

November 12, 2024

Brooke Quinlivan
SDEA
411 E. Capitol
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**LETTER DECISION ON MOTION FOR
SUMMARY JUDGMENT**

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

RE: HF No. 3G, 2022/23– Leslie 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.

Leslie Theurer (Leslie) was employed as a teacher by the District and was at all times pertinent to this matter covered by the terms of the grievance procedure in the collective bargaining agreement (Agreement) between the District and the Oglala Lakota County Education Association.

On December 9, 2022, the District received a report concerning an interaction between Leslie's husband, Jeff Theurer (Jeff) and his daughter. The report also raised concerns of abuse in the Theurer household. Upon receipt of the report, the district suspended Leslie from employment without pay so the allegations could be

investigated. The District also reported the alleged incidents to authorities as required by mandatory reporters under state law. Leslie was arrested but not charged. She was released from jail on bond on December 10, 2022. The District was informed on December 20, 2022, that the criminal charges had been dropped against Leslie. On February 2, 2023, Leslie received a letter from the South Dakota Department of Social Services confirming no charges were being filed against her, and she gave a copy of the letter to her principal. On January 23, 2023, the District instructed Leslie to return to work on January 30, 2023. Leslie returned to work on February 1, 2023.

On February 16, 2023, Leslie signed and filed four grievances at Level 1. On February 24, 2023, the District notified Leslie that her Level 1 grievances had been denied. She then filed Level 2 grievances on March 2, 2023, which were denied on March 8, 2023. Leslie filed Level 3 grievances on March 22, 2023. The grievances were denied on March 29, 2023. On May 23, 2023, Leslie filed her Petition for Hearing on Grievance with the Department of Labor & Regulation (Department).

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 Leslie failed to submit a timely appeal.

Article XXV(D) of the Agreement provides, "If the teacher fails to adhere to the time limits or procedures established in the procedure, the grievance shall be considered null and void." Leslie asserts there is a genuine issue of material fact as to the mailing date of the Level 3 grievance decision. 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 final decision letter on the Level 3 grievances sent to Leslie was dated March 29, 2023. However, she testified at deposition that she did not receive the letter until April 24, 2023. Leslie did not save the original mailing envelope for the letter. She asserts that there is no proof as to when the letter was sent.

The District argues that Leslie's deposition testimony and personal actions establish the fact that the March 29, 2023, letter was mailed to her more than 30 days before she filed her Petition for Hearing. In her answers to Requests for Admission, Leslie stated that she received the letter approximately April 24, 2023. She also testified that there had been an April blizzard, and the letter may have arrived at the post office on a day prior to April 24, 2023. She had also sent a text to her SDEA representative on April 24 which stated, "I am so angry I can't breathe. They dated the letter March 29 it came sometime last week I just got to the post office" Further, the District points out that the letter which arrived on April 24, had been sent from Sioux Falls, South Dakota to Martin, South Dakota and would not have arrived on the same day as it was mailed.

From the above arguments made by the parties, the Department is persuaded that there are still genuine issues of material fact to be addressed in this matter regarding when the letter was sent and/or received. Therefore, the District's Motion for Summary Judgment is DENIED.

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