

**IN THE SUPREME COURT**  
**STATE OF NORTH DAKOTA**

Joseph S. Motisi,	)	
	)	Supreme Court No. 20210248
Plaintiff/Appellant,	)	Morton Co. No. 30-2021-CV-00687
	)	
vs.	)	
	)	
Hebron Public School District,	)	
	)	
Defendant/Appellee.	)	

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ON APPEAL FROM THE  
SOUTH CENTRAL JUDICIAL DISTRICT  
MORTON COUNTY, NORTH DAKOTA  
THE HONORABLE DOUGLAS BAHR

Appeal from Judgment of Dismissal dated July 26, 2021

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**BRIEF OF APPELLEE**  
**HEBRON PUBLIC SCHOOL DISTRICT**

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## **STATEMENT OF THE ISSUES**

1. Whether the district court abused its discretion by denying Petitioner's Writ of Mandamus when correctly interpreting N.D.C.C. § 15.1-15-02.

## STATEMENT OF THE CASE

[¶1] This is a case of statutory interpretation to determine whether a probationary teacher under N.D.C.C. § 15.1-15-02 is a teacher employed less than two years in a school district, or whether it is a teacher employed less than two years in the State of North Dakota, in the country, in the world, etc.

[¶2] It is undisputed that Joseph S. Motisi (“Motisi”) was employed as a teacher with the Hebron Public School District (“District”) for the 2019-2020 and 2020-2021 school years. Appellant Appendix (“Appellant App.”) 5, Appellant Brief ¶ 4. It is further undisputed that if Motisi was a probationary teacher, the District followed the law when it nonrenewed Motisi’s teaching contract in the spring of 2021. Appellant App. 24, Appellee Appendix (“Appellee App.”) 26. However, Motisi alleges he was not a probationary teacher because, while he was employed less than two years in the District, he was employed as a teacher more than two years in the State of North Dakota. Appellant App. 24.

[¶3] Motisi filed a Petition for Writ of Mandamus and Application for Temporary Restraining Order and Preliminary Injunction. Appellant App. 5, 14. The district court ultimately denied Motisi’s petition and vacated the temporary restraining order, concluding that (1) N.D.C.C. § 15.1-15-02 is unambiguous and applies to teachers who have taught in the school district for less than two years; and (2) in the alternative only, if the statute is ambiguous, the legislative history of N.D.C.C. § 15.1-15-02 establishes the Legislature intended for it to apply to teachers who have taught in the school district for less than two years. Appellant App. 22-29. Motisi appealed.

## STATEMENT OF FACTS

[¶4] Motisi was employed by the District for the 2019-2020 and 2020-2021 school years. Appellant App. 5. On April 13, 2021, the principal met with Motisi to go over his evaluation and discussed that the administration would be recommending the School Board vote to nonrenew Motisi's contract. The evaluation was provided to Mr. Motisi on April 14, 2021, which provides in the Evaluator Comments: "As a probationary teacher Mr. Motisi has struggled to adequately manage his classroom for effective learning to occur, to maintain professional boundaries with staff including in the presence of students, and has failed to gain the respect of many co-workers, students, and parents. Additionally he has struggled at times to follow directives set for all staff members." Appellee App. 14, 18.

[¶5] On April 14, 2021, the Hebron School Board unanimously voted to contemplate not renewing Motisi's contract for the coming school year, and set a date and time for the Board to meet with Motisi to discuss the reasons for the contemplated nonrenewal. Appellee App. 14. On April 16, 2021, Motisi received a Probationary Teacher Notice of Contemplated Nonrenewal, informing him that the Hebron School Board voted to contemplate not renewing his contract for the coming school year for the following reasons:

1. Inability to maintain professional boundaries and language with staff including in the presence of students.
2. Inability to adequately manage his classroom including inability to adequately prepare for class and timely attend school events, which negatively impacts effective learning.
3. Inability to gain respect and trust of staff, students, and parents, in order for effective learning to occur.

Appellant App. 6, 10. That notice also provided that the School Board would be holding an executive session meeting for the purpose of discussing the reasons for his contemplated

nonrenewal on April 22. Appellant App. 6, 10. At no time did Motisi request to reschedule the meeting. Appellee App. 14.

[¶6] On April 22, 2021, the Hebron School Board did meet. Motisi did not attend. Appellant App. 6. The Board discussed Motisi's evaluations and the reasons for contemplated nonrenewal in executive session. Appellee App. 14. The Board voted unanimously to nonrenew probationary teacher Motisi's contract. Appellee App. 14. On April 23, 2021, Motisi received from the District a Probationary Teacher Notice of Nonrenewal, notifying him that the Hebron School Board made a determination to nonrenew his teaching contract pursuant to N.D.C.C. § 15.1-15-02. Appellant App. 6, 11.

[¶7] On April 26, 2021, Motisi submitted a letter wherein he stated, "Pursuant to NDCC 15.1-1504,3a, I am hereby notifying the Hebron School District of my acceptance of a continuing contract for the 2021/2022 school year." Appellee App. 15, 19. On April 27, 2021, Superintendent Schaff responded, reminding Motisi that he was a probationary teacher, that the District never waived his probationary teacher status, and that he was provided notice of the nonrenewal. Appellee App. 15, 20. The letter also offered that the school board would still meet with Motisi between then and April 30, 2021, to discuss the reasons with him. Appellee App. 15, 20. Motisi did not respond or request to meet with the Board, as offered. Appellee App. 15, 20.

[¶8] On April 28, 2021, Motisi was placed on paid administrative leave pending further investigation after Superintendent Schaff became aware of allegations that Motisi made threatening comments including a desire to "choke" two female staff members and there would be a "boom." Appellee App. 15. He remained on paid administrative leave for the remainder of the 2020-2021 school year. Appellee App. 15-16.

[¶9] On July 8, 2021, Motisi served a Petition for Writ of Mandamus (Appellant App. 5-9) and an Application for Temporary Restraining Order and Preliminary Injunction (Appellant App. 14-15). On July 12, 2021, the District served a “Response in Opposition to Application for Temporary Restraining Order and Preliminary Injunction.” Appellee App. 3-12. On July 15, 2021, Motisi served a “Response to Opposition to Application for Temporary Restraining Order and Preliminary Injunction,” which acknowledged the district court “can proceed directly with considering the merits of the Petition for Writ of Mandamus...” Appellee App. 23. On July 19, 2021, the district court noticed a status conference for July 22, 2021, and signed a Temporary Restraining Order. Appellant App. 21. On July 22, 2021, the district court held a status conference. On July 26, 2021, the district court entered its Order, denying the petition for writ of mandamus and vacating the temporary restraining order. Appellant App. 22-29. Judgement was entered on July 26, 2021. Appellant App. 30. Motisi appealed.

## LEGAL ARGUMENT

[¶10] Motisi sought a writ of mandamus and a preliminary injunction. He appeals the denial of his petition for writ of mandamus, did not appeal the district court’s denial of the preliminary injunction, and requests a remand for determination of damages<sup>1</sup>.

### I. Standard of Review

[¶11] “A writ of mandamus may be issued to ‘compel the performance of an act which the law specially enjoins as a duty resulting from an office, trust, or station, or to

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<sup>1</sup> The Court is to decide “the narrow issue of whether or not under the circumstances of this case the trial court abused its discretion in denying the petition for a writ of mandamus.” *Feldhusen v. Beach Pub. Sch. Dist. No. 3*, 423 N.W.2d 155, 157 n.2 (N.D. 1988) (noting that while there was no claim for damages, that is not of the Court’s concern).

