

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

VERMILLION EDUCATION ASSOCIATION,

HF No. 19 G, 2001/02

HF No. 8 U, 2001/02

Grievant,

vs.

DECISION

**VERMILLION SCHOOL DISTRICT and
BOARD OF EDUCATION,**

Respondents.

These matters come before the Department of Labor based on an grievance complaint and an unfair labor practice complaint filed by Vermillion Education Association (VEA) pursuant to SDCL 3-18-15.2. A hearing was held before the Division of Labor and Management on November 25, 2002, in Vermillion, South Dakota. Anne Plooster represented VEA. James E. McCulloch represented Vermillion School District and the Board of Education (District).

ISSUES

1. Whether Gary Culver and/or Len Griffith are subject to SDCL Chapter 3-18?
2. Whether the grievance and unfair labor practice filed by VEA should be barred as untimely?
3. Whether the District violated, misinterpreted or inequitably applied the Negotiated Agreement by contracting with Gary Culver and Len Griffith to pay 100% of the premium costs for full family coverage for health insurance and dental insurance?
4. Whether the District committed an unfair labor practice when it began paying 100% of the premium costs for full family coverage for health insurance and dental insurance for Gary Culver and Len Griffith without negotiating said insurance premiums with VEA?

The parties stipulated to the following facts:

1. School Board minutes from July 1, 1995, to date do not contain any information or documentation regarding the District's payment of 100% of the full family health insurance premium and/or 100% of the full family dental insurance premium for Gary Culver and/or Len Griffith.
2. The District's monthly financial statements [from] July 1, 1995, to date do not contain any information or documentation regarding the District's payment of 100% of the full family health insurance premium and/or 100% of the full family dental insurance premium for Gary Culver and/or Len Griffith.
3. The yearly publication of salaries pursuant to SDCL 6-1-10 does not show the District's payment of 100% of the full family health insurance premium and/or

- 100% of the full family dental insurance premium for Gary Culver and/or Len Griffith.
4. Only Gary Culver's individual Professional Employee Contracts from the 1996-97 school year to the current school year show information or documentation regarding the District's payment of 100% of the full family health insurance premium and/or 100% of the full family dental insurance premium.
 5. Only Len Griffith's individual Professional Employee Contracts from the 1999-2000 school year to the current school year show information or documentation regarding the District's payment of 100% of the full family health insurance premium and/or 100% of the full family dental insurance premium.

FACTS

In addition to the facts agreed to by the parties as stated above, the Department finds the following facts, as established by a preponderance of the evidence.

1. The Negotiated Agreement between VEA and the District provides, "[h]ealth/medical/hospitalization, and dental insurance are available on a group plan which provides for individual and family coverage. The Vermillion School District shall pay 100% of the premium costs for individual coverage of each certified staff employee."
2. On or about April 23, 2002, VEA became aware, through comments made by the District's Superintendent, Robert Mayer, that the District was paying 100% of the premium costs for full family coverage for health insurance for Gary Culver, Athletic Director, and Len Griffith, Guidance Coordinator.
3. As per Culver's Professional Employee Contract, Culver is paid for performing the duties of a High School Math Teacher, Athletic Director and Head Football Coach.
4. According to the Negotiated Agreement, Appendix B, the Athletic Director position is an extra duty activity. Culver is paid a specific percentage of the base salary for performing the duties required of the Athletic Director position.
5. As per Griffith's Professional Employee Contract, Griffith is paid for performing the duties of a High School Guidance Counselor and Guidance Coordinator.
6. According to the Negotiated Agreement, Appendix B, the Guidance Coordinator is an extra duty activity. Griffith is paid a specific percentage of the base salary for performing the duties required of the Guidance Coordinator position.
7. At all times relevant to this proceeding, Culver and Griffith were members of the bargaining unit represented by VEA.
8. On or about August 27, 2002, VEA became aware, through discovery responses furnished by the District, that the District was paying 100% of the premium costs for full family coverage for dental insurance for Culver and Griffith.

