

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

SCOTT BRANDENBURGER,

HF No. 11 G, 2003/04

Grievant,

vs.

DECISION

DEUEL SCHOOL DISTRICT,

Respondent.

This matter comes before the Department of Labor based on a grievance complaint filed by Scott Brandenburger (Brandenburger) pursuant to SDCL 3-18-15.2. A hearing was held before the Division of Labor and Management on July 20, 2004, in Clear Lake, South Dakota. Brandenburger appeared *pro se*. Rodney Freeman, Jr. represented Deuel School District (District).

FACTS

Brandenburger worked for the District as a custodian from November 2001 through June 2002. Brandenburger was issued a personnel contract for this time period. At the end of June 2002, Brandenburger's contract was not going to be renewed due to poor job performance. However, the District was short of help and offered Brandenburger another custodial position for six months.

Brandenburger and the District signed the [Auxiliary] Personnel Contract on July 8, 2002. The contract stated:

Conditions of Contract: Custodian – Provisional 6 Month Contract July 1, 2002 to December 31, 2002. Employee will be evaluated monthly by supervisor. Contract may be extended to June 30, 2003 pending evaluation and job salary with salary to be determined for balance of the contract.

Brandenburger fulfilled the obligations of the contract. In December 2002, the District informed Brandenburger that his contract would not be renewed due to poor job performance.

After his employment ended, Brandenburger applied for a job at Daktronics in Brookings. Brandenburger was informed that he had a "bad recommendation" and did not receive the job. Brandenburger filed his grievance with the Department because he assumed someone in the District had given him a "bad recommendation." In addition, Brandenburger argued the District violated the contract because he did not receive monthly evaluations by his supervisor. Other facts will be developed as necessary.

ISSUE

DID THE DISTRICT VIOLATE, MISINTERPRET OR INEQUITABLY APPLY THE [AUXILIARY] PERSONNEL CONTRACT?

SDCL 3-18-15.2 provides for an appeal to the Department of Labor when a public employee's grievance remains unresolved. 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, [or] ordinances . . . of the state of South Dakota or the government of any one or more of the political subdivisions thereof, or . . . any other branch of the public service, as they apply to the conditions of employment." The burden of proof is on Brandenburger, the party alleging the violation. Rininger v. Bennett County Sch. Dist., 468 N.W.2d 423 (S.D. 1991).

There is no dispute that the District must abide by the terms of the contract. See Wessington Springs Educ. Ass'n v. Wessington Sch. Dist. No. 36-2, 467 N.W.2d 101, 104 (S.D. 1991). Brandenburger's contract was a provisional six month contract. The contract provided that the "contract may be extended to June 30, 2003 pending evaluation and job performance with salary to be determined for the balance of the contract." At the end of the six month period, the District determined not to renew Brandenburger's contract due to poor performance. The District did not violate the contract when it decided not to renew Brandenburger's provisional contract.

Brandenburger argued the District did not evaluate his work performance on a monthly basis, as required by the contract. The undisputed evidence showed that Brandenburger was given verbal evaluations on a monthly basis. The District's unwritten policy is that non-certified custodial employees are not given written monthly evaluations. However, Brandenburger's supervisors, including Alvin Nielsen, the head custodian, would critique Brandenburger's performance at least once a month and verbally tell him to improve his performance. Therefore, the District did not violate the contract because Brandenburger was evaluated on a monthly basis. Finally, there was no evidence presented to substantiate Brandenburger's claim that he received a "bad recommendation" from the District. The District did not violate, misinterpret or inequitably apply the auxiliary contract. Brandenburger's Petition for Hearing on Grievance must be dismissed.

The District shall submit Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within ten days from the date of receipt of this Decision. Brandenburger shall have ten days from the date of receipt of the District's proposed 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, the District shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 28th day of July, 2004.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge