

September 10, 2010

Anne Plooster  
General Counsel  
SDEA/NEA  
411 E. Capitol Ave.  
Pierre, SD 57501

LETTER DECISION & ORDER

Sue Simons  
Asst. Superintendent HR/Legal  
201 East 38<sup>th</sup> Street  
Sioux Falls, SD 57101

RE: HF No. 23 G, 2009/10 – Sioux Falls Education Assistants Association v. Sioux Falls School District #49-5 and Board of Education

Dear Ms. Plooster and Ms. Simons:

I am in receipt of Respondent's Motion to Dismiss Petition for Hearing on Grievance, or in the Alternative, for Summary Judgment in the above-referenced matter. I have also received Petitioner's Response to Respondent's Motion to Dismiss Petition for Hearing on Grievance, or in the Alternative, for Summary Judgment and Respondents Reply Brief in Support of Motion to Dismiss Petition for Hearing on Grievance, or in the Alternative, for Summary Judgment.

Pursuant to SDCL §§3-18-15.2(1) and 1-26-18, Respondent, Sioux Falls School District #49-5 (District) brings this motion to Dismiss Petition for Hearing on Grievance, or in the alternative Motion for Summary Judgment. SDCL §1-26-18 provides in relevant part,

[E]ach 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 § 3-18-15.2(1) provides,

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. However, the 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[.]

On February 16, 2010, a Level I grievance was filed by Anna Rauscher and Sioux Falls Education Assistants Association (SFEAA) asserting a violation of The Agreement Between Sioux Falls School District 49-5 and Sioux Falls Education Assistants' Association (Agreement) by the District. On March 23, 2010, the Level I grievance was denied.

On March 31, 2010, a Level II grievance was filed by Anna Rauscher and SFEAA asserting the same violation of the Agreement by the District. On May 14, 2010, Superintendent Pamela J. Homan issued a denial of the grievance.

On May 20, 2010, Anna Rauscher submitted her resignation from employment with the District, effective on May 21, 2010.

On May 21, 2010, SFEAA alone filed a Level III grievance asserting the same alleged conduct by the District that was the subject of Ms. Rauscher's earlier grievances. On May 27, 2010, the District advised SFEAA that the Level III grievance did not provide the information required for the Union to file a grievance as required by Article 6.05 of the Agreement, and therefore the Level III grievance would not be considered. SFEAA then filed the present appeal with the Department of Labor.

District and SFEAA are parties to the negotiated Agreement. The Agreement specifically addresses what constitutes a grievance and who may file a grievance.

Article 6.01 of the Agreement defines a grievance as "a complaint by an employee concerning the interpretation of or application of the existing provisions of this agreement." Article 6.02 sets forth the grievance procedure that individual employees are to follow,

- 6.02.01 Level I. The employee shall file and sign a formal written grievance within thirty (30) days of the alleged violation or within thirty (30)

days of the when the alleged violation was discovered, or through reasonable diligence should have been discovered. The employee or the employee union/organization shall present the signed grievance in writing to the immediately involved supervisor, who will arrange for a meeting to take place within ten (10) days after the receipt of the written grievance. The grievant, and if he or she chooses a designated representative, his/her designated representative and the immediately involved supervisor shall be present for the meeting. Within ten (10) days of the meeting, the grievant shall be provided with the supervisor's written response, including the reasons for the decision.

- 6.02.02 Level II. If the grievance is not resolved at Level I, then the grievant may refer the formal written grievance to the Superintendent or his/her official designee within ten (10) days of the receipt of the Level I response. The superintendent shall arrange with the grievant for a meeting to take place within ten (10) days of the Superintendent's receipt of the appeal. Each party shall have the right to include in its representation such witnesses and counselors as it deems necessary.
- 6.02.03 Within ten (10) days of the meeting, the grievant shall be provided with the Superintendent's written response, including the reason for the decision.
- 6.02.04 Level III. If the grievance is not resolved at Level II, then the grievant may refer the formal written grievance to the School Board within ten (10) days of the receipt of the Level II response. The Board shall arrange with the grievant for a meeting to take place within fourteen (14) days of the Board's receipt of the appeal. Each party shall have the right to include in its representation such witnesses and counselors as it deems necessary. Within ten (10) days of the meeting, the grievant shall be provided with the Board's written response including the reasons for the decision.
- 6.02.05 Level IV. If the grievant is not satisfied with the disposition of the grievance at Level III or if no written decision has been rendered within ten (10) days after the hearing at Level III, the employee union/organization/grievant may submit the formal written grievance to the South Dakota Department of Labor. If such appeal is not filed within thirty (30) days of the date of receipt of the Level III response, then the grievance shall be deemed withdrawn.

Article 6.05 of the Agreement defines a class grievance as follows,

Class grievances involving more than one employee maybe initially filed in writing at the appropriate level by the employee union/organization. The grievance shall include a list of individual grievants, or a description of the class sufficient to identify the individuals.

Article 6.06 of the Agreement recognizes that the employee union/organization has the right to participate at the request of the grievant at any level of the grievance process.

Respondent argues that the Level III grievance and the Petition for Hearing on Grievance with the Department was filed by SFEAA alone, and identified only one individual that was allegedly affected by District's conduct. There was no list of grievants or a description of a class of individuals as required by Article 6.05 of the Agreement. Therefore Respondent argues that SFEAA has failed to demonstrate a class grievance. Respondent contends that SFEAA, by the terms agreed upon in the negotiated agreement simply does not have the right to file a grievance on behalf of one individual, who is no longer employed by the District.

Petitioner argues that SFEAA is the sole and exclusive bargaining agent for certain teachers' aids employed by Respondent. Association has bargained certain disciplinary provisions/measures with Respondent. SFEAA has a vested interest in seeing that those provisions are maintained properly. SFEAA agrees that to only allow the individual harmed to maintain a grievance would put SFEAA at the mercy of individual bargaining unit members to maintain the negotiated agreement. Petitioner's argument is without merit, the Agreement clearly allows for SFEAA to bring a grievance when it affects more than one employee or a class.

"The contracts negotiated between public school districts and teachers are like any other collective bargaining agreement, and disputes over the agreement are resolved with reference to general contract law." *Lillibridge v. Meade School District #46-1*, 2008 SD 17, 746 NW2d 428 (quoting *Wessington Springs Educ. Ass'n v. Wessington Springs Sch. Dist. #36-2*, 467 NW2d 101, 104 (SD 1991)). "When the terms of a negotiated agreement are clear and unambiguous, and the agreement actually addresses the subjects that it is expected to cover, there is no need to go beyond the four corners of the contract." *Id.*

The language in the Agreement pertaining to grievance procedure and who may file a grievance is clear and unambiguous. An individual employee may file a grievance and the employee union/organization, in this case SFEAA, may participate in the process. For SFEAA to file a grievance it must be on behalf of a class and the grievance must identify the affected class members. Neither the Level III grievance nor the Petition for hearing on Grievance satisfies the requirements set for the in the Agreement.

"Contracting parties are held to the terms of their agreement, and disputes cannot be resolved by adding words the parties left out." *Gettysburg Sch. Dist. 53-1 v. Larson*, 2001 S 91, ¶11, 631 NW2d 196, 200-201.

SDCL §3-18-15.2 confers jurisdiction to the Department only to hear a grievance after the grievance procedure enacted by the governing body has been followed and the grievance remains unresolved. SFEAA has failed to establish that it followed the agreed upon grievance procedure set forth in the negotiated Agreement, therefore the Department lacks jurisdiction over this matter. The Respondent's Motion is granted. This letter shall serve as the Department's Order.

Sincerely,

Taya M. Dockter  
Administrative Law Judge