

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT
PIERRE, SOUTH DAKOTA

SPEARFISH EDUCATION
ASSOCIATION,

Petitioner,

vs.

SPEARFISH SCHOOL DISTRICT #40-2
and BOARD OF EDUCATION,

Respondent.

HF No. 12 G, 2006/07

DECISION

The above-entitled matter comes before the Department of Labor pursuant to a grievance petition by the Spearfish Education Association (SEA) based upon SDCL 3-18-15.2. A Hearing was held in the matter on November 14, 2007, at Spearfish, South Dakota. Anne Plooster represented Petitioner, SEA (Petitioner). Lester Nies represented Respondent Spearfish School District #40-2 and Board of Education (District).

The Issues presented by the parties are limited by the grievance definition provided for in Article XII (A) of the 2006-2007 Negotiated Agreement. “The word “grievance” as used in this agreement shall mean a complaint by an employee, group of employees, or the Association ... based upon an alleged violation, misinterpretation, or inequitable application of this agreement as it applies to the condition of employment.” *Art. XII (A) of Negotiated Agreement*. “Nothing in SDCL ch 3-18 requires a negotiated agreements definition be as broad as SDCL 3-18-1.1 and nothing prohibits a definition which limits grievances to the terms of a negotiated agreement.” *Rapid City Ed. Assc. v. Rapid City Sch. Dist.*, 522 NW2d 494 (SD 1994).

ISSUES:

1. Whether District violated, misinterpreted and/or inequitably applied the negotiated agreement of District by imposing a 98 hour credit limitation on bargaining unit members?
2. Whether District violated, misinterpreted and/or inequitably applied the negotiated agreement of District by not paying those teachers already at the top of the Spearfish School District salary schedule for the additional three banked hours?
3. Whether District violated, misinterpreted and/or inequitably applied the negotiated agreement of District by failing to pay the high school counselors according to the imposed agreement?
4. Whether District violated, misinterpreted and/or inequitably applied the negotiated agreement of District by paying one high school counselor an additional \$6,000.00 with drug and alcohol grant money?

5. Whether District violated, misinterpreted and/or inequitably applied the negotiated agreement of District by failing to pay the new hires according to the imposed agreement?

The South Dakota Supreme Court has long held that, “[t]he contracts negotiated between public school districts and teachers are like any other collective bargaining agreement, and disputes over the agreement are resolved with reference to general contract law.” *Wessington Springs Education Association v. Wessington Springs School District #36-2*, 467 NW2d 101, 104 (SD 1991). The burden of proof lies with the Petitioner to show that “the Respondent violated, misinterpreted, or inequitably applied the negotiated agreement at issue.” *Rininger v. Bennett County School District*, 468 NW2d 423, 425 (SD 1991).

When determining the meaning of a contract, effect will be given to the plain meaning of its words. We must give effect to the language of the entire contract and particular words and phrases are not interpreted in isolation. We look to the language that the parties used in the contract to determine their intention. If the parties’ intention is made clear by the language of the contract it is the duty of this Court to declare and enforce it. However, if the contract is uncertain or ambiguous, parol and extrinsic evidence may be used for clarification.

Lillibridge v. Meade School District #46-1, 2008 SD 17, ¶12 (internal citations omitted).

The Contracts issued by District to Petitioners were imposed upon them for the 2005-06 and 2006-07 school years pursuant to SDCL 3-18-8.2.

Any school district issuing contracts to teachers for the ensuing year, but prior to reaching agreement with the representatives of the recognized employee unit, shall issue the contracts under the same terms and conditions as for the current year. If no agreement is reached in negotiations and the intervention of the labor department under 3-18-8.1 fails to bring about an agreement, the board shall implement, as a minimum, the provisions of its last offer, including tentative agreements. If the labor department is not requested to intervene under the provisions of 3-18-8.1, the board shall implement the provisions of its last offer, including tentative agreements, eleven days after an impasse is declared.

SDCL 3-18-8.2.

1. Whether District violated, misinterpreted and/or inequitably applied the negotiated agreement of District by imposing a 98 hour credit limitation on bargaining unit members?

