

**OPINION  
70-310**

January 30, 1970 (OPINION)

The Honorable M. F. Peterson

Superintendent of Public Instruction

RE: Schools - Teacher Negotiation Act - Rights of Teachers

This is in reply to your letter of January 19, 1970, relative to the Teacher Representation and Negotiation Act enacted by the 1969 Legislative Assembly and codified in chapter 15-38.1 of the North Dakota Century Code, as amended. You state the following facts and questions:

I am looking at Section 15-38.1-08, Right to Negotiation. The second sentence of that section states that 'Any teacher, or administrator, shall have the right to present his views directly to the school board.'

Does this mean that this teacher who chooses not to be a part of the negotiating unit has the right to do more than merely present his views? In other words, can this individual teacher negotiate with the school board on an individual basis for his particular salary, hours, or any other negotiable item? The question really is, what constitutes 'present his view'?

Further, the negotiating unit includes, I assume, the majority of teachers. Must the teachers who choose not to be members of the negotiating unit need to be identified? Must their names be listed as part of the teaching force in that particular school as not desiring to be a part of the negotiation unit?

Must this teacher who presents his or her views directly to the school board be identified in such a way that his or her name is public knowledge to the board and/or to the other teachers?"

We note the provisions of sections 15-38.1-07 and 15-38.1-08 of this act:

15-38.1-07. RIGHT TO ORGANIZE OR NOT ORGANIZE.

1. Teachers, or administrators, shall have the right to form, join, and participate in the activities of representative organizations of their choosing for the purpose of representation on matters of employer-employee relations.
2. Teachers, or administrators, shall also have the right to refuse to join or participate in the activities of representative organizations."

15-38.1-08. RIGHT TO NEGOTIATE. Representative organizations shall have the right to represent the appropriate negotiating unit in matters of employee relations with the school board.

Any teacher, or administrator, shall have the right to present his views directly to the school board."

Subsections 4 and 6 of section 15-38.1-01 of the North Dakota Century Code, as amended, provide:

As used in this chapter:

\* \* \*

4. 'Appropriate negotiating unit' means a group of teachers having common interests, common problems, a common employer, or a history of common representation, which warrants that group being represented by a single representative organization in negotiations with a school board.

\* \* \*

6. 'Representative organization' means any organization authorized by an appropriate negotiating unit to represent the members of the unit in negotiations with a school board."

Using this definition of a representative organization in subsection 2 of section 15-38.1-07, said section would read as follows:

Teachers, or administrators, shall also have the right to refuse to join or participate in the activities of any organization authorized by an appropriate negotiating unit to represent the members of the unit in negotiations with a school board."

It appears to us there is a significant distinction between an appropriate negotiating unit and a representative organization. A teacher may be classified as a part of an appropriate negotiating unit by virtue of his position in a school system, since it would appear to be the position rather than the teacher which is being classified. However, the above quoted statutes do authorize the individual teacher the choice of not joining or participating in the activities of the representative organization authorized by the appropriate negotiating unit in which his position is classified to represent the members of the unit in negotiations with a school board.

The provisions of section 15-38.1-07 must be read in conjunction with the provisions of section 15-38.1-08, stating that representative organizations shall have the right to represent the appropriate negotiating unit in matters of employee relations with the school board and that any teacher, or administrator shall have the right to present his views directly to the school board. We believe the term "teachers" includes the singular as well as the plural. It thus appears that a teacher, who does not wish to join or participate in the activities of any organization authorized by an appropriate negotiating unit to represent the members of the unit in negotiations with a school board, need not do so. Since the teacher has the right

to present his views directly to the school board (this would be true of all teachers, whether or not they agree to participate in the activities of the representative organization) we would conclude the teacher must have the right to negotiate directly with the school board.

Prior to the enactment of the Teacher Negotiation Act, there is no doubt but that the teacher had the right to negotiate independently, and in fact, there was considerable doubt whether the school board was required, as a matter of law, to recognize a negotiating unit or a representative organization. The enactment of chapter 15-38.1 has altered that situation so the school board may legally be required to recognize such unit and organization if the proper statutory procedures are followed. However, in view of the specific provisions contained in the act relative to the right of a teacher to refuse to join or participate in such activities, and the right of the teacher to present his views directly to the school board, we do not believe the enactment of chapter 15-38.1 proscribed the right of the individual teacher to negotiate independently if he so desires. The term "present his views directly to the school board" is not capable of precise definition. On the one hand it could be argued that a teacher could not negotiate with the school board, but could only "present his views" to the board. However, when that statement is considered with the provision that a teacher is not required to join or participate in the activities of the organization authorized to represent a unit, same must include a contract negotiated by such organization on behalf of such unit. It is possible that a school board, on its own volition, could determine it will not negotiate independently with any teacher, and that any teacher who is a part of such negotiation unit must accept the contract negotiated with the representative organization of such negotiation unit. Although a school board might adhere to such position, it must nevertheless permit the individual teacher to present his view relative thereto to the board.

Furthermore, even though some of the teachers do not wish to join or participate in the activities of the representative organization selected by their negotiating unit, such teachers would not be entitled to have a separate organization represent them as a unit, since the unit has already selected its representative organization. In other words, if one or more teachers do not wish to join or participate in the activities of the representative organization selected by their negotiating unit, such teachers may then only negotiate with the school board on an individual basis, and not as a separate representative organization basis.

Insofar as identification of the teachers who choose not to be members of the negotiating unit is concerned, it would appear, as a practical matter, that it would be necessary for the school board to know such members. If these individuals present their separate views directly to the school board, it is difficult to foresee how the board could avoid knowing the name of the individual. Furthermore, we believe the members of the negotiating unit are entitled to know the names of those teachers whom the unit represents and, through the process of elimination, the teachers would be able to identify those teachers who would not choose to be members of the negotiating unit.

Since school board meetings are open to the public, with the exception of those meetings held under the provisions of section 15-47-38 of the North Dakota Century Code, as amended, relating to discharge of a teacher or failure to renew a contract, anyone could attend such meeting. We find nothing in the statutes which prevents a teacher, who presented his views directly to the school board rather than through a negotiating unit, from being identified.

HELGI JOHANNESON

Attorney General