

OFFICIAL OPINION NO. 75-50, Do rules of the Personnel Policy Board apply to public union employees?

March 17, 1975

Robert T. Mullally, Commissioner
Bureau of Personnel
State Capitol Building
Pierre, South Dakota 57501

OFFICIAL OPINION NO. 75-50

Do rules of the Personnel Policy Board apply to public union employees?

Dear Mr. Mullally:

You have asked for an official opinion as to whether or not the rules of the Personnel Policy Board apply to public union employees.

The specific problem being addressed focuses on a disagreement over the applicability of rules of the Personnel Policy Board regarding performance appraisals, to negotiations and negotiated agreements being conducted under SDCL 3-18-2 and 3-18-3.

The position advocated by the AFSCME Union in this regard is that 3-6A-34 guarantees the right to negotiate under SDCL 3-18 completely free of the restrictions of rules of the Personnel Policy Board which affect rates of pay, wages, hours of employment or conditions of employment. SDCL 3-6A-34 provides:

Nothing in this chapter shall be considered to restrict the career service employees' right to negotiate rates of pay, wages, hours of employment, and other conditions of employment as provided in chapter 3-18.

According to the position advocated by the union, the scope of SDCL 3-6A-34 is so broad that if an employer and employee negotiate a new agreement which conflicts with existing rules of the Personnel Policy Board as to the above conditions of employment, the negotiated agreement takes priority over any such rules in conflict. To allow the rules of the Personnel Policy Board to restrict the implementation of a new negotiated agreement, in the union's view, limits their "right to negotiate" as recognized and guaranteed by SDCL 3-6A-34.

The position of the Personnel Policy Board in this matter is that the rules of the Board are not subject to being "contracted or negotiated away" by agreements reached under SDCL 3-18-2 and 3-18-3. The Board contends that their rules apply to public union employees without regard to what negotiated agreements are reached under SDCL 3-18.

The specific question raised by this request for an opinion is whether SDCL 3-6A-34 authorizes the conclusion that negotiated agreements reached under SDCL 3-18 have the effect of being exempt from the existing rules of the Personnel Policy Board relating to wages, hours and other conditions of employment. It is my opinion that negotiated agreements under SDCL 3-18 are not exempt from the scope of the rules of the Personnel Policy Board.

SDCL 3-6A-34 preserves only the "right" to negotiate. There is no provision in 3-6A-34 which leads me to believe that the phrase "right to negotiate" means the "right to agree on and implement an agreement regardless of law." The right to negotiate described in 3-6A-34 does not mean that parties can negotiate a new agreement and implement that agreement without complying with the law. SDCL 3-6A-34 certainly authorizes employers and employees to negotiate on conditions of employment such as performance appraisal rules, but if the negotiated agreement conflicts with existing rules which have the force and effect of law, that agreement can not be legally implemented until the rules which conflict with the agreement are changed.

It is well settled law that the courts of South Dakota abhor the concept of repeal by implication. *Security State Bank v. Breen*, 65 S.D. 640, 277 N.W. 497 (1938). If SDCL 3-6A-34 were interpreted in the broad manner advocated by the union, negotiations conducted under 3-18 would have the possible effect of repealing existing rules of the Personnel Policy Board which have the force and effect of law. Indeed, to carry the argument of the union to its extreme, no provision of law, even a statute, would be able to stand in the way of "negotiated agreements" reached under SDCL 3-18. This sort of argument as to the scope and effect of the "right to negotiate" is not correct.

Respectfully submitted,

WILLIAM J. JANKLOW
ATTORNEY GENERAL

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