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# NILRR NEWS RELEASE

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## National Institute for Labor Relations Research

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March 26, 2007

### In North Dakota “Opportunity Knocks”

North Dakota has a unique opportunity to demonstrate to the rest of the country what can be accomplished by switching from an exclusive-union-bargaining system in public education to a system in which there is room for individual bargaining.

In a letter (see following), mailed out last week to School Superintendents throughout the state, National Institute for Labor Relations Research (NILRR) Senior Research Associate Stan Greer laid out what could be a historic opportunity presented by the North Dakota Supreme Court’s unanimous decision in *Kenmare Education Association v. Kenmare Public School District No. 28, 2006 ND 136*.

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March 20, 2007

Office of the Superintendent  
XXXXXXXXXXXXXXXXXXXX School District  
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX  
XXXXXXXXXX, ND XXXXX

Dear Superintendent:

Last fall, I wrote you to request a copy of the above-named school district's master teacher union agreement or contract. Subsequently, you were kind enough to furnish me with a copy.

I am writing today to follow up with significant recent news regarding school union contracts in North Dakota, of which you may or may not already be aware.

In late June 2006, the North Dakota Supreme Court issued a unanimous decision in *Kenmare Education Association v. Kenmare Public School District No. 28*, 2006 ND 136.

This decision expressed serious doubt about whether current state law authorizes any teacher union to act as the "exclusive" bargaining agent in contract negotiations for any teacher who is not a member of that union, and does not want to be union-represented.

The case originated in the summer of 2005, when Kenmare Public Schools, after failing to fill a speech and language pathologist position at the salary set in the teacher union contract, decided to offer an additional \$15,000 in "incentive pay."

The offer would almost certainly have enabled the school board to hire a qualified applicant. But it infuriated officials of the Kenmare Education Association (KEA/NEA) teacher union, who insisted any incentive-pay deal would illegally infringe upon their exclusive-bargaining privileges under state law.

"For one individual to be allowed to negotiate up to \$15,000 additional salary is wrong," explained then-KEA President Donna Schmit to the *Kenmare News*.

But last summer, every state Supreme Court justice rejected KEA lawyers' claims and ruled that the school district could, after reaching an impasse in its bargaining with union officials, offer more money to find a taker for a hard-to-fill position.

One rationale for the Court's decision was the fact that there is no provision in North Dakota's education code that plainly authorizes teacher union officials to act as the exclusive

bargaining agents of all teachers, including union members and non-members alike, in a school district.

North Dakota teacher union officials have long asserted and exercised exclusive-bargaining power over teachers. However, in paragraph 29 of her opinion for the entire Court, Justice Carol Ronning Kapsner wrote: “We conclude whether the representative organization has the ‘exclusive’ right [to negotiate employee contracts] is ambiguous.”

The Justice went on to note that, when the state education code was revised in 2001, the North Dakota Education Association (NDEA/NEA) union tried to include in the bill language saying the individual teacher isn’t allowed to enter into independent negotiations with a board. However, the Legislative Assembly rejected that proposal.

The Legislative Assembly also rejected an NDEA attempt to stick the word “exclusive” in before “right to represent.”

The opinion reasoned that KEA attorneys’ view that individual teachers aren’t allowed to negotiate independently of the union bargaining agent in their school district is “a position that was rejected by the Legislative Assembly.” Although the Court did not spell out exactly to what extent such individual bargaining is permitted under North Dakota law, the decision appears to have implications that go well beyond Kenmare School District #28’s efforts to hire a language pathologist.

Around the country, not just language pathologists, but an array of types of teachers, including, most notably, math and science teachers, are in short supply. In states that authorize union exclusive bargaining over school employees, it is very difficult, if not impossible, for school officials to address this problem adequately.

For example, last November, as the Boston *Globe* reported at the time, forty-eight Massachusetts school superintendents from across the state publicly called “for cash incentives to attract math and science teachers, a new effort to compete with higher-paying private businesses that would change the way teachers are paid.”

As the school superintendents issued their plea, the Massachusetts Department of Education was already forecasting that the Bay State would “need about 1000 new math teachers” in 2007, but “only 220 students in area colleges” were pursuing a license to teach math.

Despite the alarming facts, officials of the 100,000-member Massachusetts Teachers Association (MTA/NEA) union immediately made it clear that they would strongly oppose math-science incentives.

The MTA officials’ proposed “solution” has been to raise all teachers’ salaries high enough to fill shortages that exist in math and science, and perhaps a handful of other subject areas, only. This “solution” is of course too flagrantly hostile to taxpayers’ interest and, one would guess, too unrealistic for Gov. Deval Patrick and other Massachusetts officials to consider.

Consequently, it seems inevitable that Massachusetts will go on hiring people who don’t specialize in math and science for math and science positions in public schools, or leave those positions unfilled.

Fortunately, thanks to North Dakota legislators’ refusal to write exclusive union bargaining into the state education code in 2001, and the state Supreme Court’s decision last year in *KEA v.*

*Kenmare School District #28*, you and other Rough Rider State school officials may well have a much more palatable option.

During your next school contract negotiations, I suggest you propose that specific language be included in the contract indicating that individual teachers who were for some reason dissatisfied with the union-negotiated contract would retain the right to enter into independent negotiations with the board. Union negotiators who opposed inclusion of such a clause would be on shaky ground, because your proposed provision would closely echo *KEA v. Kenmare School District #28*.

I suggest that you also propose, over the life of the contract, significantly greater pay increases for teachers of math, science, and other hard-to-fill subject areas than for teachers in subject areas that are relatively easy to fill.

I also suggest that you notify teachers and prospective teachers in hard-to-fill subject areas that, if they retain a union as their bargaining agent, implementation of the proposed raise will depend on the outcome of union negotiations. However, if the teachers opt to bargain individually, then they will be free to accept the proposed pay increase for themselves.

Decades of experience in public education have shown that the system of exclusive union bargaining is not in the best interest of schoolchildren, taxpayers, or most teachers. Exclusive bargaining especially hurts teachers with unusual talents and schoolchildren who hope to learn from them.

Schoolchildren, taxpayers, and dedicated professional educators all benefit when at least some school hiring and pay decision may be made through individual negotiations. Today, North Dakota has a unique opportunity to demonstrate to the rest of the country what can be accomplished by switching from an exclusive-union-bargaining system to a system in which there is room for individual bargaining.

I hope that you and your colleagues will take advantage of this opportunity. If you are interested, or would like more information, please write to me or give me a call at 703-321-9606.

Sincerely

Stan Greer  
Senior Research Associate

CC: Other North Dakota school superintendents  
North Dakota media