

May 4, 2016

Lance S. Russell
Russell Law Office
P.O. Box 184
Hot Springs, SD 57747

Letter Decision and Order

Michael M. Hickey
Bangs, McCullen, Butler, Foye & Simmons LLP
P.O. Box 2670
Rapid City, SD 57709-2670

Re: HF No. 3 G, 2015/16 – Michael Remington v. Oelrichs School District

Dear Mr. Russell and Mr. Hickey:

Submissions:

This letter addresses the following submissions by the parties:

September 1, 2015	Petitioner's Petition for Hearing on Grievance;
February 23, 2016	Respondents' Motion for Summary Judgment; Respondent's Memorandum of Law in Support of Motion for Summary Judgment; Respondent's Statement of Undisputed Facts; Affidavit of LuAnn Werdel;
March 28, 2016	Petitioner's Memorandum of Law in Objection to Respondent's Motion for Summary Judgment;
April 11, 2016	Respondent's Reply Memorandum of Law in Support of Motion for Summary Judgment.

Facts:

The relevant facts of this case are as follows:

1. Michael Remington (Remington) has been employed by Oelrichs School District (Respondent) as a physical education teacher since the 2005-2006 school year.
2. Respondent's grievance procedure is outlined in Section IX of the Oelrichs Public School #23-3 Negotiated Agreement.
3. Since being hired by Respondent, Remington has been hired for various Supplementary Pay Assignments, specifically coach and athletic director.
4. On March 31, 2015, Remington received a Letter of Intent form in his mailbox on campus. Remington submitted Letter of Intent by deadline indicated on form.
5. On April 13, 2015, Remington received an email sent by Respondent that states: "Dear staff, this is just a reminder that all extra duty contracts are subject to renewal so please be thinking about next year if interested in applying."
6. On June 3, 2015, Remington was notified that the coaching and athletic director positions had been advertised.
7. On June 4, 2015, Remington emailed Respondent a list of three procedures. This email was intended to set the grievance process in motion.
8. On July 9, 2015, Remington submitted a Level 1 grievance form to both Principal Werdel and Superintendent Stone.
9. On July 15, 2015, Respondent rejected the Level 1 grievance on the grounds that it was not filed in a timely manner.
10. On July 24, 2015, Remington submitted a Level 2 grievance to Superintendent Stone.
11. On August 11, 2015, Respondent rejected the Level 2 grievance on the grounds that it was not filed in a timely manner.
12. On August 11, 2015, Remington submitted a Level 3 grievance to the School Board.
13. On August, 21, 2015, Respondent rejected Level 3 grievance on the grounds that it was not filed in a timely manner.
14. On September 21, 2015, Remington's petition for hearing on a grievance was received by the Department of Labor and Regulation (Department.)

15. Additional facts may be discussed in the analysis below.

Analysis:

Grievances

This case involves a single grievance by Remington. Remington asserts that Respondent violated its own policies and procedures in the hiring process for Supplementary Pay Assignments.

Jurisdiction:

The Department's role in reviewing grievances is defined under SDCL 3-18. That statute states 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.

SDCL 3-18-15.2.

Respondent's grievance procedure is outlined in Section IX of the Oelrichs Public School #23-3 Negotiated Agreement. It must be shown that Remington followed the procedures set forth in Section IX before the Department has jurisdiction in this matter.

The Negotiated Agreement (Agreement) establishes five steps in its grievance procedure. First, the aggrieved individual must meet informally with the person's supervisor within fifteen days after the individual knew or should have known of the condition from which the grievance arises. Days are defined as business days. (Oelrichs Public School #23-3 Negotiated Agreement, section 9.3-9.4A)

In this instance, the time, place, and extent of notice is in question. Respondent asserts that Remington should have known that he would need to apply for the coaching positions when he received the April 13 email. Remington claims he did not have any notice that he would not automatically be rehired for the position until June 3. When facing a Motion for Summary Judgment, we must always apply the facts in a light most favorable to Petitioner. Therefore, June 3 will be considered the date of notice. All further time limits as defined in the Agreement will be analyzed from a June 3 starting point.

The nature of the informal meeting is not defined by the Agreement. Remington asserts that soon after he received notice of the job advertisements, on either June 3 or 4, he contacted his direct supervisor, Principal Wendel. Principal Wendel does not confirm