The 2005/2006 Negotiated Agreement and attached salary schedule fixed teachers’ salaries based upon a formula. The formula is: base salary + hours/approved units (as defined) + increment (based upon teaching experience) + college degree + fringe benefits + extra duty pay = Total Salary. This Agreement was imposed by District for the 2005/06 School Year. The contract defines “Hours/Approved Units” as follows:

Any teacher having approved under-graduate hours beyond the bachelors degree will receive .0022 of the base per credit hour per year limited however for teachers employed with the Spearfish School District in 2004-2005 to a maximum of 3 total hours/approved credits of all types for 2005-2006 per employee.

Any teacher having approved Spearfish credit will receive .0031 of the base per credit hour per year limited however for teachers employed with the Spearfish School District in 2004-2005 to a maximum if 3 total hours/approved credits of all types for 2005-2006 per employee.

Any teacher having approved graduate hours beyond the bachelor's degree will receive .0031 of the base per credit hour per year limited however for teachers employed with the Spearfish School District in 2004-2005 to a maximum of 3 total hours/approved credits of all types for 2005-2006 per employee.

Note: Hours/Approved Units that are turned in to the business office and are not compensated in 2005-2006 will be held over for future consideration under the terms of subsequent contracts (this does not apply to extension of this contract because a new contract is not ratified by August 11, 2006).

Hours will be limited to a total of 95.

A Teacher having approved under-graduate can substitute graduate hours in the formula within the limits.

Competency units from the Western Governors' University will be counted the same as hours.

See Exhibit D-32, 2005/06 Negotiated Agreement, Appendix B (emphasis added in Para. 5).

The 05-06 Agreement clearly limits the number of approved hours to 95. The approved hours, over 95, were to be banked for use in subsequent years.

In 2006/2007, the Negotiated Agreement was again imposed upon Petitioner by District. This agreement and salary formula was different than the previous year but incorporated, by specific reference, some of the language from the 2005/06 agreement. The 2006/07 agreement set a maximum salary of \$51,877.50. The formula for the teachers' salaries was: base salary + placement base hours (as defined) + ADM Advancement + fringe benefits + extra duty = Total Salary.

The Placement Base Hours were defined as:

1. Prior Hours: Any teacher employed under the 2005-2006 Agreement will receive credit for all approved Hours/Units held by the teacher at the beginning of

the 2005-2006 Agreement, together with up to (3) Hours/Units added under the 2005-2006 Agreement. This will equal the “Prior Hours.”

2. Banked Hours: Any teacher employed under the 2005-2006 Agreement who brought in approved Hours/Units in excess of the (3) Hours/Units compensated in 2005-2006 will be paid for these excess approved Hours/Units at the following rates: \$77.50 Per Graduate Credit Hour/Unit; and \$55.00 Per Undergraduate Credit Hour/Unit, to be paid in the September, 2006 check. This will equal the “Banked Hours.”

3. 2005-06 Hours: Hours/Units earned and approved during the 2005-2006 school year shall be compensated by adding them to the Prior Hours and Banked Hours to total the “Placement Base Hours” below for purposes of placement on the 2006-2007 salary schedule.

4. Placement Base Hours: The Prior Hours plus the Banked Hours plus the 2005-06 Hours equals the Placement Base Hours to be held by the teacher for the 2006-2007 salary schedule. Credits must be approved by the Superintendent and submitted to the Business Office no later than July 31, 2006 in order to be counted.

Exhibit D-31, 2006/2007 Negotiated Agreement, Appendix B.

The definition of the Placement Base Hours (for the beginning of 06/07 term) is the approved hours under the 2005/2006 contract (a limit of 95 hours approved at the beginning of 05/06 term) plus three hours earned during 05/06 for a total of 98 hours. The term “98 hours” is not included in the 06/07 contract but is included by reference to the 05/06 contract which limited the approved hours to 95. Teachers’ salaries for 06/07 were not based upon Placement Base Hours of more than 98 hours.

The 06-07 contract was imposed upon the Petitioners. During the bulk of the negotiations, the parties discussed increasing the base salary as well as the maximum salary and had not specifically discussed increasing the graduate hour cap to 98 hours. During the negotiations process, in May 2006, Petitioner requested District send an updated offer. District informed Petitioner that District was attempting to rewrite a couple sections of the agreement and that amendments were forthcoming. District wanted Petitioner to put off voting on the entire agreement proposal until after the amendments were suggested. The amendments and District’s rationale were sent via e-mail by District to Petitioner on May 30, 2006. This proposal became District’s last best offer. The offer included the language which capped the credit hours at 98 and raised the salary cap by \$1,000.

Petitioners knew and understood the offer before putting it to a vote. On June 13, 2006, Petitioner declared impasse. Eleven days after impasse was declared, District imposed the last best offer, which included the language regarding increasing the base and maximum salaries and increasing the credit hour cap to 98. The language was imposed pursuant to SDCL 3-18-8.2.

The imposition of a 98 hour credit limitation by District was not a violation, misinterpretation or an inequitable application of the negotiated agreement.

2. Whether District violated, misinterpreted and/or inequitably applied the negotiated agreement of District by not paying those teachers already at the top of the Spearfish School District salary schedule for the additional three banked hours?

The imposed contract for 06-07 contained a credit hour cap of 98 hours. Petitioner's argument is that District should have paid the teachers, at the top of the salary and credit hour cap, the same amount for each of the 3 credits that were moved from their "banked hours" to the credit hours account, as the teachers that were not at the top of the salary cap. This action would place the teachers' salaries over the maximum under the agreement.

The agreement raised the Maximum Salary for 2006/07 school year to \$51,877.50. The 2006/07 Agreement also replaced the Increment calculation with an ADM (Average Daily Membership) Advancement calculation.

If the... policy in the negotiated agreement is clear and unambiguous, we cannot go beyond its provisions. Contracting parties are held to the terms of their agreement, and disputes cannot be resolved by adding words the parties left out.

Gettysburg Sch. Dist. 53-1 v. Larson, 2001 SD 91, ¶ 11, 631 NW 2d 196, 200 (internal citations omitted).

The salary schedule for 06/07 is clear and unambiguous in its meaning. Those teachers, who have more than 98 credit hours, may not earn more than the maximum amount set by the schedule. The ADM Advancement awards a certain percentage of the allotted money to each credit approved.

The Contract sets out the details of the ADM Advancement:

2006-2007 ADM Advancement on Salary Schedule The 2006-2007 Agreement commences a new salary schedule which replaces the prior Increment calculation with an ADM Advancement calculation.

1. Teachers employed under the 2005-2006 Agreement will retain their prior Increment (without the one-time bonus of \$875) for initial placement on their ADM Advancement salary schedule. To this is added the Placement Base Hours. This total is the "Initial Placement."
2. If a teacher's Initial Placement (Increment plus Placement Base Hours) is below the 2006-2007 Base, the teacher will move to the Base for 2006-2007, and will receive an ADM Advancement based on the schedule in (3) below.

3. If a teacher's Initial Placement (Increment plus Placement Base Hours) is equal to or more than the 2006-2007 Base, the teacher will receive an ADM advancement based on the following calculation:

Step One – Calculate estimated New State Money and Set ADM advancement Pool: The District will project contract year ADM multiplied by the per student allocation minus prior year total to estimate new state money. This shall be a primary factor in establishing the ADM Advancement Pool. For 2006-2007, the ADM Advancement Pool is set at \$165,000;

Step Two – Division of ADM Advancement Pool: For 2006-2007, 47% of the ADM Advancement Pool shall be allocated to Masters Degree teachers/Number of MA/MS teachers FTE (48.85) = Per teacher ADM Advancement of \$1,587.51; and 53% shall be allocated to Bachelor's Degree teachers/ Number of BA/BS teachers FTE (87.20) = \$1,002.87 Per teacher ADM Advancement.

4. The maximum teacher salary (including Base + Base Hours) for 2006-2007 is \$51,877.50. ADM Advancement is available to a teacher up to, but not over, the maximum salary.
5. Teachers with less than full time FTE position will be paid according to the above schedule reduced to percent of FTE.

Exhibit D-31, 2006/2007 Negotiated Agreement, Appendix B.

The teachers who were at the top of the salary and credit schedules were paid \$50,877.50 for 95 hours in 2005-06 and 51,877.50 for 98 hours in 2006-07. The maximum salary was increased by \$1000 and the credit cap was increased to 98 hours. Teachers not at the top of the salary schedule earned the full ADM Advancement of \$1002.87 for three (3) Bachelors degree credits or \$1,587.51 for three (3) Masters degree credits.

