

November 12, 2024

Brooke Quinlivan
SDEA
411 E. Capitol
Pierre, SD 57501

**LETTER DECISION ON MOTION
FOR SUMMARY JUDGMENT**

Michael M. Hickey
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PO Box 2670
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RE: HF No. 2G, 2022/23– Jeff Theurer vs Oglala Lakota County School District 65-1
and Board of Education

Greetings:

This letter decision will address Oglala Lakota County School District 65-1 and Board of Education's (District) Motion for Summary Judgment. All responses have been considered.

First, the Department will provide a background for this matter. Jeff Theurer (Jeff) was employed as a teacher for the District and was at all times pertinent to this matter, covered by the terms of the grievance procedure contained in the collective bargaining agreement (Agreement) between the District and the Oglala Lakota County Education Association (Association).

On December 9, 2022, the District received a report concerning an interaction between Jeff and his daughter which occurred on December 8, 2022. Upon receipt of

the report, the District met with Jeff and suspended him from employment without pay so that the allegations in the report could be investigated. As a result of the alleged incident, Jeff was charged with simple assault domestic and disorderly conduct. All charges were ultimately dismissed on March 14, 2023.

On March 21, 2023, upon receipt of notice from the Court that the criminal action had been dismissed, the District, informed Jeff to report to work on March 27, 2023. Jeff reported to the school March 28, 2023. He suggested to the principal that he be granted personal paid leave for the remainder of the school year.

On February 22, 2023, Jeff's wife, Leslie Theurer (Leslie), filed four Level 1 grievances with the District. Level 2 grievances were filed on March 2, 2023. Both the Level 1 and 2 grievances were denied. Level 3 grievances were filed on March 22, 2023. Jeff was informed by letter dated March 29, 2023, that the District had denied his grievances. Jeff filed a Petition for Hearing with the Department of Labor & Regulation (Department) 55 days later on May 23, 2023.

The District moves for summary judgment on the ground that there are no genuine issues as to any material fact and it is entitled to judgment as a matter of law. The District alleges that no grievances were filed by Jeff, and he failed to submit a timely appeal. The Department will address both issues separately.

1. Whether Jeff filed grievances

According to the grievance procedure in the negotiated agreement, Jeff was required to file his grievances at the appropriate level within fifteen (15) working days after he knew, or should have known, of the act or condition on which the grievance was

based. If not so presented, the grievance would be considered null and void.

Agreement¹ pg 29. The District argues that as neither Jeff nor the Association filed any grievances, the Department does not have jurisdiction over any untimely grievances.

AFSCME Loc. 1025 v. Sioux Falls Sch. Dist., 2011 S.D. 76, 809 N.W.2d 349. The District argues that Jeff was not incarcerated at the time the grievances were filed, and he could have had Leslie bring home the forms for him to sign. He could have also approached the Association to file grievances on his behalf.

Jeff responds that he believed he was able to have his wife file grievances on his behalf. He had been suspended without pay effective immediately on December 9, 2022, and had been told, by letter, he was not permitted on the premises of the school, nor was he allowed to speak to any staff. The Agreement defines “aggrieved person” as a “teacher or teachers” employed by the District. *Id.* “Any teacher or party in interest may be represented at any level of the grievance procedure by a person selected by the aggrieved person.” *Id.* Jeff argues that there is no specific language or procedures to effectuate representation during the grievance process and so he thought it was sufficient that he gave Leslie permission to file the grievances on his behalf.

The District asserts that the Agreement language allows a grievant to have a representative not merely to permit any person to initially file a grievance. SDCL § 3-18-3 provides,

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; provided that salary increases for Board of Regents'

¹ The negotiated agreement between the parties will be cited to as “Agreement”.

faculty and exempt staff may only be distributed to address institutional priorities, program needs, performance meeting or exceeding expectations, or internal or external market considerations. Notwithstanding any other provision of this section, any individual employee, or a group of employees, shall have the right at any time to present grievances to their employer and to have such grievances adjusted without the intervention of the formal representative as long as the adjustment is not inconsistent with the terms of any settlement with the formal representative then in effect; provided that the formal representative has been given opportunity to be present at such adjustment.

The District further asserts that allowing anyone to file a grievance on behalf of another would result in chaos and would defeat the purpose of having a designated exclusive representative for the employees in the bargaining unit.

The Department concludes that as the Agreement specifically states that the grievant may be represented by a selected person, Jeff was permitted to have Leslie submit his grievances on his behalf. Therefore, the grievances were properly submitted.

2. Whether the appeal was timely submitted

The Department will next address the issue of timeliness. The letter with the final decision from the District was dated March 29, 2023. Jeff admitted in his deposition that he received the letter on or about March 29 of 2023. Jeff Theurer Depo. 26:25. SDCL § 3-18-15.2 provides,

If, after following the grievance procedure enacted by the governing body, the grievance remains unresolved, except in cases provided in § 3-6D-15, the grievance may be appealed to the Department of Labor and Regulation by filing an appeal with the department within thirty days after the final decision by the governing body is mailed or delivered to the employee.

SDCL § 3-18-15.2

The appeal to the Department was not received until May 23, 2023, which was 55 days after Jeff received the March 29, 2023, letter. Jeff failed to meet the 30-day timeframe

set by SDCL § 3-18-15.2. Therefore, the District's Motion for Summary Judgment is GRANTED. Hearing file number 2G, 22.23 is hereby dismissed for being untimely.

Sincerely,

A handwritten signature in blue ink that reads "Michelle Faw". The signature is written in a cursive, flowing style.

Michelle M. Faw
Administrative Law Judge