	No	Yes	Yes		Yes			
NE	Grafton School District	No	Yes	Yes	Yes				Spanish - We were unable to fill our Spanish teaching position with a 'highly qualified' teacher. The district hired a retired teacher to supervise a student teacher in the classroom. The student teacher graduated but has been unable to pass her praxis test
NE	Grand Forks	No	Yes			Yes			
NE	Hatton Public School	Yes	Yes	Yes					
NE	Hillsboro	No	Yes	Yes	Yes	Yes			
NE	Lakota	No	Yes						
NE	Leeds	No	Yes	Yes	Yes				
NE	Maddock	Yes	Yes	Yes		Yes	Yes		Maddock has 'above schedule' language that to-date has worked. Am concerned that upcoming legislation might cripple our current format.
NE	May-Port CG	No	Yes	Yes		Yes	Yes		
NE	Midkila	No	Yes	Yes		Yes			
NE	Midway	Yes	Yes	Yes		Yes			Midway recently increased the years that an experienced teacher can bring into the district to 15. The teachers, administrators, and board members all see this as one solution to the problem that will address many circumstances. However, even this appro
NE	Minto	No	Yes	Yes	Yes			as determined by the Board	
NE	New Rockford - Sheyenne	Yes	Yes	Yes	Yes	Yes			
NE	North Central	Yes	Yes	Yes		Yes			
NE	Starkweather / Munich	No	Yes	Yes	Yes	Yes			Difficult to fill most positions in a small rural community. Have to be able to offer something to get them to your district.
NE	Thompson	No	Yes			Yes			
NE	Valley School District 12	No	Yes	Yes		Yes			
NE	Warwick #28	Yes	Yes	Yes		Yes			no comments
NE		Yes						None, see 7 below.	We prefer to not have any language regarding off schedule salaries in the negotiated agreement. Such language, if necessary should be in school board policy, not a master contract or negotiated agreement.
NW	Alexander Public	Yes	Yes	Yes	Yes	Yes	Yes		
NW	Anamoose Public	Yes	Yes	Yes	Yes	Yes			
NW	Belcourt School District # 7	No	Yes	Yes					ESPB requires the schools to hire highly qualified staff, yet they will give provisional license to people who have 4 year degree's without doing student teaching or have any teaching background.

January 16, 2007

SE	Central Cass	No		Yes							The political climate for this type of agreement has been changing. As a past education association president I believe education and educators are in a new time. Free agency is now upon us and districts are under the burden to fill the positions necessary
SE	Ellendale	No	Yes								
SE	Hazleton Moffitt										
SE	Braddock	Yes	Yes	Yes	Yes	Yes	Yes				
SE	Kulm	Yes	Yes								
SE	Lamoure	No		Yes							
SE	Lidgerwood	Yes	Yes	Yes	Yes						
SE	Linton	No	Yes	Yes	Yes						
SE	Lisbon School District #19	Yes								Upon recommendation of the Superintendent	Although our negotiated agreement allows the school board the right to hire above schedule when necessary, we have never hired anyone outside of the schedule. We have only allowed them to bring in more experience then the schedule allows in difficult pos
SE	Litchville-Marion	No	Yes	Yes	Yes	Yes	Yes				The Medina School has not had trouble because the teachers know what positions we are having difficulty hiring and they want to have qualified personnel within the school system.
SE	Medina Public School #3	Yes					Yes				At the time of hire it appeared that everyone (teachers) were glad that the positions were filled and that assignments were not made to them. However, once school starts, 'the worm turns' and there is a bit of 'sour grapes' or jealousy regarding those wh The number of unfilled positions across the state.
SE	Milnor	Yes	Yes	Yes			Yes				
SE	Montpelier Public School	No	Yes	Yes			Yes				
SE	North Sargent	No		Yes							
SE	Northern Cass	No	Yes	Yes	Yes		Yes				
SE	Oakes	No	Yes	Yes			Yes				
SE	Steele-Dawson	No		Yes							
SE	Strasburg	Yes		Yes							AS of now we have not paid anyone above the salary schedule, but it is nice to have the option to do so should it become necessary.
SE	Valley City	No		Yes							
SE	Wishek	No	Yes	Yes	Yes		Yes				
SE	Zealand	No	Yes	Yes	Yes		Yes				
SW	Belfield	No		Yes							
SW	Beulah	No	Yes	Yes			Yes				
SW	Dickinson	No	Yes	Yes			Yes				
SW	Flasher School District #39	No		Yes							
SW	Hazen	No	Yes	Yes	Yes		Yes				
SW	Killedeer	No		Yes			Yes				
SW	Mandan School District	No	Yes	Yes	Yes						If we were able to get a statement similar to any of the three statements above I would be satisfied
SW	Mott/Regent	No	Yes	Yes							If the applicant can fill a combination of open positions, for example 1/2 time business education, 1/2 time phy. ed. and the applicant can fill both positions. It would still save the district money in the long run instead of hiring two individuals and
SW	Richardton-Taylor	Yes									
SW	Scranton	Yes	Yes	Yes	Yes		Yes				Schools need to fill positions and be competitive to do this in many areas. This is not a big hit with teachers and NDEA but we have to do what's necessary to fill positions.
SW	Selfridge	No	Yes	Yes							We need to continue to be able to hire teachers that are retired. If this were taken away then, we would not have been able to find qualified teachers in two main curricular areas.

All Respondent Survey Responses and Comments Off Schedule Salary **January 16, 2007**

SW	South Heart Public School District #9	No	Yes	Yes				Mathematics, Science, Vo Ag, FCS, English, Foreign Language	
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House Education Committee

Re: HB 1177 Salary Increases for unfillable positions.

Date: February 26, 2007

The Honorable Layton W. Freborg
State Senator
State Capitol Building
600 East Boulevard
Bismarck, ND 58505-0360

Mr. Chairman and Members of the Senate Education Committee:

I am Paul Stremick, Superintendent of Dickinson Public Schools. I am here to testify in favor of salary increases for unfillable positions as outlined in HB 1177. HB 1177 provides school districts with the opportunity to provide the best possible teacher for the students of North Dakota. When there is a shortage of teachers, this may be the only way to hire quality, qualified personnel in hard to fill areas.

North Dakota Century Code 15.1-09-33.1 allows school districts to pay signing bonuses to teachers. However, there are limitations on who can receive them and how many years the payment can be spread over. I have personally used signing bonuses in the hiring process and at times the signing bonuses were not enough to entice prospective candidates.

The utilization of the ability to offer salary increases is a tool that schools would not take lightly. In my previous position, counselors were hired off the salary schedule. No problems arose from hiring them off the salary schedule. The ability to pay educators off of the salary schedule is necessary to provide a quality education for students.

Thank you for the opportunity to submit this testimony. If I can respond to any questions, or if I can provide any more information that may be useful to you, I would be most happy to do so.

**Senate Education Committee Hearing
Senator Layton W. Freborg, Chairman**

**House Bill No. 1177
February 26, 2007**

Chairman Freborg and members of the Senate Education Committee:

My name is Dean Rummel and I am the President of the Dickinson Public School Board. Thank you for allowing me to submit this document in favor of HB 1177 dealing with paying a higher salary than allowed by the negotiated contract for unfillable positions.

Dickinson Public Schools and the Dickinson Education Association have negotiated a traditional salary schedule of 15 steps (experience) and 8 lanes (education) and this single schedule is used to compensate all certified professionals. With one grade within this traditional salary schedule it is and will continue to be ever more difficult to fill the professional positions required to provide a quality education for our students. House Bill 1177 would allow us to compete in the market to hire professionals for those hard to fill positions.

The law of supply and demand requires School Districts to pay more for those positions in short supply or greater demand. For example, when hiring a speech-language pathologist Job Service North Dakota reports that the entry-level annual compensation is \$34,126 statewide and the average is \$44,010. Dickinson Public's entry-level starting wage per the negotiated agreement is \$24,100. Our District has a position like this to fill for 2007-2008 and it will be extremely challenging without the ability to offer a higher salary than the negotiated agreement allows.

I thank you for the opportunity to submit this testimony and strongly encourage you to support HB 1177. I apologize for not being available to deliver this testimony in person. If there is a need feel free to contact me.

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HB1177 Testimony February 26, 2007

Chairman Freborg and Members of the Senate Education Committee,

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

NDEA opposes HB1177. If passed, this bill could have a huge impact on our public schools. We know our state has a teacher shortage problem. NDEA wants all classrooms filled with highly qualified teachers, but we do not believe HB1177 will accomplish this.

When HB1177 was introduced in the House, the bill was only a few lines. The house amended the bill, and NDEA participated in the discussions that lead to the amendments. Many of our concerns were addressed in the amendments. NDEA believes the bill is much better, but we still cannot support it. We still have concerns.

First, I will address the negotiations process.

In 1969, the Legislature passed the teacher negotiations law in response to the Minot teacher strike. The negotiations law has remained relatively unchanged since that time. The law has worked well in providing a uniform basis for recognizing the right of public school teachers to join organizations of their own choice and be represented by such organizations in their professional employment relationship with public school districts.

By passing the negotiations law, the Legislature was aware that teachers negotiating on their own probably were not as effective or persuasive as a representative that is more knowledgeable in the process of negotiations. The Legislature, therefore, provided for an organization that could negotiate for and represent the interests and concerns of teachers relative to the terms and conditions of their employment.

Salary is a mandated topic of negotiations, and public school district salary schedules across the state recognize the value of experience and education. These schedules are negotiated. HB1177 changes that process by allowing for individual negotiations between school districts and individual teachers. We believe about fifty school districts already allow some form of this. The language in their agreements was achieved through the negotiations process.

Following the regular negotiations process when agreement is not reached, the parties may submit their unresolved issues to the North Dakota Education Fact Finding Commission. Following receipt of the recommendations from the Fact Finding Commission, the parties continue negotiations until they agree or arrive at the point when no agreement can be found.

The North Dakota Supreme Court has recently ruled that if some form of individual negotiations was proposed during negotiations, a school district can impose that following impasse.

HB1177 avoids the negotiations process. It allows school districts to enter into individual negotiations without going through the process. It allows school districts to circumvent the process. The current process works and benefits all teachers. HB1177 is not needed. School districts and associations can negotiate this, or it can be imposed—through the negotiations process.

HB1177 introduces the Superintendent of Public Instruction into this process.

If the State Superintendent is to be a part of this process, we would like the Superintendent to have more authority to review the actions taken by school boards in requesting permission to provide additional salary. The bill currently only allows the Superintendent to act if he/she has reason to believe that the information contained in the notice is not "accurate." Perhaps the Superintendent's ability to review district actions should not be so narrowly proscribed.

When is the position unfillable?

HB1177 sets forty-five days prior to the start of school as the trigger. NDEA believes twenty-one days would be more appropriate.

We believe the bill lacks definitions.

According to the bill, a school board must do everything "necessary and proper" to fill a vacancy with a suitable and highly qualified individual. There is no definition for "necessary and proper" nor is there a definition for "suitable." Although we assume the definition for "highly qualified" is what is necessary for No Child Left Behind, HB1177 does not state that. The value of negotiations is that terms are defined following thorough discussion about what causes an issue to be brought to the negotiations table. The best solutions are those that are developed jointly by the stakeholders. That is the purpose of negotiations. HB1177 would be more acceptable to us if boards were directed to negotiate these definitions.

Line 22 on Page 1, allows increased compensation "to the extent deemed necessary by the board." We would suggest that be amended to read "to the extent deemed necessary by the board after consultation with the local education association."

HB1177 has some serious some financial implications.

HB1177 could cause problems for districts with limited resources. For example, when Kenmare teacher Donna Schmit testified before the House Education Committee, she cited the cost of the salary and benefit increase for the Kenmare district in the last negotiated year was \$34,669. So, if the district paid an individual an additional \$10,000 to an individual, what might be left for the other teaching staff? If the district wants to offer additional salary to more individuals, you can certainly do the math and see the impact on the budget.

Unlike a signing bonus, the additional salary in HB1177 continues. Over a period of ten years, an additional \$10,000 means an additional \$100,000 cost to the district, or \$250,000 over a twenty-five year career. Not only is this a significant amount of added disposable income, it also results in a much greater retirement benefit. It is not hard to understand why other teachers who also give years of service to the community and district may believe additional salary for certain individuals is unfair. Students learn best when their teachers have good relationships, share ideas, and collaborate. A difference in salary could affect this.

If passed, HB1177 could take this state a long way backwards in history.

It has been a long time since North Dakota elementary and secondary teachers were paid on different scales. The additional salary permissible in HB1177 is for positions necessary for school approval. Will HB1177 take us back to a two-cast system of elementary vs. secondary or women vs. men?

Another concern we continue to have is about free agency.

When HB1177 was first introduced, NDEA was concerned about free agency. In spite of several amendments to alleviate that concern, we still have it. HB1177 still allows teachers from other states to cross over into North Dakota and receive additional salary.

And lastly, NDEA does not believe HB1177 will solve our state's teacher shortage problem.

NDEA supports legislation when we believe it will attract and retain teachers and education employees. NDEA wants individuals to enter the teaching profession and teach in North Dakota because it is a worthy profession with employees being treated and compensated in a fair manner.

Attached to my testimony is the NDEA policy for compensation systems. NDEA believes compensation systems should be designed to attract and retain staff, encourage and reward the acquisition of additional skills and knowledge, enhance collegiality and collaboration, enhance self-esteem, and provide improvement in student achievement. HB1177 does not provide a fair system of compensation and may impede collegiality and collaboration.

What will attract and retain teachers is compensation that reflects the value and respect for the profession, good working conditions, time and resources for professional development, sufficient resources to provide the materials and experiences to allow all students to achieve and learn, and providing tuition reimbursement for a teacher to get highly qualified to replace someone who is likely to retire.

HB1177 will not solve our teacher shortage problem. Adequate funding for education will attract people into the profession. Loan forgiveness for those entering the profession will do this. Low interest rates will do this. Equal respect for all in the profession will do this. NDEA doesn't believe HB1177 will do these things.

In conclusion, we have a negotiations process that works. HB1177 is not needed, and HB1177 will not solve our state's teacher shortage problem. NDEA urges a Do Not Pass recommendation.