

15-381-02
15-391-04 ✓

January 4, 1974

The Honorable M. F. Peterson
Superintendent of Public Instruction
State Capitol
Bismarck, North Dakota 58501

Dear Mr. Peterson:

This is in reply to your letter of December 21, 1973, in which you request an opinion relative to the status of a guidance counselor in teacher negotiation processes. You state the following facts and questions:

"Section 15-39.1-04 defines a teacher for purposes of the Teachers' Fund for Retirement and lists nearly everyone engaged in education with the exception of counselors. Librarians, supervisors, and special teachers are mentioned.

"Section 15-38.1-02 defines a teacher for purposes of the negotiation law as one primarily in the classroom. Librarians, supervisors, and counselors may or may not be in the classroom.

"For purposes of the negotiation law are counselors, librarians, and supervisors considered in the large group of teachers? For purposes of the Teachers' Fund for Retirement Law, are counselors considered teachers?"

Section 15-38.1-02 (1) of the North Dakota Century Code defines a teacher for purposes of the Teacher Representation and Negotiation Law and provides as follows:

"As used in this chapter:

1. 'Teachers' means and includes all public school employees certified under chapter 15-36 of the North Dakota Century Code and employed primarily as classroom teachers.

I further note that Subsection 2 of the above cited section defines the term "administrator". It provides as follows:

" 'Administrator' means and includes all public school employees employed primarily for administration of the school or schools of a school district and devoting at least fifty percent of their time in any one year to the duties of administration of the school or schools of a school district."

I assume that guidance counselors are certificated as provided by Chapter 15-36 of the North Dakota Century Code. If they are not so certified they would not, of course, be considered as teachers for purposes of the negotiations law. Assuming they are certified, however, we note the definition of teacher adds another criteria, i.e., they must be employed primarily as classroom teachers. Both criteria must be met. However, we believe the purpose of the second criteria was to distinguish the teacher from the administrator, i.e., a person who had some administration duties but was primarily a classroom teacher would be classified with the teachers rather than the administrators. A person who was employed for the purpose of devoting at least fifty percent of his time to the duties of administration would, on the other hand, be classified as an administrator even though he had some classroom duties. Thus, it appears to me the requirement of being employed primarily as a classroom teacher was to distinguish the individual from the administrator. A guidance counselor, although he might not teach in the classroom as that function is ordinarily considered would still be considered a teacher (unless he devoted fifty percent or more of his time to administration in which case he would be considered an administrator) for purposes of the negotiation law. We believe the same rationale applies to librarians and supervisors who are certified pursuant to Chapter 15-36.

With respect to the Teachers' Fund for Retirement, we would note this is a separate act with separate definitions. Section 15-39.1-04 of the North Dakota Century Code provides in part:

"For purposes of this chapter, unless the context or subject matter otherwise requires:

1. 'Teacher' shall include:

- a. All persons employed in teaching in any state institution or by any school board or other governing body of any school district of this state, including superintendents, assistant superintendents, business managers, principals, assistant principals, and special teachers employed in any state institution or in the school system of any school district in this state, except that the superintendent and assistant superintendent of the Grafton state school may be brought within this definition at their option.
- b. The superintendent of public instruction, assistant superintendents of public instruction, county superintendents, assistant superintendents, supervisors of instruction, state school supervisors and inspectors, every person engaged as president, dean, school librarian, or registrar of any state institution, the secretary of the North Dakota education association, all assistant secretaries and professional staff of such association, and the commissioner of higher education.

The Honorable M.F. Peterson

3

January 4, 1974

- " c. Any person who serves in the capacity of substitute or part-time teacher and earns more than the maximum allowed by the Federal Social Security Act for the receipt of full social security benefits in any one school year.

We believe counselors are considered as teachers for purposes of the Teachers' Fund for Retirement. We note the general definition found in Subdivision a of Subsection 1. While it may be that in certain instances a guidance counselor does not "teach" formal classes in the ordinary manner, we would hesitate to say that a guidance counselor is not a "teacher" in the broad sense. The counselor is required to be certified in order to be employed by a school board in that capacity. As such, we believe he is employed to "teach" by the school board. We would further note that the reference to librarians is used in the phrase "every person engaged as president, dean, school librarian, or registrar of any state institution," and as such we believe it has reference to librarians in state institutions as opposed to school districts. Librarians in state institutions need not be certified and therefore, if they did not teach in the normal manner, would ordinarily not be considered as teachers for purposes of the act. We believe this is the reason they are specifically included in this instance and their specific inclusion would not act to exclude guidance counselors who are not specifically mentioned and who may not teach in the normal manner.

I trust this will adequately set forth our position on the matters presented.

Sincerely yours,

Gerald W. Vandewalle
Assistant Attorney General

GWV:ah

A: AIO, PMS, GWV, JEA, RPB, LEE