

November 23, 2011

Kristie A. Lindskov  
14784 Moonlight Dr.  
Rapid City, SD 57703  
Sent certified: 7010 1670 0002 5650 0862

**Letter Decision and Order**

Jeff Marlette  
Superintendent  
New Underwood School District 51-3  
PO Box 128  
New Underwood, SD 57761

Re: 13 G, 2010/11 - Kristie A. Lindskov v. New Underwood School District 51-3

Dear Ms. Lindskov and Mr. Marlette:

***Submissions:***

This letter addresses the following submissions by the parties:

August 3, 2011	[Employer's] Motion for Summary Judgment;
August 18, 2011	[Grievant's] Response to Mr. Marlette's Motion for Summary Judgment;
October 4, 2011	[Employer's] Reply in Support of Motion for Summary Judgment.

***Facts:***

The facts of this case are as follows:

1. Kristie A. Lindskov (Grievant) was employed by the new Underwood School District 51-3 (Employer) during the 2010/11 school year.
2. During the 2010/11 school year, Jeff Marlette was superintendent of Employer.
3. During the 2010/11 school year, Grievant worked under the terms of a probationary or non-continuing employment contract and a written

agreement which had been negotiated by Employer and the Union representing the school district's staff (Negotiated Agreement).

4. Employer notified Grievant in a letter dated March 30, 2011, that her contract would not be renewed for the 2011/12 school year.
5. Immediately after receiving notice of the non-renewal of her contract, Grievant filed a Level 1 grievance with the Employer and asked to speak to the Board of Education at its next meeting. Grievant alleged in her grievance that she was not evaluated during her employment as required by the Negotiated Agreement.
6. On April 5, 2011, Grievant met with the school district's administration and informally discussed Grievant's concerns. Grievant left that meeting without indicating that she was taking the grievance any further and Grievant has not filed a level 2 grievance.
7. At some point between the April 5, 2011, meeting and the Board of Education's next meeting on April 18, 2011, Grievant mailed each member of the Board of Education a copy of her grievance.
8. At the April 18, 2011 Board of Education meeting, the Board noted that Grievant had not followed the proper grievance procedures and refused to review her grievance.
9. On April 29, 2011, Grievant filed a Petition for Hearing on Grievance with the South Dakota Department of Labor and Regulation.
10. Article IV of the Negotiated Agreement contains the grievance procedures in effect during the time relevant in this case. Article IV states:

A. Definitions:

1. A "grievance" is a complaint by a person or group of persons employed by the New Underwood School District, regarding a violation, misinterpretation or inequitable application of any of the terms of this agreement. The term "grievance" will not apply to any matter in which the method of review is prescribed by law, or the Board is without authority to act.

2.

C. Procedure:

The number of days indicated at each level should be considered as a maximum; however, the number of days may be extended by mutual agreement. The time limits set

forth herein will be reduced so that all attempts should be made to resolve any grievance prior to the end of the current school year.

**Level 1: Informal Resolution**

The aggrieved person will discuss the matter informally with their immediate supervisor. They may have a representative of the Association accompany them.

**Level 2: Formal Procedures**

If there is no resolution at Level one, or if there is no decision within 7 days, a written grievance may be filed within 7 days with the superintendent. The Superintendent, or designee, will represent the administration and will meet with the aggrieved person. The meeting will take place within seven (7) days upon the receipt of the written grievance. Within seven (7) days after the meeting, the Superintendent, or designee, will render a written decision to the aggrieved person.

**Level 3:**

If there is no resolution at Level two, or if there is no decision within fourteen (14) days after the grievance was filed, the aggrieved person may refer the grievance to the Board of Education for consideration at its next regular meeting. The Board and/or legal counsel will meet with the aggrieved person to resolve the grievance. The decision of the Board will be presented in writing within seven (7) days of the meeting.

**Level 4:**

If there is no resolution at Level three or if there is no decision within seven (7) days after the Board has heard the grievance, the aggrieved person, may within fourteen (14) days initiate an appeal to the South Dakota Department of Labor.

All parties agree that taking an appeal to said Department constitutes an election of remedies and a waiver of any and all rights by the appealing party of parties and representatives to litigate or otherwise contest the appealed subject matter in any court under SDCL 13-46, except in the

form of an appeal from the decision of the Department as provided in SDCL 21-33 and/or I-26.

**Summary Judgment:**

Employer has filed a Motion for Summary Judgment. The authority for this motion in grievance claims is set forth in SDCL 1-26-18. That provision states in part:

Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. However, each agency, upon the motion of any party, may dispose of any defense or claim:

- (1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law;

SDCL 1-26-18. The South Dakota Supreme Court has discussed summary judgment on numerous occasions. The court stated in McDowell v. Citicorp USA, 2007 SD 53, ¶ 22, 734 N.W.2d 14, 21 the following:

The burden is on the moving party to clearly show an absence of any genuine issue of material fact and an entitlement to judgment as a matter of law. (Internal citations omitted). On the other hand, [t]he party opposing a motion for summary judgment must be diligent in resisting the motion, and mere general allegations and denials which do not set forth specific facts will not prevent issuance of a judgment. (Internal citations omitted). [T]he nonmoving party must substantiate his allegations with sufficient probative evidence that would permit a finding in his favor on more than mere speculation, conjecture, or fantasy. (Citations omitted).

Id. at ¶ 22.

The facts as stated above were primarily taken from Employer's pleadings in this case. Nevertheless, Grievant did not dispute any of the facts cited in her response to Employer's Motion for Summary Judgment. Consequently, it is appropriate for the Department of Labor and Regulation to conclude that there is no dispute of any facts necessary to determine the disposition of this case as a matter of law.

**Grievance:**

SDCL 3-18-15.1 requires school districts to enact, “by agreement” a procedure which its employees may follow for prompt disposition of grievances.” A grievance is defined by statute as “a complaint by a public employee or group of public employees based upon an alleged violation, misinterpretation, or inequitable application of any existing agreement ....” SDCL 3-18-1.1.

The South Dakota Supreme Court has discussed the jurisdictional limitation of the Department of Labor and Regulation in grievance cases. It has stated “[t]he Department’s jurisdiction is lost if the grievance is not timely filed in accordance with grievance procedures.” Cox v. Sioux Falls Sch. Dist. 49-5, 514 N.W.2d 868, 871 (S.D. 1994) quoting Reninger v. Bennett County Sch. Dist., 468 N.W.2d 423, 428 (S.D. 1991). See also Bon Homme County Commission v. American Federation of State, County, and Municipal Employees, Local 1743A, 2005 SD 76, 699 N.W.2d 441; Larson v. Mitchell School Dist., 2000 WL 1920462 (SD Dept. Labor HF No. 3G, 1999/00 October 5, 2000).

The grievance procedures set forth in the Negotiated Agreement make clear that Grievant had 7 days following her Level 1 meeting to file a Level 2 grievance with the Superintendent to initiate formal proceedings. She failed to do so. Consequently, the Department now lacks jurisdiction to consider her complaints.

**Order:**

For the reasons stated above, The Department has no choice but to grant Employer’s Motion for Summary Judgment in part. This matter is dismissed with prejudice. This letter shall constitute the Order in this matter.

Sincerely,

/s/ Donald W. Hageman

Donald W. Hageman  
Administrative Law Judge