9. Upon discovery of these payments by the District, VEA initiated grievances via the District's grievance procedure and filed an unfair labor practice with the Department.
10. Other facts will be developed as necessary.

ISSUE I

WHETHER GARY CULVER AND/OR LEN GRIFFITH ARE SUBJECT TO SDCL CHAPTER 3-18?

The District argued that Culver and Griffith are not subject to the provisions of SDCL Chapter 3-18 or the Negotiated Agreement between VEA and the District because Culver and Griffith performed administrative duties in their respective positions of Athletic Director and Guidance Coordinator. This argument fails when considering the clear language of the Negotiated Agreement between VEA and the District.

The Negotiated Agreement provides:

ARTICLE 1 – RECOGNITION

The Vermillion School Board formally recognizes the Vermillion Education Association as the representative of the certified personnel of the district. (Any and all references to “certified school district employees,” “certified staff,” “teacher,” and “certified personnel” in this negotiated agreement refer to non-administrative certified personnel and employees who are issued individual teaching contracts as defined in SDCL 13-43-6).

(emphasis added). Both Culver and Griffith are certified personnel within the District who are issued individual Professional Employee Contracts each year. Culver and Griffith are not administrators. Culver and Griffith perform extra duty positions, as set forth in the Negotiated Agreement, and are compensated accordingly. Therefore, Culver and Griffith are subject to the provisions of SDCL Chapter 3-18 and the Negotiated Agreement between VEA and the District.

ISSUE II

WHETHER THE GRIEVANCE AND UNFAIR LABOR PRACTICE FILED BY VEA SHOULD BE BARRED AS UNTIMELY?

The District argued that VEA did not timely file the grievance and the unfair labor practice complaints. The Negotiated Agreement, under Grievance Procedure for Certified Personnel, Article VI, Miscellaneous, provides:

- B. If a teacher does not file a grievance in writing pursuant to Article V, Level One, Item B, within thirty (30) days after the teacher knew of the act or condition on which the grievance is based, the grievance shall be considered as having been waived.

The deadline for filing an unfair labor practice is governed by SDCL 3-18-3.4:

Any complaint brought under the provisions of §§ 3-18-3.1 and 3-18-3.2 shall be filed with the department of labor within sixty days after the alleged commission of an unfair labor practice occurs or within sixty days after the complainant should have known of the offense.

Damian Donahoe, a teacher for the District since 2001, testified at the hearing. Donahoe also taught for the District from 1992 through 1998. At some point prior to 1998, Donahoe became aware that the District paid full family health insurance premiums for the previous Athletic Director, Bob Lowery. After Lowery left the District and Culver became the new Athletic Director, Donahoe assumed that the District paid Culver's full family health insurance premiums. However, Donahoe did not have actual knowledge that the District was paying for this benefit for Culver. Also, Donahoe did not have any knowledge about whether the District was paying the premiums for Culver's full family dental insurance.

Despite the District's argument, VEA did not have actual knowledge that the District was paying 100% of the premium costs for full family coverage for health insurance for Culver and Griffith until April 23, 2002. Once VEA learned of the District's payments, VEA properly followed the grievance procedure set forth in the Negotiated Agreement and filed grievances with the District. The District denied the grievances on June 24, 2002. After VEA received the District's decision, VEA timely filed its Petition for Hearing on Grievance with the Department.

VEA did not have actual knowledge that the District was paying 100% of the premium costs for full family coverage for dental insurance for Culver and Griffith until August 27, 2002, when discovery revealed this information. Once VEA learned this information, VEA appropriately filed a Motion to Amend Petition for Hearing on Grievance. The District did not object to the Motion filed by VEA. The Department signed an Order Allowing Amendment of Petition for Hearing on Grievance on October 15, 2002. VEA timely filed its Amended Petition for Hearing on Grievance.

Finally, the District argued the unfair labor practice filed by VEA with the Department on June 21, 2002, was untimely. Again, the District argued VEA had knowledge of the District's payment of 100% of the premium costs for full family health and dental insurance as early as 1998. For the same reasons as stated above, VEA did not have actual knowledge of the District's payments until the spring of 2002. VEA timely filed its Petition for Hearing on Unfair Labor Practice with the Department.