Some of the teachers, who were at the 95 hour cap for 05/06, had at least three hours banked for use in upcoming years. These teachers were not given the option of not using three of their banked hours in 06-07. These teachers also were at the maximum salary rate. Therefore, the highest paid teachers were being paid at the salary cap, but they had three less banked hours. This cap on both the salary and the credit hours was applied to all teachers. If a teacher had prior hours of 95 and 3 hours approved in 05-06, their placement base hours were raised to 98. The agreement clearly limits the salary to the maximum allowed. The ADM Advancement Pool is allocated to teachers "up to, but not over, the maximum salary." District followed the unambiguous formula. Petitioner did not show that District, in applying the salary formula to those teachers making the maximum salary, violated, misinterpreted, or inequitably applied the 2006-07 Agreement by District.

3. Whether District violated, misinterpreted and/or inequitably applied the negotiated agreement of District by failing to pay the high school counselors according to the imposed agreement?

Petitioner argues that the high school counselors' salaries were incorrectly calculated, according to the negotiated agreement. Jackie Rans and Marcia Aiken were contracted for the 2006-2007 school year at a salary, without extra-duty assignments, of \$53,483.34 and \$42,869.46, respectively.

The length of the contracted 2006-2007 school term is 181 days. The negotiated contract states in part, "[s]alary will be paid on the basis of contracted days. Any proration will be done on the basis of contracted days." The school counselors were hired to work 201 days instead of the normal 181 days. District prorated their salary based upon the above language. The contract sets out the formula for setting salaries:

Formula for Working Salary:

2006-2007 Contract:
_____ Increment from 2004-2005 (excluding one time \$875 bonus)
_____ Banked Hours (Grad:_____ @ \$77.50; Undergrad: _____ @ \$55)
_____ Initial Placement Hours
(Grad:_____ @\$77.50; Undergrad: _____ @ \$55)
_____ ADM Advancement (MA/MA:\$1587.51; BA/BS:\$1002.87)
_____ Total Salary (may not exceed \$51,877.50)

The above salary is based upon the contract of 181 days. District then used the amount of the Total Salary to prorate the amount for 20 more days to be paid to the high school counselors. The contract language is unambiguous. Petitioner argues that instead of prorating the total salary, the base salary should have been prorated prior to adding the ADM Advancement. The Agreement does not specify that only the base salary shall be prorated to determine the salaries of those working less or more than 181 days.

Petitioner argues that ADM Advancement is worth more to those employees who work more than 181 days, and that the credit hours brought in are worth more per credit to those who are employed for more than 181 days. Essentially that argument is correct, but the salary formula calls for that calculation. Employees who work more hours are paid more total salary, a portion of which is based upon credit hours. This method of prorating the salary, utilized by District and allowed for by the contract, is not a violation, misinterpretation or inequitable application of the contract.

4. Whether District violated, misinterpreted and/or inequitably applied the negotiated agreement of District by paying one high school counselor an additional \$6,000.00 with drug and alcohol grant money?

Petitioner alleges that the failure to negotiate the position of Safe and Drug-Free Schools Coordinator, or Title IV Coordinator, was a violation, misinterpretation, or inequitable

application of the 2006-2007 contract. SDCL 3-18-2 clearly states that public employees have the right to meet and negotiate conditions of employment. Those conditions of employment include rates of pay, wages, hours of employment, or other conditions of employment. SDCL 3-18-3.

However, these statutes do not give public employees the right to engage in negotiations over all issues relating to rates of pay, wages, hours and other conditions of employment. [T]he state is different from a private employer inasmuch as it has the unique responsibility to make and implement public policy. Accordingly, the scope of negotiations in the public sector is more limited than in the private sector. *Rapid City Education Association v. Rapid City Area School District No. 51-4*, 376 NW2d 562, 564 (SD 1985) (citing *In re Local 195, IFPTE, AFL-CIO v. State*, 443 A2d 187, 191 (NJ 1982)).

West Central Ed. Ass'n. v. West Central Sch. Dist., 2002 SD 163, ¶11, 655 NW2d 916.

