

SOUTH DAKOTA DEPARTMENT OF LABOR  
DIVISION OF LABOR AND MANAGEMENT

**TOM RICE,**

**HF No. 15 G, 2005/06**

**Grievant,**

v.

**DECISION**

**BERESFORD SCHOOL DISTRICT #61-2  
and BOARD OF EDUCATION,**

**Respondent.**

This matter comes before the Department of Labor based on a grievance complaint filed by Tom Rice (Rice) pursuant to SDCL 3-18-15.2. Anne Plooster represented Rice. Rodney Freeman, Jr. represented Beresford School District #61-2 and Board of Education (District). A hearing was held before the Division of Labor and Management on September 7, 2006, in Beresford, South Dakota. The sole issue presented was whether the District violated, misinterpreted or inequitably applied the policies, rules and regulations, or negotiated agreement of the District in reducing Rice's employment contract from Step 26 MA+45 to Step 16 MA+45 for the 2006-07 school year.

**FACTS**

Based upon the Department's record and the live testimony at hearing, the following facts have been established by a preponderance of the evidence.

In 1999, Rice interviewed for a teaching position with the District. Rice was offered a job, but he turned down the District's initial offer of employment because it would have resulted in a significant pay cut. Later, the District contacted Rice again and offered him additional money to accept the teaching position with the District. Rice reconsidered and accepted the District's employment offer. At the time of his hire, the District placed Rice on Step 19 of the salary schedule even though his actual teaching experience would have placed Rice on Step 9 of the salary schedule. The District's Professional Staff Salary Schedules policy did not limit the placement of new hires on the salary schedule.

The District has employed Rice on a full-time basis since 1999. Rice is currently a middle school teacher in social studies and physical education. Rice is also the head football coach and assistant track coach. Rice is a member of the Beresford Education Association (BEA), which is the sole and exclusive bargaining representative for all professional staff.

On March 14, 2006, the District sent Rice written notice that his salary was being reduced. The March 14, 2006, letter stated:

Pursuant to SDCL 13-43-6.4, notice is hereby given that your contract with the district will be reduced from Step 26MA+[45] to Step 16MA+[45] for the ensuing school year due to reduction in force.

(emphasis added). Vince Schaefer, the District's Superintendent, signed the letter and Rice acknowledged receipt of the letter on March 14, 2006. Rice was the only professional staff member whose salary was reduced. Rice's duties were not cut or reduced. Rice's duties actually increased for the 2006-07 school year as he "has extra preps." Rice was a member of the negotiating team for the 2006-07 negotiated agreement. Rice's reduction in salary was not negotiated between BEA and the District.

Rice filed a grievance and this hearing ensued. Rice was a credible witness at the hearing. This is based on his consistent testimony and based on the opportunity to observe his demeanor at the hearing. Other facts will be developed as necessary.

## ISSUE

WHETHER THE DISTRICT VIOLATED, MISINTERPRETED OR INEQUITABLY APPLIED THE POLICIES, RULES AND REGULATIONS, OR NEGOTIATED AGREEMENT OF THE DISTRICT IN REDUCING RICE'S EMPLOYMENT CONTRACT FROM STEP 26 MA+45 TO STEP 16 MA+45?

SDCL 3-18-1.1 defines a grievance as "a complaint by a public employee or group of public employees based upon an alleged violation, misinterpretation, or inequitable application of any existing agreements, contracts, ordinances, policies, or rules of the government of the State of South Dakota . . . or of the public schools . . . as they apply to the conditions of employment." SDCL 3-18-15.2 provides, in part:

If, after following the grievance procedure enacted by the governing body, the grievance remains unresolved, except in cases provided for in § 3-6A-38, it may be appealed to the Department of Labor, if notice of appeal is filed with the department within thirty days after the final decision by the governing body is mailed or delivered to the employee. The Department of Labor shall conduct an investigation and hearing and shall issue an order covering the points raised, which order is binding on the employees and the governmental agency.

"Deference is not given to the school board's decision by the department in a grievance review under SDCL 3-18-15.2." Cox v. Sioux Falls Sch. Dist. 49-5, 514 N.W.2d 868 (S.D. 1994). The burden of proof is on SEA, the party alleging the violation. Rininger v. Bennett County Sch. Dist., 468 N.W.2d 423 (S.D. 1991).

The issue presented is whether the District can reduce Rice's salary from Step 26 MA+45 to Step 16 MA+45. As previously stated, the District notified Rice in March 2006 that his salary was being reduced for the 2006-07 school year "due to reduction in force." This was the only reason proffered by the District for Rice's salary reduction.

The District's Staff Reduction Policy provides, in part, "[s]hould it become necessary in the judgment of the Board of Education to reduce the professional staff of the Beresford School District due to declining enrollment or financial conditions and limitations, the following procedure shall be used[.]" The Staff Reduction Policy then sets forth the specific procedures to be followed. Nowhere in the Staff Reduction Policy does it state that the policy can be used to reduce the amount of an individual teacher's salary.

The District must abide by the terms of the Staff Reduction Policy. See Wessington Springs Educ. Ass'n v. Wessington Sch. Dist. No. 36-2, 467 N.W.2d 101, 104 (S.D. 1991). "Disputes over the meaning of terms in [a policy or negotiated agreement] are resolved under the general principles of contract law." Gettysburg Sch. Dist. 53-1 v. Larson, 2001 SD 91, ¶ 11. Terms in a contract are to be given "their plain and ordinary meaning." Harms v. Northland Ford Dealers, 1999 SD 143, ¶ 12 (citation omitted). "When the terms of a negotiated agreement are clear and unambiguous, and the agreement actually addresses the subject that it is expected to cover, 'there is no need to go beyond the four corners of the contract.'" Wessington Springs, 467 N.W.2d at 104 (citation omitted).

The District's Staff Reduction Policy enumerates a specific protocol for implementing a reduction in professional staff. The District's Staff Reduction Policy does not provide for a reduction in an individual teacher's salary. The District acknowledged at the hearing that the Staff Reduction Policy is silent as to allowing for a reduction in salary. Superintendent Schaefer testified,

- Q: Where in the district's written policy does it say that you can reduce salary? And if you need to look at the policy, we can give that to you, too.
- A: From my memory, I would offer the statement that because it is silent it gives us the opportunity to do so.

However, the District's reasoning is contrary to settled law. "Contracting parties are held to the terms of their agreement, and disputes cannot be resolved by adding words the parties left out." Gettysburg, 2001 SD 91, ¶ 11. "A school board cannot rewrite an incompletely specified agreement, inserting or deleting to make it mean more than its words plainly declare." Id. at ¶ 14 (citation omitted).

The Staff Reduction Policy is clear and unambiguous. The District's Staff Reduction Policy cannot be used to reduce salary. The Staff Reduction Policy can only be used to reduce professional staff. The District did not reduce either Rice's position or his duties. Therefore, the District violated, misinterpreted and inequitably applied the Staff Reduction Policy when it reduced Rice's salary from Step 26 MA+45 to Step 16 MA+45 for the 2006-07 school year.

At the hearing, the District argued that the Professional Staff Salary Schedules policy allowed it to reduce Rice's salary, even though this rationale was not provided to Rice in his March 2006 official written notice. The Professional Staff Salary Schedules policy provides, in part:

The Board will adopt salary schedules for its professional staff, and each staff member will be placed on the schedule at a salary level that is commensurate with, but not limited to, the staff member's educational training, prior experience, and experience in the district. The schedule adopted by the Board will remain in effect until changed or modified by the Board.

Salary increments will be conditional upon evidence of the continued professional growth of the teacher. Employees who do not comply with the requirements of the Board and/or the state may not be granted salary increases or may not be retained on the staff.

Placement on the salary schedule will be in accordance with requirements developed by the administration and approved by the Board.

The District's reliance on the Professional Staff Salary Schedules policy as authority to reduce Rice's salary must be rejected.

The District's only reason for Rice's reduction in salary was provided by the March 2006 letter notifying Rice that his salary was being reduced "due to reduction in force." As with any agreement, the District is bound by its rationale for reducing Rice's salary. The District cannot now provide Rice with another rationale as an afterthought. In addition, the Professional Staff Salary Schedules does not allow the District to reduce Rice's salary. This policy refers to "placement" and Rice was "placed" on the salary schedule in 1999. Further, the policy provides only for "salary increments" and not for salary reduction. Again, the District cannot add words it failed to include when developing and negotiating the policy.

Finally, the District's action of reducing Rice's salary by "reduction in force" is contrary to SDCL 3-18-3. Rice is a member of BEA and BEA is the "exclusive representatives of all employees in such unit for the purposes of representation in respect to rates of pay, wages, hours of employment, or other conditions of employment[.]" SDCL 3-18-3. This statute mandates that any issue of pay or wages be negotiated between BEA and the District. This includes a reduction in salary. The evidence established that the parties did not negotiate the reduction in Rice's salary, in violation of SDCL 3-18-3.

The District violated, misinterpreted and inequitably applied the Staff Reduction Policy. The District also violated and misinterpreted SDCL 3-18-3. Rice's grievance is granted in all respects. The District must reinstate Rice's 2005-06 salary and add any and all appropriate increases for the 2006-07 school year. Rice is also entitled to back pay plus interest.

Rice shall submit Findings of Fact, Conclusions of Law, and an Order consistent with this Decision, and if necessary, proposed Findings and Conclusions within ten days from the date of receipt of this Decision. The District shall have ten days from the date of receipt of Rice's Findings and Conclusions to submit objections thereto or to submit proposed Findings and Conclusions. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, Rice shall submit such Stipulation, along with an Order in accordance with this Decision.

Dated this 3<sup>rd</sup> day of November, 2006.

SOUTH DAKOTA DEPARTMENT OF LABOR

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Elizabeth J. Fullenkamp  
Administrative Law Judge