

CASE NO. A06-2173

STATE OF MINNESOTA
IN COURT OF APPEALS

ORIGINAL

Sauk Centre Education Association and
Independent School District No. 743, Sauk Centre,

Relators,

v.

Alice Seagren, Commissioner,
Minnesota Department of Education, State of Minnesota,

Respondent.

RELATORS' BRIEF AND APPENDIX (PART I)

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).

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I.

ISSUE

Whether the denial of Relators' application for alternative teacher performance pay funding was arbitrary, unreasonable, not supported by substantial evidence in the record, or otherwise affected by errors of law.

The Commissioner ruled: No.

II.

STATEMENT OF THE CASE

The Minnesota Legislature enacted an alternative teacher professional pay system in 2005. Minn. Stat. §§ 122A.413-.416. The purpose of the alternative teacher professional pay system is set forth in Minn. Stat. § 122A.414, subd. 1:

A restructured alternative teacher professional pay system is established under subdivision 2 to provide incentives to encourage teachers to improve their knowledge and instructional skills in order to improve student learning and for school districts, intermediate school districts and charter schools to recruit and retain highly qualified teachers, encourage highly qualified teachers to undertake challenging assignments, and support teachers' roles in improving students' educational achievement.

Relators initially applied for funding under the alternative teacher performance pay (ATPPS) statutes on May 6, 2006. Relators worked with the Respondent Minnesota Department of Education (MDE) and made numerous changes in the application at the request of the MDE. Nevertheless, the MDE finally rejected the application on August 2, 2006.

Relators revised the ATTPS plan and reapplied on September 1, 2006. Again Relators worked with the MDE and made more changes in the application. The MDE rejected the second application on September 29, 2006.

The governing statutes define the scope of the necessary components for a successful application for ATPPS funding. Relators' application contained all the necessary components under the statutes. Respondent rejected the application using criteria and authority not authorized and beyond the scope of the law.

Specifically, the governing statute requires that the parties "reform the 'steps and lanes' salary schedule." Minn. Stat. § 122A.414, subd. 2 (listing reforming the salary schedule as one of six requirements). Under a traditional steps and lanes salary schedule, teachers receive additional compensation (steps) for each year of service subject to a maximum number of steps and other potential limitations. For instance, some contracts allow a district to withhold a step based on unsatisfactory performance. A teacher could also receive additional compensation in the form of lane advancement. Traditionally a teacher would advance to a different lane when he/she earns additional educational achievements or credits; for example, obtaining a master's degree in the teacher's subject area.

Teachers covered by the changed salary structure in the instant case would no longer be paid solely on the basis of a steps and lanes salary schedule. The system maintains a steps and lanes schedule but adds a compensation component that is based on student achievement gains, measures of student achievement, and an objective evaluation system as required by the statute. Prior to reforming the salary structure, persons covered by the relevant collective bargaining agreement had a steps and lanes schedule only.

Respondent denied approval of the application for ATPPS funding solely on the basis that the salary schedule was not reformed sufficiently. Relators' application was rejected despite the fact that other applications had been approved in the past with identically reformed salary structures. All other statutory prerequisites under the law were approved by the Respondent. Relators therefore challenged the rejection by timely filing and serving a Petition for a Writ of Certiorari and a Writ of Certiorari issued by the Minnesota Court of Appeals.

III.

FACTS

The relevant facts in this case are largely undisputed. The question before the Court is purely a matter of law.

The Commissioner ruled that Relators' application was defective solely on the basis that the restructured pay system failed to meet the statutory

requirement that the steps and lanes schedule be reformed. The pay system submitted has two components. The first component contains a salary grid under which a person advances under a traditional steps and lanes method. The second component is based on meeting the specific statutory requirements of student achievement gains, measures of student achievement, and an objective teacher evaluation system.

The question before the Court, then, is whether this change constitutes “reform” as that term is intended under Minn. Stat. § 122A.414, subd. 2.

IV.

ARGUMENT

A. Standard of Review: Statutory Construction is Question of Law, Subject to De Novo Review and Reversal for Errors of Law.