For the 2006-2007 School Year, District paid one counselor an additional \$6,000 for serving as the Safe and Drug-Free Schools Coordinator. The position is funded by Federal Title IV grant funds and administered to local school districts through the State of South Dakota. The Extra-Duty Schedule for 2006-2007 does not include the position of Safe and Drug-Free Schools Coordinator. In prior years, the drug and alcohol grant was administered by a non-bargaining unit member and the Coordinator position was not listed on the extra-duty schedule. This position and the accompanying salary were not negotiated by either side during the negotiations process.

Prior to conclusion of negotiations for 2006-07, the Superintendent e-mailed Petitioner regarding the extra-duty schedule. This e-mail string confirms that both the Superintendent and Petitioner agreed that the salary for the position was a negotiable item, but that both sides were checking with their respective negotiating teams to decide what their positions will be on the matter. The representatives' e-mails in August 2005 were the last time either side broached the issue. The position of Coordinator was not open to all teachers. Prior to the conclusion of negotiations, District met with the staff member who was to take on these duties and offered her the position. This position was listed on the Coordinator's contract as an extra-duty assignment. District makes the argument that the position, by its job duties, is not subject to mandatory negotiations.

The role of the courts in a scope of negotiations case is to determine, in light of the competing interests of the State and its employees, whether an issue is appropriately decided by the political process or by collective negotiations. In making this sensitive determination, the mere invocation of abstract categories like terms and conditions of employment and managerial prerogatives is not helpful. To determine whether a subject is negotiable, the Court must balance the competing interests by considering the extent to which collective negotiations will impair the determination of governmental policy.

Rapid City, 376 NW2d at 564 (quoting *IFPTE*, 443 A2d at 191).

The South Dakota Supreme Court has set out a three-part test to determine whether an issue is subject to mandatory negotiations. “If the challenger can satisfy all three prongs, the subject must be negotiated.” *Webster* at ¶5. The test is as follows:

To assist in making that sensitive determination, a three-part test is applied.

1. A subject is negotiable only if it intimately and directly affects the work and welfare of public employees.
2. An item is not negotiable if it has been preempted by statute or regulation.
3. A topic that affects the work and welfare of public employees is negotiable only if it is a matter on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy.

West Central Ed. Ass’n. v. West Central Sch. Dist., 2002 SD 163, ¶11, 655 NW2d 916 (quoting *Rapid City*, 376 NW2d at 564 (citing *IFPTE*, 443 A2d at 191)).

The first prong of the test is whether the subject directly affects the work and welfare of public employees. “The prime examples of subjects that fall within the category are rates of pay and working hours.” *IFPTE* at 192 (internal citation omitted). “Any subject that does not satisfy this part of the test is not negotiable.” *Id.* The creation of the position and the salary directly and intimately affect public employees in that a bargaining member would be able to take the position and benefit from the additional salary. A member of the bargaining unit is the Coordinator hired for 06-07. This first prong is met.

The second prong asks the question of whether the item has been preempted by statute or regulation. In *Webster Education Association v. Webster School District #18-4*, 2001 SD 94, 631 NW2d 202, the SD Supreme Court stated:

As the New Jersey Supreme Court stated in *Township of Old Bridge Bd. of Educ. v. Old Bridge Educ. Ass’n.*, 489 A2d 159, 162 (NJ 1985), “negotiation on terms and conditions of employment will be preempted by a statute or regulation if the provision addresses the particular term or condition ‘in the imperative and leaves nothing to the discretion of the public employer.’”

Webster, 2002 SD 94, ¶9, 631 NW2d at 205.

Followed by the South Dakota Supreme Court in *Rapid City Educ. Ass’n. v. Rapid City Area Sch. Dist. No. 51-4*, 376 NW2d 562, 564 (SD 1985), the Supreme Court of New Jersey elaborated upon the 3 prong test. To explain the second prong, they stated:

Second, an item is not negotiable if it has been preempted by statute or regulation.

If the Legislature establishes a specific term or condition of employment that leaves no room for discretionary action, then negotiation on that term is fully preempted. If the statute sets a minimum or maximum term or condition, then negotiation may be confined within the parameters established by these limits. *State v. State Supervisory Employees Ass'n*, 78 N.J. at 80-82, 393 A.2d 233; N.J.S.A. 34:13A-8.1. However, the mere existence of a statute or regulation relating to a given term or condition of employment does not automatically preclude negotiations. Negotiation is preempted only if the “statutory or regulatory provisions ... speak in the imperative and leave nothing to the discretion of the public employer.” *State v. State Supervisory Employees Ass'n*, *supra*, 78 N.J. at 80, 393 A.2d 233.

