January 7, 2005

Robert A. Martin
616 ½ St. Joseph Street Suite 210
Rapid City SD 57701

Michael M. Hickey
PO Box 2670
Rapid City SD 57709-2670

RE: HF No. 16 G, 2003/04 – Helen and Gary Ladner v. Rapid City Area School District #51-4 and Rapid City Board of Education

Dear Counsel:

I am in receipt of Respondents' Motion for Summary Judgment, the Ladners' Response thereto, and Respondents' Reply Memorandum, along with the attached Exhibits, Transcripts and Depositions. Having carefully reviewed the submissions, the Department finds that Respondents' are entitled to summary judgment as a matter of law because no genuine issues of material fact exist.

SDCL 3-18-15.2 sets forth the standard to be applied in a summary judgment motion before the Department of Labor. It states in relevant part:

> [T]he department, upon the motion of any party, may dispose of any grievance, 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.

All reasonable inferences drawn from the facts must be viewed in favor of the non-moving party. Morgan v. Baldwin, 450 N.W.2d 783, 785 (S.D. 1990). The burden is on the moving party to show an absence of any genuine issue of material fact and an

entitlement to judgment as a matter of law. Wilson v. Great N.Ry. Co., 83 S.D. 201, 212, 157 N.W.2d 19, 21 (1968). Once the moving party has met this burden, the non-moving party may not rest on the allegations in the pleadings but by affidavit or other evidence must set forth specific facts showing that a genuine issue of material fact exists. See SDCL 15-6-56(e).

Cases involving the interpretation of written documents are particularly appropriate for disposition by summary judgment, such interpretation being a legal issue rather than a factual one. Dale v. Pelton, 365 N.W.2d 1, 3 (S.D. 1985); Wilson, 157 N.W.2d at 21; Kimball Investment Land, Ltd. v. Chmela, 2000 SD 6, ¶ 7, 604 N.W.2d 289, 292.

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 following facts are undisputed:

Pursuant to a certification issued by the Department of Labor, the Rapid City Area School District 51-4 and the Rapid City Board of Education (hereinafter the District) have recognized the Rapid City Education Association (hereinafter RCEA) as the exclusive representative for the purposes of negotiation for a unit designated as all classroom, special education, resource teachers, counselors, nurses and degreed non-certified staff employed by the District. The Ladners, as classroom teachers, were members of that unit at all time material to this grievance. The Ladners are not "members" of the RCEA. The Ladners did not attend any negotiations or any informational meetings regarding the negotiated agreements.

Following the Department certification, the District and RCEA have annually engaged in collective bargaining. As a result of that process, the parties have negotiated a series of collective bargaining agreements covering grievance procedures and conditions of employment including rates of pay, wages, hours of employment and working conditions.

Prior to the 1998-1999 school year, the parties entered into a new collective bargaining agreement. The 1998-1999 agreement provided at Article XXIII Salary and Teacher Classification, Part A Salary Schedule, Section 2, that "[t]he lanes of the salary schedule are based upon the specified levels of education." Part B, Section 1 of Article XXIII provided that "[t]eachers will be classified for placement on the salary schedule at the time their individual contract is offered to them. At that time, they will be placed on the schedule at the levels warranted by their experience, training, and education." Section 4 of that same part provided specific requirements for the sixty credits beyond a master's degree anticipated by the MA+60 lane. Section 4 also provided "[t]eachers with an Ed.S. or Ph.D./Ed.D. degree in a teaching field will automatically be placed on the MA+60 lane." The 1998-1999 agreement also included Article XXXIV Effective Date and Duration of Agreement, which set forth the effective dates of the agreement to be the beginning of the 1998-1999 school year to the beginning of the 1999-2000 school year.

The District and RCEA negotiated an agreement for the 1999-2000 school year. The terms of that agreement included language in Article XXIII Salary and Teacher Classification, Part A Salary Schedule, Section 2, that "[t]he lanes of the salary schedule are based upon the specified levels of education." Part B, Section 1 of Article XXIII provided that "[t]eachers will be classified for placement on the salary schedule at the time their individual contract is offered to them. At that time, they will be placed on the schedule at the levels warranted by their experience, training, and education." Section 4 of that same part provided that "[t]eachers with an Ed.S. or Ph.D./Ed.D. degree in a teaching field will automatically be placed on the Ed.S./Ph.D./Ed.D. lane. Teachers currently placed on the formerly named MA+60 lane of the salary schedule will be grandfathered." The 1999-2000 agreement also included Article XXXIV Effective Date and Duration of Agreement, which set forth the effective dates of the agreement to be the beginning of the 1999-2000 school year to the beginning of the 2000-2001 school year.

The District and RCEA negotiated one agreement for the 2000-2001 school year and the 2001-2002 school year. The terms of that agreement included language in Article XXIII Salary and Teacher Classification, Part A Salary Schedule, Section 2, that "[t]he lanes of the salary schedule are based upon the specified levels of education." Part B, Section 1 of Article XXIII provided that "[t]eachers will be classified for placement on the salary schedule at the time their individual contract is offered to them. At that time, they will be placed on the schedule at the levels warranted by their experience, training, and education." Section 4 of that same part provided that "[b]eginning with the 2001-2002 school year, the MA+45 Lane will include Ed.S. Teachers with a Ph.D./Ed.D. degree in

a teaching filed will be placed on the new Ph.D./Ed.D. lane." The 2000-2002 agreement also included Article XXXIV Effective Date and Duration of Agreement, which set forth the effective dates of the agreement to be the beginning of the 2000-2001 school year to the beginning of the 2002-2003 school year.

The Ladners each have a Master's Degree plus at least 60 hours of further education. For the 1999-2000 school year, the Ladners were placed on the salary schedule in the MA+60 lane and were paid $47,498.00 each. For the 2000-2001 school year, the Ladners were placed on the salary schedule in the Ed.S./Ph.D./Ed.D. lane and were paid $47,735.00 each. For the 2001/2002 school year, the Ladners were placed on the salary schedule in the Ph.D./Ed.D. lane and were paid $50,019.00 each. This placement was in error and contrary to the clear and unambiguous language of the contract because neither of the Ladners has Ph.D. or Ed.D. degree.

For the 2002/2003 school year, the Ladners were placed on the salary schedule in the MA+45/Ed.S. lane and were paid $49,058.00 each. After the 2002/2003 contracts were issued and signed, the Ladners filed grievances claiming that their teacher contract and salary amount were incorrect. The grievance was processed through the grievance procedure and eventually was heard by the Board of Education on December 19, 2002. After hearing and considering the evidence, the Board denied the Ladners request for relief.

Analysis

The Ladners' Petition for Hearing alleged that the District improperly placed them on the salary schedule for the 2002/2003 school year. The Ladners argue that because of the language in the 1999-2000 agreement, which included the word "grandfathered", they are entitled to placement on the salary schedule in the Ph.D./Ed.D. degree lane. The Ladners' argument is without merit. First, Article XXXIV of the 1999-2000 agreement specifically stated that its provisions ended when the 2000-2001 school year began. The use of the term "grandfathered" does not have the meaning that the Ladners attribute to it. A school district is without the authority to bind itself in perpetuity to any contract term or condition, no matter what term is used in the agreement.

The District and RCEA are required to negotiate the collective bargaining agreement every year. The agreements in question are only binding through the time frames set forth in Article XXXIV in each agreement. To accept the argument of the Ladners would mean that the agreement made in 1999-2000 to "grandfather" those individuals with an MA+60 would permanently bind all future elected boards to that provision. As stated above, the District was without the legal ability to do this because all collective bargaining agreements must be negotiated.

The second reason the Ladners' argument fails is because each agreement in question contains Article XXIII Salary and Teacher Classification, Part A Salary Schedule, Section 2, that "[t]he lanes of the salary schedule are based upon the specified levels of education." Neither of the Ladners possess a Ph.D. or Ed.D. degree. To place them in

the lane specifically designated for those degrees for the 2001/2002 term would be contrary to the clear and unambiguous language of the agreement at Part B, Section 4 of Article XXIII, that provided "[b]eginning with the 2001-2002 school year, the MA+45 Lane will include Ed.S. Teachers with a Ph.D./Ed.D. degree in a teaching filed will be placed on the new Ph.D./Ed.D. lane." The District has waived the overpayment and will not seek repayment from the Ladners.

There are no genuine issues of material fact concerning the placement of the Ladners on the salary schedule. The Ladners do not have the education necessary to be placed in the Ph.D./Ed.D. lane. Respondents are entitled to summary judgment as a matter of law. The Ladners were not properly placed on the salary schedule for the 2001/2002 school year. The District correctly placed the Ladners on the salary schedule for the 2002/2003 school year.

The second issue raised by the Ladners is that they have experienced discrimination because they chose to exercise their right to file a grievance. The Ladners allege that the District's decision during the grievance process to seek repayment constitutes discrimination. The District has waived the right to seek recovery of any overpayment in the course of the proceedings before the Department of Labor. The Ladners failed to present evidence of any act on behalf of the District that would constitute discrimination. The Ladners showed insufficient evidence of any adverse action taken against them because they exercised the right to file a grievance. Respondents are entitled to summary judgment as a matter of law. Respondents' Motion for Summary Judgment on this issue is granted.

The Ladners' other arguments will not be addressed in light of the above rulings. Respondents' Motion for Summary Judgment is granted and the Petition for Hearing must be dismissed. Respondents shall submit a proposed order consistent with this decision.

Dated this 7th day of January, 2005.

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Heather E. Covey
Administrative Law Judge