ISSUE III

WHETHER THE DISTRICT VIOLATED, MISINTERPRETED OR INEQUITABLY APPLIED THE NEGOTIATED AGREEMENT BY CONTRACTING WITH GARY CULVER AND LEN GRIFFITH TO PAY 100% OF THE PREMIUM COSTS FOR FULL FAMILY COVERAGE FOR HEALTH INSURANCE AND DENTAL INSURANCE?

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 VEA, the party alleging the violation. Rininger v. Bennett County Sch. Dist., 468 N.W.2d 423 (S.D. 1991).

The District must abide by the terms of the Agreement. See Wessington Springs Educ. Ass’n v. Wessington Sch. Dist. No. 36-2, 467 N.W.2d 101, 104 (S.D. 1991). The Negotiated Agreement states, “[t]he Vermillion School District shall pay 100% of the premium costs for individual coverage of each certified staff employee.” “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). “The only circumstances in which we may go beyond the actual language of the collective-bargaining agreement are where the agreement is ambiguous or fails to address a subject that it is expected to address.” Id.

Here, the Negotiated Agreement is clear and unambiguous. The Negotiated Agreement provides that the District shall pay 100% of the premium costs for individual coverage. The Negotiated Agreement does not provide that the District shall pay 100% of the premium costs for full family coverage for health insurance or dental insurance for the Athletic Director, the Guidance Coordinator or any other certified staff member. The Negotiated Agreement makes it quite clear that the District can pay only 100% of the premium costs for individual coverage and not full family coverage. The District violated the Negotiated Agreement when it paid 100% of the premium costs for full family coverage for health insurance and dental insurance for Culver and Griffith. The District is ordered to cease and desist immediately from continuing to pay these benefits. The District is ordered to follow the Negotiated Agreement and pay only 100% of the premium costs for individual coverage for Culver and Griffith.

ISSUE IV

WHETHER THE DISTRICT COMMITTED AN UNFAIR LABOR PRACTICE WHEN IT BEGAN PAYING 100% OF THE PREMIUM COSTS FOR FULL FAMILY COVERAGE FOR HEALTH INSURANCE AND DENTAL INSURANCE FOR GARY CULVER AND LEN GRIFFITH WITHOUT NEGOTIATING SAID INSURANCE PREMIUMS WITH VEA?

SDCL 3-18-3.1 reads, in part:

It shall be an unfair practice for a public employer to:

1. Interfere with, restrain or coerce employees in the exercise of rights guaranteed by law;

.....

5. Refuse to negotiate collectively in good faith with a formal representative;
and
6. Fail or refuse to comply with any provision of this chapter.

SDCL 3-18-3 sets forth those items that are mandatory items of negotiation between a public employer and public employees. SDCL 3-18-3 states, in part:

Representatives designated or selected for the purpose of formal representation by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all employees in such unit for the purpose of representation in respect to rates of pay, wages, hours of employment, or other conditions of employment[.]

As stated in the Recognition clause of the Negotiated Agreement, VEA is the exclusive bargaining representative for the certified staff of the District. Therefore, VEA is the exclusive bargaining representative in respect to wages, hours of employment, rates of pay or other conditions of employment. VEA and the District negotiated only the payment of 100% of the premium costs of individual coverage for health insurance and dental insurance.

The District cannot individually bargain with a member of the bargaining unit represented by VEA. However, this is exactly what the District did when it individually bargained the payment of 100% of the premium costs of full family coverage for health insurance and dental insurance with Culver and Griffith. The District committed an unfair labor practice when it individually bargained with Culver and Griffith regarding insurance premiums. The District is ordered to recognize VEA as the exclusive representative of the bargaining unit. The District is ordered to cease and desist immediately from continuing to pay these benefits and is ordered to follow the Negotiated Agreement and pay only 100% of the premium costs for individual coverage for Culver and Griffith.

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

Dated this 17th day of September, 2003.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge