

**SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT**

**MYRNA WILCOX,
Grievant,**

HF No. 22 G, 2002/03

v.

DECISION

**LEMMON SCHOOL DISTRICT 52-2,
Respondent.**

This matter comes before the Department of Labor based on Grievant Myrna Wilcox's Petition for Hearing on Grievance filed pursuant to SDCL 3-18-15.2. Michael J. Williams represented Grievant Myrna Wilcox. Timothy P. Parmley represented Respondent Lemmon School District 52-2. Upon consideration of the submissions of the parties, Grievant's Petition for Hearing and request for relief is hereby denied.

Issue:

Did Respondent erroneously apply its reduction in force policy to terminate Myrna Wilcox rather than another teacher who should have been terminated instead?

Facts:

1. On March 12, 2001, the Board of Education accepted Mrs. Wilcox's early retirement resignation. Mrs. Wilcox was thereafter rehired, but with a loss of renewal protections or tenure as set forth in SDCL 13-43-6.3.
2. Mrs. Wilcox did not have tenured status.
3. At the March 10, 2003, School Board meeting, the Board determined a reduction in force was necessary due to declining enrollment and lack of funds or uncertainty of funds.
4. The Board voted to non-renew Mrs. Wilcox due to financial reason for the 2003-2004 school year.
5. The Board voted to offer Mrs. Wilcox a contract for a 4/7 teaching position for the 2003-2004 school year.
6. At the March 10, 2003, school board meeting, Mrs. Wilcox was nonrenewed for reduction in force due to financial reasons. Mrs. Wilcox was rehired at a 4/7 position.
7. Also at the March 10, 2003, school board meeting, the teaching positions held by Linda O'Donnell, Dorothy Kelley, and Delilah Heil were reduced. The board offered Kelley and Heil 4/7 and 3/7 positions respectively. O'Donnell was offered a contract, but without her cheerleading coaching position.
8. On March 11, 2003, the Board notified Mrs. Wilcox in writing that her contract would not be renewed for the 2003-2004 school years due to reduction in force.

9. On March 11, 2003, the Board offered Mrs. Wilcox a contract for a 4/7 position for the 2003-2004 school year.
10. On April 9, 2003, Mrs. Wilcox met with Superintendent Rick Herbel to discuss a grievance.
11. On April 9, 2003, Mrs. Wilcox also filed a written grievance with the District alleging that the reduction in force policy was violated or inequitably applied.
12. The recommendation was made to meet the present and future staffing needs of the Lemmon School District.
13. Grievant submitted her written grievance to Respondent on April 4, 2003.
14. Superintendent Herbel placed Mrs. Wilcox's grievance on the agenda for the May 12, 2003, meeting of the School Board.
15. On May 12, 2003, the District determined that the reduction in force was correctly followed.
16. Other facts will be developed as necessary.

Issue

Did Respondent erroneously apply its reduction in force policy to terminate Myrna Wilcox rather than another teacher who should have been terminated instead?

SDCL 3-18-1.1 defines a grievance:

The term "grievance" as used in this chapter means 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 the government of any one or more of the political subdivisions thereof, or of the public schools, or any authority, commission, or board, or any other branch of the public service, as they apply to the conditions of employment. Negotiations for, or a disagreement over, a nonexisting agreement, contract, ordinance, policy or rule is not a "grievance" and is not subject to this section.

The Department's role in resolving a grievance is defined by SDCL 3-18-15.2.

SDCL 3-18-15.2 reads, in part:

If, after following the grievance procedure enacted by the governing body, the grievance remains unresolved . . . it may be appealed to the department of labor . . . 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.

The burden of proof is on the grievant. Rininger v. Bennett County Sch. Dist., 468 N.W.2d 423 (S.D. 1991).

The Reduction in Force policy in the Negotiated Agreement states:

The School Board shall have the sole right to determine the necessity for and scope of a reduction in force for reasons including, but not limited to, lack of funds, uncertainty of funds, declining enrollment, or other reasons of necessity. This determination shall not be arbitrary or capricious.

If a decision is made to reduce the teaching staff, any teacher affected hereby shall be given any notice as may be required by law.

As used herein, "adaptability" shall be understood to include a teacher's ability to conform to and accommodate the School District's needs as to curriculum, financial needs and extra curricular activities as determined by the School Board. A teacher certified in multiple areas of certification is more adaptable than a teacher meeting only minimum certification requirements. The selection of the teacher(s) to be non-renewed because of reduction in force shall be made in accordance with the following criteria:

1. Attrition, including retirement and resignations, shall be relied on to the extent possible.
2. When attrition is not sufficient to alleviate the necessity for reduction in force, then the policy for this District shall be to retain those teachers with the greatest adaptability, to meet the present and future staffing and educational needs of the District.
3. When two teachers within the same area of certification are deemed to be of equal adaptability to meet the present and future staffing needs of the District, then the teacher with the superior academic and professional preparation beyond minimum certification requirements in his or her teaching field, shall be retained.
4. When two teachers are deemed to be of equal adaptability and have equal academic and profession preparation within their teaching fields, then the teacher who has taught in this district for the greater period of time shall be retained.

The District had no retirements or resignations. Mrs. Wilcox's degree program is 7-12 Science Education –Biology. Mrs. O'Donnell's degree program is Pre-Kindergarten Education and Elementary Education. Mrs. Wilcox's endorsements are "5-8 Middle Level Ed – Lang Arts, 5-8 Middle Level Ed – Social Science, 5-8 Middle Level Ed – Natural Science, General Science, 7-12 Science Ed – Earth Science, 7-12 Social Science Ed – History, 7-12 Social Science Ed – Psychology." The District compared Mrs. Wilcox's degree program and endorsements to those of the other teachers. The District determined that middle level education science and math for the 2003-2004 school year would be needed, and that language arts would be needed for the 2004-2005 school years. The District also determined that Mrs. Wilcox's endorsements would not allow her to teach physics, chemistry, or physical science, which were also found to be necessary for the District. Mrs. Wilcox is also not certified for coaching in

any area. Respondent determined that Mrs. Wilcox's adaptability was not such that it would meet the needs of the District.

Grievant alleged that her years of service should have been considered in the District's reduction in force of her position. The District responded that the reduction in force policy allows for the consideration of years of service only after it is determined that "two teachers have equal adaptability and have equal academic and professional preparation within their teaching fields, then the teacher who has taught in this district for the greater period of time shall be retained." Mrs. Wilcox did not make it to this step of the reduction in force policy. The District determined that she lacked the necessary adaptability and the academic and professional preparation. Mrs. Wilcox's argument that she should have been retained based on her years of service must fail. The reduction in force policy is clear and unambiguous on when years of service are to be considered. Mrs. Wilcox's adaptability and academic and professional preparation were found not to meet the needs of the District. Mrs. Wilcox's request for relief is denied.

Respondent shall submit proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within ten (10) days from the date of receipt of this Decision. Counsel for Mrs. Wilcox shall have ten (10) days from the date of receipt of Respondent's proposed Findings of Fact 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, Respondent shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 23rd day of June, 2005.

SOUTH DAKOTA DEPARTMENT OF LABOR

Heather E. Covey
Administrative Law Judge