



NDSBA

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**SB 2215
Testimony of Amy De Kok
House Education
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Chairman Owens and members of the House Education committee, my name is Amy De Kok. I am in-house legal counsel for the North Dakota School Boards Association. NDSBA represents all North Dakota public school districts and their boards. I am here today in support of SB 2215.

SB 2215 seeks to build into NDCC chapter 15.1-16, which addresses teacher representation and negotiation, a more structured timeframe to assist school boards and teachers in their pursuit of good faith contract negotiations within a reasonable period of time. With the passage of SB 2215, the overall structure of the negotiations process as it works in practice throughout North Dakota today would remain the same. Before I get into the bill, I think it would be helpful to briefly review the requirements of NDCC chapter 15.1-16 regarding the negotiations process. Before I begin, I want to define two important concepts relevant to negotiations: (1) a negotiating unit; and, (2) a representative organization. A negotiating unit is a group of employees that will be subject to the agreement reached as a result of the negotiations (e.g., teachers). A representative organization is the organization chosen by the negotiating unit to represent it at the table with the board to negotiate the agreement. This is usually the local teachers association (e.g., the Bismarck Education Association or the Fargo Education Association).

The purpose of teacher negotiations is for the board and the teachers to enter into a master contract or negotiated agreement that addresses the terms and conditions of the teachers' employment with the district. The master contract/negotiated agreement governs the relationship between the parties for the term of the contract (usually 2 years) and individual teacher contracts are issued based on the terms of the negotiated agreement. Negotiations typically occur every other year, usually during a legislative year. This usually results in a 2-year master contract. However, nothing in ND law prohibits school boards and teachers from negotiating every year. Indeed, there are some districts in ND where the board and teachers will only agree on a one-year master contract.

Negotiations cannot begin until either the board or a representative organization (usually the local teachers association) for the negotiating unit (the teachers) provides notice to the other side of their intent to

negotiate. This notice must be provided no later than 60 days before the anniversary date of the negotiated agreement (typically July 1st). Once notice is provided and regardless of which party provides the notice, a 2-step recognition process is supposed to occur before actual negotiations may begin. This recognition process does two things: it defines the appropriate negotiating unit of employees and identifies the representative organization that will represent the unit in negotiations. However, there is no time frame built into statute as to when this process must occur following provision of the notice of intent to negotiate. If this recognition process is not commenced or is delayed, it can significantly impact the timing and completion of negotiations.

The 2-step recognition process begins with the filing of a petition for recognition of an appropriate negotiating unit. There is no timeframe or deadlines in the NDCC for this step in terms of when this request must be filed or when the board must act on/consider it. Once the board approves the appropriate negotiating unit, the second step is for a representative organization to file a petition with the board to be recognized as the party that will represent the unit in negotiations. Again, there is no deadline or timeframe by which this request must be filed in relation to the recognition of the unit; however, there are deadlines for what is to occur once such a petition is filed with the board. In practice in most districts, the local teachers association submits a petition containing both requests. Because the NDCC contemplates a 2-step process and there are not sufficient deadlines and timeframes built into the process in statute, this often causes confusion as to how the recognition process should move forward, especially when the two requests are included in one petition, and has caused boards to inadvertently miss the few deadlines required by statute. As I will explain shortly, SB 2215 provides a better structure for this process to occur.

Once the recognition process is complete, negotiations must begin within 30 days unless the parties agree otherwise. However, other than the duty to negotiate in good faith, there are no other time frames or deadlines in place to encourage the parties to pursue negotiations in a timely manner. This has led to use of delay as a negotiation tactic. In some situations, parties have refused to meet at all during the summer months and the next school year begins without a negotiated agreement. This has caused issues with the annual budgeting process as well because teacher salaries and benefits (often the largest portion of a district's annual budget) are not known prior to completing the budget for the upcoming year.

The only option to respond to such tactics is to bring a lawsuit in district court alleging bad faith negotiations. Two districts were forced to pursue this option in the last few years, causing them to incur significant legal fees and costs. More importantly, this just causes further delay of the negotiations process. In one case, the process was delayed almost 18 months. As negotiations drag on, it is common to see once amicable discussions turn adversarial and contentious, which benefits neither side. In these situations,

boards are often left with no real option to keep negotiations moving forward other than to declare impasse. However, even this option has been challenged in the past few years and only led to further delay.

As a result of these ongoing concerns with the statutory requirements and their impact on how negotiations proceed, SB 2215 is being proposed to build additional structure and timeframes into the process in an effort to benefit all sides. To this end, SB 2215, as amended in the Senate, does several things:

- Incorporates specific deadlines within the current statutory structure relating to the 2-step recognition process. This is reflected in Sections 2 and 3 of the bill.
 - Specifically, a petition requesting recognition of the appropriate negotiating unit must be filed with the school board no later than February first of the current school year. The board must accept or reject the proposed negotiating unit described in the petition within 30 days of receipt.
 - In addition, a petition requesting recognition of a representative organization must be filed with the school board no later than March first of the current school year. The existing process/deadlines following receipt of this petition remains the same.
 - The proposed deadlines and timeframes will require only one meeting of the board, at which the board will accept or reject the proposed negotiating unit and if accepted, will consider the request to recognize the representative organization that will have authority to negotiate on behalf of the unit.
 - This allows the representative organization to file one petition containing both requests or to file two separate petitions, if desired.
- Moves the deadline to provide notice of intent to negotiate/renegotiate in section 15.1-16-13(3) from no less than 60 days before annual anniversary date to no less than 160 days before annual anniversary date. This is reflected in Section 4 of the bill.
 - Providing notice of intent is the first step in the negotiation process and therefore, it makes sense to move this deadline up in light of the proposed deadlines relating to the recognition process.
 - Also, in my experience, this notice is already being provided in most instances much earlier than 60 days before the anniversary date of the master contract.
- Adds an end date of July first for completion of negotiations unless otherwise agreed to by the parties. This is reflected in Section 4 of the bill.
 - This will encourage both parties to diligently pursue negotiations and will prevent the parties from using undue delay or the potential threat of starting the school year without a contract as a negotiation tactic.
 - It will also require negotiations to be completed in advance of the annual budgeting process conducted by the board, as well as in time for the new pay schedule that typically begins on July 1st.
 - There is an option for the parties to agree to extend this deadline if more time is needed.

- Provides that impasse will exist by operation of law if any of the following three situations occur: (1) after a reasonable period of negotiation, an agreement has not been formulated and a dispute exists; (2) by July first following recognition, an agreement has not been reached between the board and the representative organization and the parties have not otherwise agreed to extend the negotiations period; or (3) the board and the representative both agree that an impasse exists.
 - This is reflected in Section 5 of the bill.
 - The first and third bases are already included in existing law.
 - This clarifies that if negotiations are not complete by July first, an impasse exists.
- Removes the implication that the factfinding commission must determine that an impasse exists before it may provide assistance.
 - This change is reflected in Sections 1 and 6.
 - The factfinding commission has agreed that having it make this determination is not appropriate.
- Makes clear that the representative organization maintains its authority to represent the negotiating unit for the duration of the contract term or until another representative organization is recognized by the board pursuant to the process set forth in statute.
 - This ensures that the parties are able to come back to the table and modify the agreement during the term if necessary (e.g., COVID compensation).

NDSBA supports SB 2215 because we believe it benefits all parties in the negotiation process and builds more structure into the process so that negotiations may be conducted in good faith and with fair and reasonable diligence. It will ensure the district can issue contracts to its teachers prior to the start of the new school year, which will provide certainty to its teaching staff in terms of salary and benefits, among other things. Overall, teachers do not want to start the school year without their contracts and districts want to be able to provide this certainty to its staff and avoid retention problems that are often created by starting the school year without contracts. This concern was referenced in the debate on the Senate floor in support of the bill. Teachers will still have the same amount of time to accept or reject their individual contracts following completion of negotiations. SB 2215 will allow a district to confirm its staffing needs prior to the start of the school year.

You will hear from opponents to this bill that SB 2215 takes away local control. This is simply not true. SB 2215 will not impact local control of negotiations as the board and teachers may still negotiate as they see fit. For example, they may still meet when and wherever and for how long they choose. The parties may start negotiations as early as they would like to ensure adequate time if that is a concern in that particular district. Nothing in SB 2215 would require either side to agree to a particular offer, provision or issue; the parties retain the freedom to structure their contract the way they see fit. They also have the

ability to extend negotiations beyond the deadline if more time is necessary to complete the process. Finally, we believe it will also avoid costly and unnecessary litigation that has wreaked havoc in the negotiations process in over the years.

For all of these reasons, NDSBA asks the committee to issue a do pass recommendation on SB 2215. Thank you for your time. I would be happy to answer any questions the committee may have.