The construction of this statute is a question of law, fully reviewable by the appellate courts. Hibbing Education Association v. PERB, 369 N.W.2d 527, 529 (Minn. 1985) . The reviewing court is not bound by the agency’s interpretation of the statute. AFSCME, Council No. 14 v. County of Scott, 530 N.W.2d 218, 220 (Minn. App. 1995), *review denied* (Minn. May 16, 1995 and June 14, 1995) (*citing Arvig Tel. Co. v. Northwestern Bell Tel. Co.*, 270 N.W.2d 111, 114 (Minn. 1978)). Review is de novo. Teamsters, Local No. 320 v. County of McLeod, 509 N.W.2d 554, 556 (Minn. App. 1993) (citation omitted).

The reviewing court may give some deference to the manner in which an agency has construed a statute only if the statutory language is technical in nature *and* the agency's interpretation is one of longstanding application. AFSCME, Council No. 14 v. County of Scott, 530 N.W.2d at 220 (citing Arvig, 270 N.W.2d at 114). The Court defers only if both elements are present, and then only if the Court so chooses. Here, neither element exists. The meaning of the word "reform" is not technical in nature which would subject it to deferential agency interpretation. Additionally, the interpretation by the Respondent is not longstanding, considering this is a new statute. The Court therefore reviews the question de novo.

The Court may also reverse the Commissioner's decision if it is arbitrary, unreasonable, or unsupported by substantial evidence. Dokmo v. ISD No. 11, 459 N.W.2d 671, 675 (Minn. 1990).

B. By definition, the pay system has been reformed.

The word "reform" is defined as "[t]o improve by alteration, correction of error, or removal of defects; put into a better form or condition." The American Heritage Dictionary of the English Language: Fourth Edition (2000). There is no question that the pay system under scrutiny has been altered and/or put into a better form or condition. Prior to the reformation, the system consisted solely of a steps and lanes schedule. After the reformation, the pay system had two

components: a steps and lanes component and a component that was designed to meet the specific statutory requirements.

Under the old pay system, teachers obtained all pay increases without consideration given to student achievement and/or teacher performance. Steps were obtained by years of service. If a teacher successfully completed a year of teaching, she would advance on the schedule to the next step until reaching the top step for that lane. Lane changes were attained by obtaining additional academic credits. Upon successful completion of the required number of approved courses, a teacher would move to a higher paid "lane" that also contained a set number of steps. See, Appendix A, p. 41a.

Under the new pay system, a significant portion of a teacher's compensation increase is dependent on completely new factors. All of the new factors conform to and are being implemented to meet the standards of an alternative teacher professional pay system as that term is contemplated under Minn. Stat. § 122A.414. If a teacher fails to meet the requirements set forth in the pay system, she will not receive up to \$1,000 in compensation. See, Appendix A, pp. 3 and 38.

This is a significant change from the old system. It is significant in at least two ways. First, the amount of money that can be earned under the new system is significant. For a first-year teacher moving from step one to step two, the entirety of the pay increase under the old system amounted to \$423. Under the

new system, that teacher could earn that amount plus an additional \$1,000, which is more than twice the amount of the “step” increase alone.

Second, all teachers under the new plan must now either meet certain achievement and performance objectives under the plan or they will not obtain a significant portion of their potential compensation package. See, Appendix A, p. 41a. After decades of living under the old plan under which they obtained all of their compensation increases by experience and academic advancement alone, it is disingenuous to say that the salary structure has not been changed or reformed. Clearly, those who must live under the new system would not agree with such an assertion. Under the circumstances, the union and school district should be lauded for undertaking such a significant change in the interest of advancing student achievement.

On its face, the Commissioner’s determination was an error of law requiring reversal of this Court.

C. The revised pay system meets the statutory requirements.

The purpose for the establishment of an alternative teacher professional pay system is contained in Minn. Stat. § 122A.414, subd. 1:

A restructured alternative teacher professional pay system is established under subdivision 2 to provide incentives to encourage teachers to improve their knowledge and instructional skills in order to improve student learning and for school districts, intermediate school districts and charter schools to recruit and retain highly qualified teachers, encourage highly qualified teachers to undertake

challenging assignments, and support teachers' roles in improving students' educational achievement.

There should be no question that the salary system in question provides "incentives to encourage teachers to improve their knowledge and instructional skills in order to improve student learning." The system proposed by Relators clearly provides "incentives" for teachers. "Incentive" is defined as "something, such as the fear of punishment or the expectation of reward, that induces action or motivates effort." The American Heritage Dictionary of the English Language: Fourth Edition (2000). In Respondent's statement of the case, the revised pay system is described as a "bonus" system. See, Respondent's Statement of the Case, page 3. Even if that were true, a bonus system is clearly also a system providing incentives for increase in pay. As such, it is expressly authorized under the statute.

