

STATEMENT OF ISSUES

WHETHER THE CIRCUIT COURT ERRED IN AFFIRMING THE DEPARTMENT'S
DECISION THAT A PUBLIC EMPLOYER CANNOT BARGAIN TO IMPASSE ON THE ISSUE
OF MANAGEMENT RIGHTS.

Trial Court: The circuit court affirmed the Department's decision that it is *per se*
unlawful for a public employer to bargain to impasse on the issue of management
rights.

- II. WHETHER THE CIRCUIT COURT AND DEPARTMENT ERRED IN RETROACTIVELY
APPLYING THEIR NEW HOLDING TO FIND THAT THE COUNTY VIOLATED SDCL § 3-
18-3.1(1), (5) AND (6).

Trial Court: The circuit court affirmed the Department's decision to retroactively
apply its new rule and find that the County violated SDCL § 3-18-3.1(1), (5) and
(6).

- III. WHETHER THE CIRCUIT COURT ERRED IN HOLDING THAT A NON-SCHOOL DISTRICT
PUBLIC EMPLOYER IN SOUTH DAKOTA MUST IMPLEMENT ALL TERMS AND
CONDITIONS CONTAINED WITHIN ITS LAST, BEST AND FINAL OFFER UPON
REACHING A BARGAINING IMPASSE.

Trial Court: The circuit court overruled the Department and held that upon
reaching impasse all South Dakota public employers are required to implement
their last, best and final offer and that offer cannot vary from what was proposed
by the employer, except to the extent any such offer is illegal.

- IV. WHETHER THE CIRCUIT COURT ERRED IN REVERSING THE DEPARTMENT'S DECISION AND CONCLUDING THAT MEDIATION IS PART OF THE NEGOTIATIONS PROCESS AND OFFERS MADE DURING A MEDIATION ARE ADMISSIBLE INTO EVIDENCE AND MUST BE IMPLEMENTED AS PART OF A NON-PUBLIC SCHOOL DISTRICT PUBLIC EMPLOYER'S LAST, BEST AND FINAL OFFER.

Trial Court: The circuit court reversed the Department and held that any offer made in mediation is admissible and is part of the last best offer of the public employer.

- V. WHETHER THE CIRCUIT COURT ERRED IN REVERSING THE DEPARTMENT AND FINDING THAT THE COUNTY VIOLATED SDCL § 3-18-3.1(3).

Trial Court: The circuit court reversed the Department and ordered the County to retroactively pay bargaining unit members a 10 cent/hour pay increase plus interest.

- VI. WHETHER THE COURT ERRED IN HOLDING THAT THE COUNTY'S DECISION NOT TO ALLOW THE UNION TO BLOCK A PLANNED PAY INCREASE FOR NON-BARGAINING UNIT MEMBERS WAS MOTIVATED BY ANTI-UNION ANIMUS AND THEREFORE UNLAWFUL.

Trial Court: The circuit court held that the County's decision to not allow the Union's intransigence to block a planned pay increase for non-bargaining unit workers was evidence of anti-union animus and unlawful.

VII. WHETHER THE COURT ERRED IN AFFIRMING THE DEPARTMENT'S DECISION THAT THE UNION DID NOT COMMIT AN UNFAIR LABOR PRACTICE IN VIOLATION OF SDCL § 3-18-3.2 BY REFUSING NEGOTIATE COLLECTIVELY IN GOOD FAITH.

Trial Court: The circuit court affirmed the Department's decision finding that the Union negotiated in good faith.

VIII. WHETHER THE COURT ERRED IN CONCLUDING THAT SOUTH DAKOTA LAW GRANTS THE DEPARTMENT THE AUTHORITY TO ORDER THE COUNTY:

- I. TO CEASE AND DESIST FROM BARGAINING FOR A MANAGEMENT RIGHTS PROVISION;
- II. TO CEASE AND DESIST FROM IMPLEMENTING A MANAGEMENT RIGHTS PROVISION THAT WAS CONTAINED WITHIN THE COUNTY'S LAST, BEST AND FINAL OFFER UPON REACHING BARGAINING IMPASSE;
- III. TO NOTIFY ALL OF THE APPELLANT'S EMPLOYEES THAT THE APPELLANT HAS COMMITTED UNFAIR LABOR PRACTICES AND ANY "RESULTANT ACTIONS THEY WILL IMPLEMENT TO CORRECT SUCH IMPROPRIETIES OR ACTS"; and
- IV. TO PAY BARGAINING UNIT MEMBERS BACKPAY WITH INTEREST.

Trial Court: The circuit court concluded the Department possessed such authority.

IX. WHETHER THE COURT ERRED IN AFFIRMING THE DEPARTMENT'S MARCH 13, 2002, ORDER GRANTING THE UNION THE AUTHORITY TO APPROVE OR REJECT THE NOTICE TO BE SENT BY THE COUNTY TO EMPLOYEES CONSTITUTES AN IMPERMISSIBLE DELEGATION OF ADMINISTRATIVE AND JUDICIAL AUTHORITY TO THE UNION.

Trial Court: The circuit court concluded that the Department could delegate this responsibility to the Union.