IFPTE, 443 A2d at 192 (emphasis added).

The Grant, which is regulated by the U.S. Department of Education, Office of Safe and Drug-Free Schools, does not speak in the imperative on all issues regarding the grant money. The grant has some general requirements for District to follow when administering the grant monies. District is given discretion in a number of ways regarding the Title IV money. District is given general authority to hire coordinators, staff, or a council to administer the funds and pursue the grant objectives. The grant does not dictate the amounts that District may request for salaries. When District requests a certain amount for salaries, it is expected that the money received will be spent in the manner for which it was requested. The salary of the coordinator is not prescribed by the grant language. District still has some discretion over various portions of the grant money. Petitioner showed that there is no preemption by statute or regulation. The second prong has also been met by Petitioner.

District argues that the Grant is not guaranteed to District each year and therefore, the position of Coordinator cannot be listed as extra-duty each year. Furthermore, District does not know how much Grant money will be given to District each year and cannot plan for such event as a non-funding. An inherent possibility of requesting money is the fact that the request could be denied. The funding for the Coordinator comes from that person’s work in securing funding. Nothing in the grant requirements prevents District from planning for the possibility that District will not receive funding and the Coordinator position is eliminated for a year. District is given the discretion of planning for the grant not being funded.

The third prong is fully explained in the New Jersey case, *IFPTE*. The court wrote:

A topic that affects the work and welfare of public employees is negotiable only if it is a matter on which negotiated agreement would not significantly interfere with the exercise of inherent management prerogatives pertaining to the determination of governmental policy. This principle rests on the assumption that most decisions of the public employer affect the work and welfare of public employees to some extent and that negotiation will always impinge to some extent on the determination of governmental policy. The requirement that the interference be

“significant” is designed to effect a balance between the interest of public employees and the requirements of democratic decision making.

Id. at 191(internal citations omitted).

The third prong cannot be met if listing the Coordinator position as an extra-duty position and setting the salary by the negotiated agreement “significantly interfere[s]” with District’s “inherent management prerogatives pertaining to the determination of governmental policy.” If listed as an extra-duty, District is still in the position to select the proper candidate, set policies and duties of the position, oversee the Coordinator’s progress, require the Coordinator to seek District authorization for certain activities, and establish job requirements of the position. District may also require the Coordinator to work a certain number of hours. The creation of the Coordinator position and the salary are the only negotiable items. The “determination of governmental policy” may still be set by District and by the State of South Dakota, when approving the grant application. The application requests a certain amount of money to be used for the salary of the coordinator. The possibility of the grant proposal being underfunded or not funded may be written into the position of the Coordinator.

For the above reasons, Petitioner showed that the Safe and Drug Free Schools Coordinator position meets the three prong test of *IFPTE*. The position and salary of the Coordinator position is subject to mandatory negotiations.

5. Whether District violated, misinterpreted and/or inequitably applied the negotiated agreement of District by failing to pay the new hires according to the imposed agreement?

While the 2005-2006 Contract was still in effect (prior to August 11, 2005), District offered contracts to 13 new teachers. Some of these teachers had prior experience and others did not. Each of the teachers had a different number of post-graduate credit hours. The 05-06 contract set a base salary of \$25,000. The 06-07 contract set a base salary of \$27,000. However, the 06-07 contract set up a new formula to determine total salary based partially upon the ADM Advancement calculation. Part of this calculation is a division of the ADM Advancement Pool among the teachers, based upon their college degrees.

The division of the ADM Advancement Pool among the teachers gives all the teachers an interest in how the salaries are calculated. The teachers, as a collective group, have standing to contest the calculation of all the teachers’ salaries.

During the spring and summer of 2006, District hired new teachers (new-hires) and offered them a certain amount of salary, based upon the 05-06 contract. When the 06-07 contract was imposed, some of the salaries were reconfigured based upon the new formula. Under the 06-07 formula, the salary of some of the new-hires increased and some should have decreased. District adjusted the salaries of those new-hires whose salaries were to increase, but did not adjust the salaries of the new-hires whose salaries were to decrease. Therefore, the percentage of the money that was paid to some of the new-hires per the ADM Advancement was miscalculated and the returning teachers were paid less ADM Advancement than what they were entitled.

District did not contract with the new-hires to adjust their salaries based upon the 06-07 negotiations, even though District signed individual contracts for new-hires during negotiations for 06-07. After the salary formula was changed and the agreement imposed, District did not want to break the hiring contracts of the new-hires by lowering their salaries. The new-hire language in the 05-06 and 06-07 contracts are the same. They read:

An experienced teacher new to the district, can bring no more than ten years of experience to the district unless approved by the Board. Teaching experience means teaching in an accredited school. A year means a full school contract term. Portions of experience may be counted towards a year of experience, if they total nine months and were in an accredited school. New hire experienced teachers must furnish official written evidence of experience and completion of course work to the business office no later than 4:00 p.m. on the last working day of July. Transcripts must be furnished to the business office no later than the last working day in August for initial placement on the salary schedule for the September Payroll. If a teacher is hired mid-year, written evidence of experience and completion of course work and copies of transcripts must be provided to the business office no later than the last working day of their first full month of employment. The newly hired employee is responsible to confirm the accuracy of his or her initial placement on the salary schedule. After the last working day in August of the first year of employment, initial placement on the salary schedule cannot be changed because of experience or credits that were not disclosed to the district on or before that date. The rule stated above also applied to current employees of the District who did not object to initial placement on the salary schedule, and placement on the salary schedule of current employees will not be changed after the last working day in August of their first year of employment.

The contracts specify base salary, maximum salary, and the formula for determining total salary. However, the contract does not specify how the salaries of newly hired teachers under the 05-06 contract will be configured for the 06-07 contract.

This contract, including the ADM Advancement Calculation, was imposed upon the Petitioners. “It is a general principle of construction that a party will be held to the terms of their own agreement, and disputes will not be resolved by resort to what they might have included.” *Wessington Springs*, 467 NW2d at 104 (citing *Raben v. Schlottman*, 77 SD 184, 190-91, 88 NW2d 205, 208 (1958)). District’s decision to adjust some of the salaries, and not all of the salaries resulted in an inequitable distribution of the ADM Advancement Calculation. Some of the new-hires were overpaid to the detriment of the returning teachers. For the foregoing reasons, Petitioner did show that District violated, misinterpreted, or inequitably applied the agreement.

In conclusion, District did not violate, misinterpret, or inequitably apply the 06-07 contract by imposing a 98-hour credit cap and by paying the highest paid teachers according to the contract as written. The contract language regarding the credit cap and salary formula is unambiguous.

District paid the two high school counselors according to the imposed agreement and did not violate, misinterpret, or inequitably apply the 06-07 contract.

Petitioner did show that District failed to negotiate the position and salary of the Safe and Drug Free Schools Coordinator. The job of Coordinator is a negotiable position and should be added to the extra-duty schedule in future contracts. The Department does not have the authority to require the Coordinator to pay back to District that \$6,000 approved by the Grant for salaries. Petitioner's remedy is that the position and salary are to be negotiated in the next contract.

Petitioner did show that District failed to pay the new-hires according to the imposed agreement which resulted in inequitable treatment of the returning teachers. District put themselves into the position of having to adjust contracts of new-hires based upon the imposed contract. The imposed salary formula gives standing to each teacher to contest the salary of every other teacher, as the formula gives a portion of the ADM Advancement to each teacher. District did not violate the contract by adjusting the new-hires contracts up, but did violate when not adjusting down the new-hires who were to earn less under the 06-07 agreement. The Department cannot order the new-hires to refund to District that amount that they were overpaid. The Department can and does order District to calculate the amount of ADM Advancement overpaid to the new-hires. This amount is to be distributed, per the 06-07 agreement to the teachers employed under the 06-07 agreement.

District and Petitioner shall submit Proposed Findings of Fact and Conclusions of Law and a Proposed Order, consistent with this Decision, within 20 days from the date of receipt of this Decision. Both sides will then have 10 days to make written objections. The parties may stipulate to waiver of Findings of Fact and Conclusions of Law and if they do so, the parties will submit such Stipulation, along with an Order in accordance with this Decision.

Dated this 7th day of July, 2008.

SOUTH DAKOTA DEPARTMENT OF LABOR

Catherine Duenwald
Administrative Law Judge