



**FOREST LAKE AREA SCHOOLS
FOREST LAKE, MN 55025**

August 4, 2011

AGENDA ITEM: 9.5

TOPIC: Retirement Incentive Payments and Application of Age Discrimination in Employment Act

BACKGROUND: In the early months of 2011, Forest Lake Area Schools offered an Early Retirement Incentive Program in accordance with Minn. Stat. § 122A.48 (2010). This program was a unilateral offering, not negotiated with the exclusive representative for the certified staff members, and, thus, was dependent upon the terms of that statute to permit district disbursement of funds to the individual employees. Twenty-six applicants met the eligibility terms contained in Minn. Stat. § 122A.48, subd. 1(b)(1)(i) and (ii). One applicant met the eligibility terms contained in Minn. Stat. § 122A.48, subd. 1(b)(2). All twenty-seven of the applicants who met one of the standards of eligibility received the incentive payment.

Two applicants applied who did not meet the criteria of either of the eligibility standards. Each of these applicants had reached age 65 by June 30 of the retirement year. They each had more than 15 years of service, but fewer than 30 years of service, as required for an applicant who has reached at least age 65 by June 30 of the retirement year. In accordance with the provisions of Minn. Stat. §122A.48, the district denied those two requests for the retirement incentive.

On June 30, 2011, the district received a communication from the U.S. Equal Employment Opportunity Commission, requesting information about the district's retirement incentive and about the foundations upon which the decision to deny the incentive to the two above-referenced applicants.

On July 18, 2011, the school district responded to EEOC's request for information. The school district related the terms of Minn. Stat. §122A.48 and specified that the terms of the statute were determinative for the district's decision to deny the incentive payment to the two individuals who met neither of the terms for eligibility.

On July 22, 2011, the school district received EEOC's Determination letter, which reflected EEOC's determination of "reasonable cause to believe that the district's use of a less than 65 age requirement to deny the early retirement incentive

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Early Retirement Incentive
Item 9.5
.../2/

benefit to those teachers who otherwise met the at least 15-year experience requirement was in violation of the Age Discrimination in Employment Act of 1967” (EEOC Letter of July 21, 2011). Although the letter does not acknowledge the Minnesota statute, the correlation is that the statute itself is age discriminatory.

PROCESS: We have consulted, also, with Pat Maloney of Ratwik, Roszak and Maloney. Her recommendation is that, because the federal statutes pre-empt state statutes, EEOC’s determination is authoritative in this area. The EEOC Determination means we must either settle or litigate the issue with EEOC.

RECOMMENDATION: That the school board take immediate action to pay the retirement incentive in the amount of \$20,000 each to the two applicants for the incentive who were previously denied due to their age exceeding 65 without a minimum of 30 years of service.