compel the admission of a party to the use and enjoyment of a right or office which the party is entitled and from which the party is precluded unlawfully by such inferior tribunal, corporation, board, or person.” *Cockfield v. City of Fargo*, 2019 ND 77, ¶ 8, 924 N.W.2d 403 (quoting N.D.C.C. § 32-34-01). “Whether to issue a writ of mandamus is left to the district court’s sound discretion.” *Little v. Stark Cnty. Sheriff on behalf of Stark Cnty. Sheriff’s Off.*, 2018 ND 22, ¶ 8, 906 N.W.2d 333 (quoting *Dickinson Educ. Ass’n v. Dickinson Pub. Sch. Dist.*, 2014 ND 157, ¶ 9, 849 N.W.2d 615). “A district court abuses its discretion if it acts in an arbitrary, unreasonable, or capricious manner, or if it misapplies or misinterprets the law.” *Id.* (quoting *Dickinson Educ. Ass’n*, 2014 ND 157, at ¶ 9). Motisi, as the party seeking a writ of mandamus, “bears the burden of demonstrating a clear legal right to the performance of the particular acts sought to be compelled by the writ.” *Little*, 2018 ND 22, at ¶ 9 (quoting *Nagel v. City of Bismarck*, 2004 ND 9, ¶ 11, 673 N.W.2d 267). “Absent an abuse of discretion, this Court will not overturn a trial court’s denial of a petition for a writ of mandamus.” *Id.* (quoting *Nagel*, 2004 ND 9, at ¶ 10).

**II. The District Court Did Not Abuse Its Discretion and Correctly Interpreted N.D.C.C. § 15.1-15-02.**

**A. N.D.C.C. § 15.1-15-02, when read as a whole, is unambiguous.**

[¶12] There is a specific law that applies to probationary teachers in North Dakota, N.D.C.C. § 15.1-15-02. In 2019, the statute was amended through House Bill 1347. HB 1347 was generally supported by school administrators and the North Dakota School Boards Association, and opposed by teachers and the entity representing them, North Dakota United. *Hearing on H.B. 1347 Before the Senate Education Comm.*, 66th N.D. Legis. Sess. (Mar. 13, 2019) (Testimony).

[¶13] The current version of the statute provides in full:

1. If the board of a school district contemplates not renewing the contract of an individual employed as a probationary teacher, the board shall review the individual's evaluations required by section 15.1-15-01 and meet with the individual in an executive session to discuss the reasons for the contemplated nonrenewal.
2. The individual employed as a probationary teacher may be accompanied by two representatives selected by the individual for the purpose of speaking on behalf of the individual and by the individual's spouse or one other family member.
3. No claim for relief for libel or slander may be brought regarding any communication made at an executive session of a school board held pursuant to this section.
4. If the board of a school district elects not to renew the contract of an individual employed as a probationary teacher, the board shall provide written notification of the decision, together with a detailed description of the board's reasons, to the individual no earlier than April fifteenth nor later than May first.
5. Failure by the board of a school district to provide the notification required by subsection 4 constitutes an offer to renew the individual's contract on the same terms and conditions as the individual's contract for the current year.
- 6. The board of a school district may waive probationary status for a teacher with at least two years of teaching experience in the state.**
7. The board of a school district shall offer, as needed, based on the teacher's evaluation, a teacher mentoring program for probationary teachers.
- 8. For purposes of this section, “probationary teacher” means an individual teaching for less than two years.**

N.D.C.C. § 15.1-15-02 (emphasis added).

[¶14] The prior version of the statute applied to first-year teachers only and defined a first-year teacher as “an individual teaching for the first school year since obtaining a license to teach.” N.D.C.C. § 15.1-15-02 (2001) (emphasis added). In 2019, “first-year” teacher was replaced with “probationary” teacher, the language “since obtaining a license to teach” was removed, and subsection 6 was added that allows school boards to waive probationary status for a teacher with at least two years of teaching experience in the state. By deleting “since obtaining a license to teach,” the 2019 amendments to N.D.C.C. § 15.1-

15-02 broadened the definition of individuals that fall under the statute where it now applies to not only those who were teaching for the first time since obtaining a teaching license, but to all individuals teaching for less than two years in a school district. *See Riemers v. Jaeger*, 2018 ND 192, ¶ 14, 916 N.W.2d 113 (finding an amendment that deleted a phrase was intentional and meaningful).

[¶15] It is undisputed that Motisi was employed less than two years in the District when he was nonrenewed. Appellant App. 5. Motisi argues he was not a probationary teacher under the statute because while he was employed less than two years at Hebron, he was employed as a teacher in the State of North Dakota prior to coming to the District. However, his prior employment before coming to the District is irrelevant to his status as a probationary teacher under the statute.

[¶16] When ascertaining the Legislature's intent, the Court needs to look at the statute as a whole:

Our primary goal in statutory construction is to ascertain the intent of the Legislature. In ascertaining the Legislature's intent, we first look to the plain language of the statute and give each word of the statute its ordinary meaning. We construe the statute as a whole and give effect to each of its provisions if possible. If the language of the statute is clear and unambiguous when read as a whole, we cannot ignore that language under the pretext of pursuing its spirit because the legislative intent is presumed clear from the face of the statute. If, however, the statute is ambiguous or if adherence to the strict letter of the statute would lead to an absurd or ludicrous result, a court may resort to extrinsic aids, such as legislative history, to interpret the statute. A statute is ambiguous if it is susceptible to meanings that are different, but rational.

*State by & through Workforce Safety & Ins. v. Avila*, 2020 ND 90, ¶ 7, 942 N.W.2d 811, 814 (emphasis added).

[¶17] Instead of construing the statute as a whole, which is the appropriate standard, Motisi argues the Court should look at one subsection of a statute in isolation of

the remaining subsections. He fails to cite to any case where the Court adopted a standard of looking only to one subsection of a statute when another subsection would then be deemed meaningless. Instead, he first cites to *Stutsman Cnty. v. State Historical Society of N.D.*, 371 N.W.2d 321 (N.D. 1985), but that case does not support his position. When spelling out the standard for statutory interpretation, the Court in *Stutsman Cnty.* stated, “All sections of a statute must be construed to have meaning because the law neither does nor requires idle acts.” *Stutsman Cnty.*, 371 N.W.2d at 325 (citing N.D.C.C. 31-11-05(23); *State v. Nordquist*, 309 N.W.2d 109 (N.D. 1981)). The Court further stated, “In short, we are guided by the common-sense principle that a statute is to be read to give effect to each of its provisions, whenever fairly possible.” *Id.* (emphasis added).

[¶18] Motisi further cites to *Avila*, which both the District and the district court cited to when laying out the standard for statutory construction, as spelled out above. The issue in *Avila* was whether the injured worker’s permanent impairment should be paid out under N.D.C.C. §§ 65-05-12.2(10) and/or (11). Subsection (10) awards permanent impairment benefits based on a percentage of whole body impairment, while subsection (11) awards permanent impairment benefits for certain injuries. The Court looked at the statute as a whole and determined that a comparison under both N.D.C.C. §§ 65-05-12.2(10) and (11) can be done, and after the comparison, Workforce Safety and Insurance must pay an award based on the greater of the permanent impairment multipliers. *Avila*, 2020 ND 90, ¶ 10. One subsection did not make the other subsection meaningless, and the Court determined there was no ambiguity.

[¶19] In the present case, when reading N.D.C.C. § 15.1-15-02 as a whole, it is clear the statute applies to teachers who have taught in the school district for less than two

years. Motisi argues that N.D.C.C. § 15.1-15-02(6) has no application but fails to address how it could ever apply if the statute is interpreted the way Motisi argues. How could a school district waive probationary teacher status for a teacher who, under Motisi's interpretation, would never have probationary teacher status? If the statute is interpreted the way Motisi alleges, subsection 6 would have no meaning. There would be no need to waive probationary status for a teacher with at least two years of teaching experience in the state if the definition of probationary teacher is an individual teaching for less than two years in the state, country, world, etc.

[¶20] Motisi's argument that N.D.C.C. § 15.1-15-02(8) is unambiguous, when read in isolation, fails. The district court correctly interpreted N.D.C.C. § 15.1-15-02, as a whole, wherein a probationary teacher is an individual teaching for less than two years in the school district. Any other interpretation would render subsection (6) meaningless, and "[a]ll sections of a statute must be construed to have meaning ..." *Stutsman Cnty.*, 371 N.W.2d at 325.

**B. In the alternative, if N.D.C.C. § 15.1-15-02 is ambiguous, the legislative history establishes Motisi was a probationary teacher.**

[¶21] The district court determined N.D.C.C. § 15.1-15-02, when read as a whole, is unambiguous. In the alternative only, the district court determined that if the statute is ambiguous, then "the legislative history establishes the Legislature intended for the statute to apply to teachers who have taught in the school district for less than two years." Appellant App. 26.

[¶22] Subsection (8) provides, "For purposes of this section, 'probationary teacher' means an individual teaching for less than two years." N.D.C.C. § 15.1-15-02(8). If the Court is only to look at subsection (8) of the statute alone, on an island without subsection

(6), the district court determined, “That subsection, alone, does not specify whether that means two years in the District, two years at the school, two years in the State, etc.” Appellant App. 25.

[¶23] While Motisi argues that subsection (8) when read alone is unambiguous, without acknowledging the need to look at the statute as a whole, he himself then places ambiguity into subsection (8). At the district court level, Motisi argued he was not a probationary teacher because he was an individual teaching for more than two years in the State of North Dakota. Appellant App. 5, 6, 7, 24; Appellee App. 23, 29. On appeal, Motisi now argues for the first time that the word “teaching” in subsection (8) could mean teaching in the State or teaching in another state. Appellant Brief, ¶ 23. Could it also mean teaching in another country? Read in isolation, without looking at the statute as a whole, subsection (8) is ambiguous. If the Court adopts the standard Motisi requests where it is to look at a subsection of a statute alone, instead of a statute as whole, then subsection (8) of N.D.C.C. § 15.1-15-02 is ambiguous.

[¶24] If the statute is ambiguous, the legislative history of 2019 H.B. 1347 supports the District’s position. On March 13, 2019, the Senate Education Committee discusses the fact that a school district would utilize N.D.C.C. § 15.1-15-02 for a teacher with less than three<sup>2</sup> years teaching in the school district, when it is discussing subsection 6 and the ability of a school to waive probationary status if the teacher comes into the district with prior teaching experience in the state. During that hearing, Senator Rust asks Representative Zubke to explain section six and Representative Zubke states:

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<sup>2</sup> The original version of H.B. 1347 included a three-year probationary teacher status. It was amended to two years.

The issue becomes – you have a lot of situations there – for example, you may have a teacher who has taught in the district for 20-years and then just moves to an adjoining district. Those districts can waive that. You might also have teachers that come in from out of state and maybe have taught in another district for only one or two years – maybe even three and four years and maybe that district doesn't want to waive that probationary period because they haven't had a lot of experience. It is trying to encompass all of those situations and put the administration in charge of it.

*Hearing on H.B. 1347 Before the Senate Education Comm.*, 66th N.D. Legis. Sess. (Mar. 13, 2019). Testimony in support of the bill further clarifies the intent. *Hearing on H.B. 1347 Before the Senate Education Comm.*, 66th N.D. Legis. Sess. (Mar. 13, 2019) (Testimony of Dr. Robert Lech and Aimee Copas of NDCEL, Testimony of Amy DeKok of NDSBA).

[¶25] On March 26, 2019, further discussion occurs relating to a probationary teacher being new to the district:

**Senator Oban:** Mr. Chairman, I would just remind the committee this isn't just about young people coming straight out of college. This is about everybody who is in their first three years of teaching, plus, it puts somebody back on probationary period status if they move to another district. So if a fifteen-year teacher moves to a new town, he or she is on probationary status for three years. It gives the school district the ability to waive it, but we are lumping everybody into one box. If this really is just about trying to help those ones that might clearly need some help, then why not grant an extension period to those probationary years. This is putting everybody on three-years and saying this is the number of years it takes for everybody. I understand what you are saying that it won't impact people who are those shining stars in their first year, but then, why put everybody on probationary status for three-years? I know we are just arguing – But, I also think it is hilarious that we are just focusing on teachers.

**Senator Elkin:** I visited with my local school district and the only thing they liked about the bill was the fact that the tenured teacher moving in with ten years of experience – it allows them the opportunity to – but we have never had a problem with those teachers that have come out of college. The only thing they liked about it was that – it allows them that opportunity. Many times, school districts or a teacher may move for unknown reasons and they cannot find the rationale behind it. I would like to know what

precipitated this bill. You have been on a school board a long time. Did you see a need for it within the school district you served?

**Chairman Schaible:** Yes, I served for 20 years on a school board and yes, I see a need for it. I am a school board person so local control is my deal. It gives the flexibility to the school board. Even a teacher coming in with some experience – that experience may be somewhere, but it might not be the mix for your district. You have experience and then you have to go through this process we have with non-renewal which is not much fun for anybody. I see this as an opportunity to give everybody time to make it fit for your district – whether it is a teacher and the school. Right now, if they are a new teacher, you have that one year to decide. If it is an existing teacher that already has tenure on that, then it is a non-renewal process. Those are really, really not fun processes. It is what is required, but I see this as a period of time as a school district and as a teacher, you can do somethings to mold it into something that is good for everybody.

*Hearing on H.B. 1347 Before the Senate Education Comm., 66th N.D. Legis. Sess. (Mar. 26, 2019) (underline added for emphasis).*

[¶26] While Motisi argues throughout his brief that N.D.C.C. § 15.1-15-02(8), read in isolation, is unambiguous, he then urges the Court to look outside the language of the statute to another statute, N.D.C.C. § 15.1-15-05.1, which covers nonrenewal rights of principals, assistant superintendents, and associate superintendents. The statute relating to teachers, N.D.C.C. § 15.1-15-02, had been in existence for many years prior to the Legislature’s adoption in 2015 of the statute relating to principals, N.D.C.C. § 15.1-15-05.1. Section 15.1-15-05.1 covers principals, assistant superintendents, and associate superintendents who have been “employed by the board in that position for less than two years.” N.D.C.C. § 15.1-15-05.1(1) (emphasis added). This language clarifies that the law applies to an individual who may have previously been employed as a teacher in that school district prior to becoming a principal, as long as the individual was employed less than two years as a principal. In contrast, N.D.C.C. § 15.1-15-02 defines probationary teacher as “an individual teaching for less than two years.” N.D.C.C. § 15.1-15-02(8) (emphasis

added). Furthermore, the statute applying to principals does not include an option for the school district to waive probationary status for those with at least two years' experience in the state, where the statute applying to teachers does. The language in N.D.C.C. § 15.1-15-05.1 is not applicable to the statutory interpretation of N.D.C.C. § 15.1-15-02. The Court should only consider other statutes if the language in N.D.C.C. § 15.1-15-02 is ambiguous, and if the language is ambiguous, the legislative history certainly clarifies the intent.

[¶27] The statute at issue, N.D.C.C. § 15.1-15-02, as a whole, is unambiguous. The Court should not adopt Motisi's new suggested standard where a subsection of a statute should be reviewed in isolation of other subsections. But if it does, then subsection (8) alone is ambiguous. The legislative history clarifies any ambiguity. The district court correctly determined that if the statute is ambiguous, the legislative history establishes that the Legislature intended for a probationary teacher to mean an individual teaching for less than the statutory timeframe in that particular school district.

### **CONCLUSION**

[¶28] The district court correctly denied Motisi's petition for writ of mandamus, concluding that a probationary teacher under N.D.C.C. § 15.1-15-02 is a teacher with less than two years of experience in the school district. The District, therefore, complied with the requirements of state law when it did not renew Motisi's teaching contract, and Motisi was not entitled to a contract for the 2021-2022 school year. As such, the North Dakota Supreme Court should **AFFIRM** the district court's order.

Dated this 5th day of November, 2021.

Respectfully submitted,

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	)	Supreme Court No. 20210248
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THE HONORABLE DOUGLAS BAHR

Appeal from Judgment of Dismissal dated July 26, 2021

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**CERTIFICATE OF SERVICE**

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[¶ 1] I hereby certify that on November 5, 2021, the following documents:

**Brief of Appellee**  
**Appendix of Appellee**

were filed electronically with the Clerk of the North Dakota Supreme Court and were served electronically on the following:

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/s/ Rachel A. Bruner  
Rachel A. Bruner