

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

SPEARFISH EDUCATION ASSOCIATION,

HF No. 12 G, 2005/06

Grievant,

v.

DECISION

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

Respondent.

This matter comes before the Department of Labor based on a grievance complaint filed by Spearfish Education Association (SEA) pursuant to SDCL 3-18-15.2. Anne Plooster represented SEA. Lester Nies represented Spearfish School District #40-2 and Board of Education (District).

In a Stipulation and Order approved on June 7, 2006, the parties agreed there were no facts in dispute and the only issues were legal issues that could be decided by the Department without a hearing. The parties submitted a Statement of Uncontested Facts with attached Exhibits A – I. In addition, the record consisted of Petitioner's Brief, Respondent's Brief and Petitioner's Reply Brief.

The sole issue as identified and presented by SEA was whether the District violated, misinterpreted or inequitably applied the policies, rules and regulations, or negotiated agreement of the District by unilaterally altering the method of payment and amount of salary paid to bargaining unit members of SEA, which resulted in the elimination of the increment and reduction in the amount of educational credit payment by unilaterally limiting the number of credits for which a bargaining unit member could be paid.

STATEMENT OF UNCONTESTED FACTS

The parties stipulated and agreed to the following uncontested facts:

1. On August 25, 2003, the Spearfish School District #40-2 (Respondent) and the Spearfish Education Association (Petitioner) entered into the 2004-05 SEA Professional Negotiations Agreement.
2. A copy of the 2004-05 SEA Professional Negotiations Agreement (portions relevant to this grievance) is attached and marked as Exhibit "A."¹
3. By the terms of the 2004-05 SEA Professional Negotiations Agreement, Petitioner and Respondent were to meet on the first Monday of April, 2005, to negotiate a new agreement. If such successor agreement was not ratified by August 11, 2005, the 2004-05 SEA Professional Negotiations Agreement was to ["...remain in effect until such time as a subsequent contract is approved by the

¹ The facts set forth here are taken directly from the parties' Statement of Uncontested Facts. Although these facts make reference to documents attached, none of the documents are attached to this Decision. See the Statement of Uncontested Facts for the attached Exhibits.

parties or the implementation of contract terms pursuant to SDCL 3-18-8.2.” See Exhibit “A”, Article XVI, Page 13.

4. Spearfish Education Association and Spearfish School District #40-2 negotiators first met Monday, April 4, 2005, for negotiations, and thereafter met several times during the Spring and Summer of 2005 in their attempt to negotiate a successor 2005-06 SEA Professional Negotiations Agreement.

5. On April 15, 2005, Respondent issued teaching contracts for the 2005-06 school year under the terms of the 2004-05 SEA Professional Negotiations Agreement. On that date, no successor 2005-06 SEA Professional Negotiations Agreement had been approved by the parties.

6. There are approximately 133 FTE’s within the Petitioner’s bargaining unit. In order to provide an example of one teacher’s documentation concerning this grievance filing, the parties have included documentation for one School District employee (name blocked, referred to as Employee No. 1).

7. The teaching contract issued by Respondent to Employee No. 1 is attached and marked as Exhibit “B.” Total contract for example Employee No. 1 was \$37,747.50.

8. Petitioner and Respondent were unable to reach an agreement and, on July 12, 2005, Respondent gave Petitioner written notice of impasse stating that on July 11, 2005, the School Board voted to declare impasse.

9. A copy of Respondent’s Statement of Impasse dated July 12, 2005 is attached and marked as Exhibit “C”.

10. Conciliation was attempted on August 24, 2005 in Spearfish, South Dakota, with the assistance of Administrative Law Judge Heather E. Covey, South Dakota Department of Labor, but was unsuccessful.

11. As of September 20, 2005, no successor 2005-06 SEA Professional Negotiations Agreement had been approved by the parties. On that date, Respondent issued an Addendum to employees subject to the 2004-05 SEA Professional Negotiations Agreement indicating that impasse had been declared and the teacher’s pay schedule would “...revert to our current agreement until impasse is resolved.” The Addendum also stated that the employee’s “...paycheck may change again when that resolution is reached,” and “...[a]t that time another addendum will be delivered...” to the employee.

12. A copy of the September 20, 2005, Addendum to Employee No.1 delivered by the Respondent is attached and marked as Exhibit “D.” Total contract for example Employee No. 1 was based on MS 11 (increment of 11 years), and 65 Graduate Credits, at \$38,900.00.

13. Respondent issued paychecks to employees subject to the 2004-05 SEA Professional Negotiations Agreement as set forth in the September 20, 2005 Addendum for September and October, 2005. The payroll checks issued to example Employee No. 1, amounted to \$3,241.67, less deductions, in these months (1/12th of \$38,900.00).

14. A copy of Employee No. 1’s payroll record for the pertinent period is attached and marked as Exhibit “E.”

15. Respondent thereafter requested Fact Finding by the South Dakota Department of Labor. A hearing was held before the Division of Labor and Management, Mr. James E. Marsh, Director, on October 12, 2005. On October

18, 2005, the Department of Labor issued its written Fact Finding Recommendations, which recommended Respondent's salary proposal and medical benefits proposal.

16. A copy of the Department of Labor Fact Finder's Report of Issues and Recommendation dated October 18, 2005, is attached and marked as Exhibit "F."

17. On November 14, 2005, the Respondent imposed Respondent's last, best offer as the 2005-06 SEA Professional Negotiations Agreement.

18. A copy of the minutes for the November 14, 2005 School Board meeting is attached and marked as Exhibit "G."

19. A copy of the 2005-06 SEA Professional Negotiations Agreement imposed by the Respondent (portions relevant to this grievance) is attached and marked as Exhibit "H."

20. The 2005-06 SEA Professional Negotiations Agreement froze salaries at the 2004-05 level, provided a one time \$875.00 signing bonus per FTE, and compensated up to three additional credits per employee.

21. The one-time \$875.00 salary payment, less deductions, was issued to each FTE on the November 20, 2005 payday by separate check. See Exhibit "E" for Employee No. 1 payroll.

22. Beginning November 20, 2005, employee salary was adjusted by: (1) reduction of the increment identified in the September 20, 2005 Addendum for all employees to freeze increment at 2004-05 level; and, (2) revision of credits identified in the September 20, 2005 Addendum to compensate for 2004-05 credits plus a maximum of three additional credits, which reduced applicable credits for some employees.

2[3]. On November 20, 2005, Respondent issued an Addendum to employees subject to the 2005-06 SEA Professional Negotiations Agreement showing the changes to the employee's paycheck resulting from imposition of the new contract.

2[4]. A copy of the addendum to Employee No. 1 showing the information delivered by the Respondent is attached and marked as Exhibit "I." Post-imposition total contract for example Employee No. 1 was based on MS 10 (increment of 10 years versus MS 11 increment), and 62 Graduate Credits (versus 65), at \$37,980.00.

2[5]. The payroll check issued to Employee No. 1, on November 20, 2005, amounted to \$3,149.67 (\$37,980.00 less two checks of \$3,241.67, then divided by 10 months remaining). With like salary payments through August, 2006, example Employee No. 1 will receive salary totaling \$37,980.00 and in addition the one-time \$875.00 signing bonus, totaling \$38,855.00 for the 2005-2006 school contract (12 payment month schedule). Please refer to Exhibit "E."

ISSUE

WHETHER THE DISTRICT VIOLATED, MISINTERPRETED OR INEQUITABLY APPLIED THE POLICIES, RULES AND REGULATIONS, OR NEGOTIATED AGREEMENT OF THE DISTRICT BY UNILATERALLY ALTERING THE METHOD OF PAYMENT AND AMOUNT OF SALARY PAID TO BARGAINING UNIT MEMBERS OF SEA, WHICH RESULTED IN THE ELIMINATION OF THE INCREMENT AND REDUCTION IN THE

AMOUNT OF EDUCATIONAL CREDIT PAYMENT BY UNILATERALLY
LIMITING THE NUMBER OF CREDITS FOR WHICH A BARGAINING
UNIT MEMBER COULD BE PAID?

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 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.

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).

SEA alleged that the District committed a grievance when it rescinded increments given via the September 20, 2005, Addendum (September 2005 Addendum). SEA argued, “[b]y choosing to issue new, different teaching contracts in September, without any statutory requirement to do so, while negotiations were ongoing, District was admitting that the 04-05 Agreement as to salary would continue to be in place for the 2005-06 school year and that its new proposed method of determining salary would not take place until the 2006-07 school year. By issuing the September teaching contracts, District made the 04-05 Agreement’s method of determining salary part of the 05-06 Agreement.”

In essence, SEA argued that the District issued new teaching contracts when it issued the September 2005 Addendum. SEA stated, “[b]ecause the District had no legal reason to issue the September teaching contracts, the only assumption that can be drawn from District’s unilateral actions in issuing those teaching contracts was that it intended to continue with the 04-05 Agreement’s method of calculating salary, that it was making the 04-05 Agreement’s method part of its 05-06 Agreement proposal for the 2005-06 school year.” The District argued that at all times relevant to this grievance, it adhered to the terms and conditions of the Negotiated Agreements and to South Dakota law.

SDCL 3-18-8.2 provides:

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.

(emphasis added). Article XVI of the Professional Negotiations Agreement Between Spearfish School District 40-2 and Spearfish Education Association for the 2003-04 and 2004-05 school years (2004-05 Negotiated Agreement) provided:

The Board and Association will meet by the first Monday in April, 2005 to negotiate a new agreement. If a successor agreement is not ratified by August 11, 2005[,] this agreement shall remain in effect until such time as a subsequent contract is approved by the parties or the implementation of contract terms pursuant to SDCL 3-18-8.2.

(emphasis added). The District must abide by the terms of the Negotiated Agreement. 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 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). As the undisputed facts showed, the District followed the clear and unambiguous terms of Article XVI of the 2004-05 Negotiated Agreement.

The parties met several times during the spring and summer of 2005 to negotiate terms and conditions for the 2005-06 Negotiated Agreement. On April 15, 2005, the District issued teaching contracts for the 2005-06 school year under the terms of the 2004-05 Negotiated Agreement because no successor 2005-06 Negotiated Agreement had been approved by the parties. By doing this, the District complied with the terms of the 2004-05 Negotiated Agreement and with the requirements of SDCL 3-18-8.2. The parties continued with negotiations, but were unsuccessful.

On July 12, 2005, the District provided SEA with written notice of impasse. The District requested the Department's intervention and on August 24, 2005, the Department conducted a conciliation session, which was unsuccessful.

On September 20, 2005, the District sent an Addendum to every certified staff member. Each Addendum contained the following language:

As the school district and the SEA are currently at impasse concerning contract negotiations, the certified pay schedule will revert to our current agreement until

impasse is resolved. Your paycheck may change again when that resolution is reached. At that time, another addendum will be delivered to you.

(emphasis added). The September 2005 Addendum also set forth the specific amount to be paid to that certified staff member. For example, Employee No. 1's September 2005 Addendum stated:

During this interim period, your contract will be based on the following:

MS 11

Undergrad Hours: 7, Graduate Hours: 65, SSD Hours: 0

F.T.E: 1

\$0

\$0

\$0

\$0

Total Contract: \$38,900.00.

Contrary to SEA's argument, the September 2005 Addendum did not constitute a new teaching contract or create an implied contract. The September 2005 Addendum recited the District's intention of complying with the terms and conditions of the 2004-05 Negotiated Agreement and with SDCL 3-18.8.2. The September 2005 Addendum was informational in nature as the District notified each certified staff member of his or her current salary until such time as the impasse was resolved. The September 2005 Addendum also notified each certified staff member that his or her salary could change after a resolution was reached.

The District requested Fact Finding and the Department conducted a fact finding session on October 12, 2005. The Department issued its recommendations on October 18, 2005. On November 14, 2005, the District imposed its last best offer as the 2005-06 Negotiated Agreement.

On November 20, 2005, the District sent another Addendum to the certified staff members. The November 2005 Addendum contained the same language to all the certified staff members, with the exception of setting forth that certified staff member's salary calculation for the 2005-06 school year. For example, Employee No. 1's November 2005 Addendum provided:

At the conclusion of the school board meeting, November 14, 2005, the Board acted to impose its last best offer in negotiations with the SEA. You will receive a separate check for a one-time contract signing payment (\$875 = 1 FTE less applicable taxes), along with a second check that will become your regular salary for the remainder of the 2005-06 school year.

The differences between the two contracts that show up in your paycheck involve contract "steps" and credits allowed. Contract steps were not allowed in the settlement for this year, nor were more than three credits. Credits approved beyond the three will be banked and available for your salary advancement at a later date.

Your contract for the 2005-06 school year is based on the following:

MS 10

Undergrad Hours: 7, Graduate Hours: 62, SSD Hours: 0

F.T.E: 1

\$0

\$0

\$0

\$0

Total Contract: \$37,980.00.

As of November 20, 2005, the District adjusted the salaries of the certified staff members to reflect the terms and conditions of the 2005-06 Negotiated Agreement.

The District was required to operate under the terms and conditions of the 2004-05 Negotiated Agreement until "such time as a subsequent contract is approved by the parties or the implementation of contract terms pursuant to SDCL 3-18-8.2." The District complied with the terms and conditions of the 2004-05 Negotiated Agreement and with the dictates of SDCL 3-18-8.2. Once the negotiations process was completed, the District complied with the terms and conditions of the 2005-06 Negotiated Agreement. The September 2005 Addendum did not constitute a new agreement between the parties that would contravene the terms and conditions of the 2004-05 Negotiated Agreement. The September 2005 Addendum did not create an implied contract in which the District manifested an intent to pay the certified staff members according to the terms of the 2004-05 Negotiated Agreement for the entire 2005-06 contract year. The District did not violate, misinterpret or inequitably apply the 2004-05 Negotiated Agreement, the 2005-06 Negotiated Agreement or SDCL 3-18-8.2. SEA's grievance is denied in all respects and must be dismissed with prejudice.

The District 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. SEA shall have ten days from the date of receipt of the District'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, the District shall submit such Stipulation, along with an Order in accordance with this Decision.

Dated this 31st day of October, 2006.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge