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RE: HF No. 4G, 2017/18 – Todd County Education Association v. Todd County
School District 66-1 and Board of Education

Dear Ms. Plooster and Mr. Freeman:

This matter comes before the Department of Labor based on a grievance complaint filed by Grievant, Todd County Education Association (TCEA), pursuant to SDCL 3-18-15.2. Anne Plooster represented TCEA. Rodney Freeman, Jr. represented Todd County School District and Board of Education (District). A hearing was held before Administrative Law Judge Joe Thronson on February 15, 2018, in Mission, South Dakota. The sole issue presented was whether the District violated, misinterpreted or inequitably applied the policies, rules and regulations, or negotiated agreement by failing to pay each teacher a \$3,000 raise for the 2017/18 school year.

FACTS

Grievant, TCEA, represents teachers in the Todd County School District. The Todd County School District is located within the boundaries of the Rosebud Sioux Indian Reservation. Recruitment and retention of staff is difficult, such that 17 full time positions remained unfilled for the 2016/17 school year. During negotiations for the

2017/18 school year, the District's offered an increase in salary of \$3,000 for each teacher. Along with negotiating for the 2017/18 school year, the District also had to reallocate approximately \$9 million dollars. This was because the South Dakota Legislature adopted a new educational funding formula, codified in SDCL 13-13-79, to significantly raise the salaries of the state's public-school teachers. Under the new formula, any district which did not spend a certain portion of its general fund on salaries was faced with losing a portion of its state educational funding for the following year. The failure to fill all its positions resulted in the District missing the required budget allocation to salaries. To comply with the state requirements, the District proposed applying a retroactive payment of \$3,000 to all certified staff in the district for the 2016/17 year. This amount was not included in the district's hiring schedule or salary schedules. The District contends that this retroactive payment of \$3,000 was also meant to be the negotiated raise for the 2017/18 school year.

TCEA rejected the offer and impasse was declared. Despite an attempt at conciliation by the Division of Labor and Management and a later fact-finding hearing before the Department, the sides were not able to come to an agreement and the District imposed a contract for the 2017/18 year. That agreement, approved July 24, 2017, included an appendix which referenced the District's hiring guide. It also included a section titled "Todd County School District Returning Teacher Salary." This section included the following language: "Each returning teacher will receive at a minimum, an increase of \$3,000.00 for the 2017-18 school year."

After the 2017/18 agreement was imposed, each teacher was given the referenced amount of \$3,000 in two payments. TCEA filed a grievance alleging the District was in violation of the agreement. TCEA's position is that the retroactive one-time payment of \$3,000 was part of the 2016/17 salary and not included in the appendix. TCEA argues that the agreement provided for a \$3,000 raise to the adjusted salary; essentially that the agreement called for another \$3,000 on top of the retroactive payment. The District counters that the \$3,000 retroactive payment was also the raise for the 2017/18 school year. It contends that it made the Grievant aware of this fact during negotiations.

ANALYSIS

Disputes over the meaning of terms in teacher contracts are resolved under the general principles of contract law. *Gettysburg Sch. Dist. 53-1 v. Larson*, 2001 S.D. 91, ¶ 11, 631 N.W.2d 196, 200. Under South Dakota law, “[t]he execution of a contract in writing... supersedes all the oral negotiations or stipulations concerning its matter which preceded or accompanied the execution of the instrument. (SDCL 53-8-5).

The consideration of parole evidence is generally only allowed when a portion of a contract is ambiguous. Our Supreme Court has noted, “When a contract is clear and unambiguous and speaks to a subject it is expected to, there is no need to go beyond the four corners of the contract. Thus, we will look to the language of the contract.” *Am. Fed'n of State, Cty. & Mun. Employees (AFSCME) Local 1922 v. State*, 444 N.W.2d 10, 12 (S.D. 1989).

At issue here is the following language: “Each returning teacher will receive at a minimum, an increase of \$3,000.00 for the 2017-18 school year.” TCEA argues that the agreement is meant to apply to each teacher’s *adjusted* salaries, or the 2016/17 salary amount after the retroactive payment. However, this interpretation is not supported by the plain language of the agreement. Per the terms of the agreement, each teacher was to be paid \$3,000 more for the 2017/18 school year than the previous year. The evidence presented indicates that all returning teachers within the district did in fact receive \$3,000. Several teachers’ W2 forms were introduced indicating that each’s salary was \$3,000 more for the 2017/18 school year than it had been in 2016/17. This point is uncontested. Upon cross examination, TCEA president Tess Canet acknowledged that her 2017/18 salary was \$3,000 more than the previous year.

Nothing in the contract specifies that the \$3,000 increase was meant to apply to an *adjusted* 2016/17 salary. “A [party] cannot rewrite an incompletely specified agreement, inserting or deleting to make it mean more than its words plainly declare... These terms could have been adopted when the agreement was made, if the parties had wanted them.” *Larson*, at ¶ 14. Had the District intended to apply the raise to the adjusted salary, the language of the agreement could have reflected that intent. However, since the phrase “adjusted salary” is not included within the text, the Department cannot assume it should have been included.

Grievant also argues that the District mischaracterized the \$3,000 payment as one-time money and that supports the argument that it was not intended to be applied towards the 2017/18 salary increase. Since the agreement is silent about the source of the raise, this designation is inconsequential to the Department’s decision. The

agreement is unambiguous, and so long as each teacher receives a salary increase of \$3,000, the Department need not consider whether the money was designated as “one-time” by the District. However, the \$3,000 increase could be categorized as both salary and a one-time payment. It is beyond dispute that the money was included in each teacher’s salary, meaning that it will carry through to each successive contract year. Additionally, the district’s business manager, Chad Blotsky, testified that the \$3,000 was not placed in either the hiring schedule or the salary schedule. Therefore, any teacher hired after 2017/18 will not receive this money. Neither will any teacher moving up a step on the salary schedule receive an additional \$3,000.

Finally, TCEA argues that the District cannot apply one-time monies both to the 2016/17 salary and provide for a raise in the 2017/18 school year under SDCL13-13-19 of the code. Whether such a payment violates the new salary formula established by the Legislature is a matter for the Department of Education, and has no bearing here.

ORDER

For the above stated reasons, Grievant’s petition for grievance is DENIED. District’s attorney shall submit Proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within 20 days from the date of receipt of this Decision. Grievant’s attorneys shall have 20 days from the date of receipt of Respondent’s Proposed Findings of Fact and Conclusions of Law to submit objections and/or Proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, District’s attorney shall submit such Stipulation along with an Order in accordance with this Decision.

SOUTH DAKOTA DEPARTMENT OF LABOR
& REGULATION

/s/ Joe Thronson

Joe Thronson

Administrative Law Judge