



Great Public Schools

Great Public Service

**Testimony on SB 2215
House Education Committee
March 17, 2021**

Good morning, Chairman Owens, and members of the Committee. For the record, my name is Nick Archuleta, and I am the president of North Dakota United. ND United is a union of professionals, including K-12 classroom teachers, dedicated to great public schools and great public service. I rise today in opposition to SB 2215 and to respectfully urge a DO NOT PASS recommendation on this unneeded proposed legislation.

Mr. Chairman, I want to begin my testimony with a brief history of collective bargaining in North Dakota.

On March 28, 1969, the Minot School Board moved to issue teachers' contracts in a special session by formally terminating negotiations between the teachers and the board. Negotiations had broken down several days earlier, with teachers unhappy over a decreased rate of a salary increase. Their superintendent was instructed by the Board to issue contracts with a \$6,000 base salary and a revised salary schedule which reduced the number of lanes from ten to six.

Teachers were feeling additionally frustrated, members of the Committee, at how quickly negotiations were terminated. In comments to the Minot Daily News, Rudy Zupetz, then-president of the Minot Federation of Teachers, said, "We could have arrived at a more satisfactory agreement, I believe, had the board's team not insisted upon winding everything up Friday night. They felt they could not keep the news media waiting upon further negotiations."

According to a news release from the Minot Federation of Teachers, the teachers requested that "negotiations with the Minot School Board on several matters, including teachers' salary schedule, employment security and restoration of educational programs such as remedial reading and elementary music," be reopened.

On April 2, approximately 150 of Minot's 430 public school teachers went on strike.

Dick Palmer, the editor of the North Dakota Education Association member magazine, *The North Dakota Teacher* wrote, "Teachers who have lived and taught in communities for a lifetime are putting jobs on the line in an effort for better salaries, which they strongly maintain will result in better education for their community's children."

Trading off headlines, splashed across the front page of the Minot Daily News, were stories about the strike and of a catastrophic flood of the Souris River in Minot. The state legislature, which was meeting in Bismarck, realized that what was happening in Minot was a harbinger of what was likely to play out across the state unless it established guidelines governing negotiations between school boards and teachers.

As a result, the North Dakota Legislature passed HB 175, enshrining Chapter 15-38.1 (now, 15.1-16) into the ND Century Code, titled "Teachers' Representation and Negotiations." The implementation of legislation acknowledging the right of teachers to collectively bargain the terms and conditions of employment was hailed at the time as a giant stride forward in terms of North Dakota teacher and school board relations.

This right did not come without a cost, however. Judge Roy A. Ivedson began to call teachers into court to face contempt charges for defying his injunction "to restrain and enjoin the teachers of the public schools of Minot from engaging in a strike.". The Associated Press reported that 22 teachers were sent to jail, and the Minot Daily News published a list of 125 teachers who were fired.

When I think of these teachers, Mr. Chairman, I think of heroes. They risked their jobs, their livelihoods, and their security to raise their profession and to improve the education environment for their colleagues and students. Their actions brought to light an emerging issue and the 44th Legislative Assembly sagaciously responded with a law that has served teachers, administrators, and school boards quite well since, with few exceptions.

Any changes to the collective bargaining statute in North Dakota should serve to make things fairer for all parties. Not only does SB 2215 fail to do so, but it also only serves to exacerbate a serious flaw in the legislation. That is, SB 2215 further disadvantages teachers by making the field for negotiations less level.

The North Dakota Supreme Court has recognized the inequality in bargaining power between teachers and school boards on at least three occasions.

- In Dickinson Education Association v. Dickinson Public School District (1993), the Supreme court said, "*We recognize that N.D.C.C. ch. 15-38.1 does not place school boards and public school teachers on equal footing in contract negotiations. In all contract negotiations conducted under N.D.C.C. § 15-38.1, a school board always holds a trump card – the power to unilaterally issue last-offer contracts, which teachers must either accept or reject – ranking higher than any held by the teachers.*"
- In Kenmare Education Association v. Kenmare Public School District, (2006), the Supreme Court said, "*We are mindful that a school district's authority to end contract negotiations creates unequal bargaining power.*"

- In Dickinson Education Association v. Dickinson Public School District, (2014), The Supreme Court said, *“We are mindful of the unequal bargaining power created by a school district’s authority to end contract negotiations. The apparent purpose for allowing a school district to bring good faith negotiations for an ensuing school year to an end is to permit schools to operate with a teaching staff for that school year. Limiting a school district’s authority to issue unilateral last offer contracts to a single school year then under negotiation is consistent with that purpose.”*

Chairman Owens and members of the Committee, please consider the following points:

1. Placing a deadline for the declaration of impasse, which SB 2215 does, simply adds to the existing unequal bargaining power of a school board. As it currently exists, the law provides that after a reasonable period of negotiations, impasse exists, or the parties can always agree that impasse exists. The latter is most often the case. It is very unusual to simply have one party agree that impasse exists. The situation that developed in the Fargo School District in 2019 is the first time that legal action was ever taken regarding the declaration of impasse. The District Judge dismissed the case, not on the merits, but rather because he ruled that the Fargo Education Association had another remedy in the form of the Fact Finding Commission.
2. Placing a deadline on the declaration of impasse runs contrary to N.D.C.C. § 15.1-16-13(4). Pursuant to this section, school boards and teachers shall meet at reasonable times and negotiate in good faith regarding the terms and conditions of employment, employer/employee relations, formation of a contract which may contain a provision for binding arbitration, and the interpretation of an existing contract. Nothing in subsection 13 “compels either the board of a school district or a representative organization to agree to a proposal or to make a concession.” Proposing a deadline to declare impasse forces teachers to either make concessions to school board proposals or risk the potential that impasse will be declared.
3. By proposing a deadline on declaring impasse by July 1, school boards are encouraged to slow walk negotiations until July 1 to declare impasse and turn negotiations over to the ND Fact Finding Commission, whose rulings are not binding on school boards.
4. No student’s education has ever been negatively impacted by negotiations which have continued beyond July 1. Teachers and administrators have always continued to work in the best interests of our students regardless of the status of their negotiations.

5. There has never been an exodus of teachers from a school district because negotiations went beyond July 1. Those returning teachers all have continuing contracts with the school district which is a guarantee of employment for the next school year. Teachers who leave, though very few do, run the risk that they will not be employed during the next school year. Most teachers have some type of contact or connection with the community which prevents them from being overly mobile.
6. School Boards are not disadvantaged in any way by extended negotiations. An argument can be made that teachers are disadvantaged because if they receive pay raises during negotiations, they will not receive that extra compensation until negotiations have been concluded.
7. It is well known that the months of April and May are the busiest for teachers as the school year is winding down. At those times, to require that negotiations be completed by July 1 simply adds to the stress teachers will experience during the last few weeks of May. It is much better to allow negotiations to go into the summer when teachers can look at and contemplate the proposals made by their school board, and vice versa.

Chairman Owens and members of the Committee, in the eyes of our members, SB 2215 is, at best, a solution to a problem that does not exist. At worst, it is seen as a cynical attempt to further weaken the hand of teachers as they negotiate the terms and conditions of their employment. Our members agree with the ND Supreme Court that even before the parties sit down to negotiate, school boards have the upper hand. SB 2215, should it become law, would further put the heavy thumb of the state on the scales of fair negotiations in favor of the school boards. That is the antithesis of "the light touch of government."

The way SB 2215 came to be is analogous to my daughters when they were in middle school. On occasion, my daughters would have a difference of opinion that turned into an argument. Inevitably, one would appear before my wife and I, make their case, and expect us to intervene on her behalf, without ever getting the other side of the story. Usually, we did not fall for that ploy. We would seek out the other side of the story before deciding on a course of action. Often, we would tell them to try to work it out on their own before asking us to decide, because neither of them was likely to be entirely satisfied with our plan to resolve their differences. That proved to be an effective plan. They learned not to run to us when they have not attempted to work out their differences with each other.

That is what has happened here. The School Boards Association, on behalf of the Fargo School Board following a contentious negotiation, came to the state of North Dakota to

solve a problem that it had not tried to solve locally. Rather than trying to ascertain all the facts or telling the NDSBA to try to work it out between the parties involved, the state, should SB 2215 pass, will unilaterally intervene in a local matter, further ignoring the principle of local control.

Chairman Owens and members of the Committee, ND United released a poll two months ago that revealed that where once 83% of educators planned to retire as a teacher when they began their career, now, just 50% of educators plan on spending their entire career in teaching. Educators attribute this dramatic drop to increased pressure and job burnout. They have been paying attention to what has happened in the legislature over the course of recent sessions. They have seen the time allowed for them to accept their contracts shrink from 30 days to 14 days. They have seen any number of voucher schemes introduced that, if passed, would divert dollars raised for public purposes, including K12 education, to private schools, parochial schools, and homeschools. They have seen the value of the licenses they worked hard to earn devalued by alternative licensure policies. Furthermore, teachers know that fair negotiations result in outcomes that attract young people to the profession and encourage talented people to remain in the profession. And everyone in this room knows that when good people are drawn to the profession and talented people are encouraged to remain in the profession, the real winners are the children and communities that teachers serve.

Finally, Mr. Chairman, teachers deserve respect. They deserve dignity. They deserve a fair shake at the bargaining table. SB 2215 falls far short in delivering on any of those.

For these reasons, Mr. Chairman, on behalf of North Dakota United's 11,500 members, I urge a DO NOT PASS recommendation for SB 2215. Thank you for the opportunity to be here today. I am happy to stand for any questions.