Minn. Stat. § 122A.414, subd. 2(b) contains more specific requirements for a lawful alternative teacher professional pay system. Under that provision, the pay system must:

- (1) describe how teachers can achieve career advancement and additional compensation;
- (2) describe how the school district, intermediate district, school site, or charter school will provide teachers with career advancement options that allow teachers to retain primary roles in student instruction and facilitate site-focused professional development that helps other teachers improve their skills;
- (3) reform the "steps and lanes" salary schedule, prevent any teacher's compensation paid before implementing the pay system from being reduced as a result of participating in this system, and base at least 60 percent of any compensation increase on teacher

performance using: (i) schoolwide student achievement gains under section 120B.35 or locally selected standardized assessment outcomes, or both; (ii) measures of student achievement; and (iii) an objective evaluation program that includes (A) individual teacher evaluations aligned with the educational improvement plan under section 122A.413 and the staff development under section 122A.60; and (B) objective evaluations using multiple criteria conducted by a locally selected and periodically trained evaluation team that understands teaching and learning; (4) provide integrated ongoing site-based professional development activities to improve instructional skills and learning that are aligned with student needs under section 122A.413, consistent with the staff development plan under section 122A.60 and led during the day by trained teacher leaders such as master or mentor teachers; (5) allow any teacher in a participating school district, intermediate district, school site, or charter school that implements an alternative pay system to participate in that system without any quota or other limit; and (6) encourage collaboration rather than competition among teachers.

Minn. Stat. § 122A.414, subd. 2.

Without getting into a detailed analysis of each of the six requirements, the Commissioner has determined that Relators' plan meets all of the listed criteria other than the "reform steps and lanes" issue. The only issue before the Court, then, is whether the revised pay system meets the definition of "reform" under the statute. See, Decision of Respondent, Appendix N.

Whether you label the revised system as providing for "bonus" pay or as a two-tiered pay system with one component clearly based on teacher performance and student achievement, one fact is clear. A teacher's compensation under the revised pay system is not solely based on years of service and academic achievement (steps and lanes). The system provides clear incentives that are student achievement based and are directly related to

teacher performance. If the teacher does not meet the applicable criteria, she does not obtain the achievement/performance based pay. This is in stark contrast to the previous system that was solely based on years of service and academic achievement. By any of the above definitions, the pay system for teachers has clearly been changed or reformed.

The only argument that could be offered by the Commissioner is that the system is not reformed enough. However, there is nothing in the language of the statute that allows for discretionary reformation gradations. Either the system is reformed or it is not. This system is clearly reformed.

D. The Commissioner's decision is arbitrary, unreasonable and unsupported by substantial evidence because other identical pay systems have been approved.

Respondent has approved at least twelve (12) plans that are identical in form to Relators'. Each of these plans has a base salary structure that is based on steps and lanes and has a performance/achievement component overlaid on top of the steps and lanes salary schedule. Those plans and the written decision of Respondent approving those plans are contained in Appendices B – M.

The plans contained in Appendices D – M all contain an indication that the steps and lanes salary schedule will be discussed or reformed sometime in the future. However, at the time of approval, none of these plans changed the steps and lanes schedule one bit. If Respondent's interpretation of the statute is correct, the other plans should not have been approved. There is nothing in the

enabling legislation that allows the Commissioner discretion to approve plans on the promise that they will meet the statutory criteria in the future.

The plans contained in Appendices B and C have a salary structure and plan identical to Relators' and there is no promise to address reformation of the steps and lanes portion of the schedule anywhere in the application or decision of Respondent. Both of these plans have an achievement/performance component that is overlaid on top of the steps and lanes schedule, identical in form to that of Relators'. Notably, the plan contained in Appendix C actually calls the incentives a "bonus". The Respondent's decision/letter itself refers to these incentives with the word "bonus". See, Appendix C, pp. 48-49.

Rejecting Relators' application while accepting identical plans from other applicants is the epitome of arbitrary and unreasonable conduct. The decision of the Respondent should be reversed on this basis alone.

V.

CONCLUSION

For the foregoing reasons, Relators respectfully ask the Court to reverse Respondent's decision and to direct Respondent to approve Relators' application retroactive to the date of the decision, September 29, 2006. The Respondent should also be ordered to make Relators whole for all damages caused by the unlawful denial of its application for alternative teacher professional pay system funding.

Dated: December 15, 2006.

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