

**SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION
DIVISION OF LABOR AND MANAGEMENT**

**MICHELLE CRANE and WAKPALA
EDUCATION ASSOCIATION,**

HF No. 6 G, 2013/14

Petitioner,

v.

DECISION

**SMEE SCHOOL DISTRICT #15-3 and
BOARD OF EDUCATION,**

Respondent.

This matter came before the Department of Labor & Regulation when Michelle Crane and Wakpala School District, filed a Petition for Hearing on Grievance pursuant to SDCL 3-18-15.2. The Department conducted a hearing on October 29, 2014, in Selby, South Dakota. The matter was heard by Donald W. Hageman, Administrative Law Judge. Anne Plooster appeared on behalf of Petitioner, Michelle Crane and Wakpala Education Association. Rodney Freeman represented Respondent, Smee School District #15-3 and Board of Education.

Legal Issue:

This case presents the following legal issue:

Whether the Smee School District #15-3 and Board of Education inequitably applied the policies of the school district when it issued a written reprimand to Michelle Crane and placed her on a Plan of Assistance (POA)?

Facts:

Based upon the testimony and evidence presented at hearing, the Department finds the following facts by a preponderance of the evidence:

1. Michelle Crane (Crane) was the high school science teacher in the Smee School District (District) from August of 2010 through May of 2014.
2. Greg East has been Superintendent of the Smee School District since July 2013. When he first began his duties, the Board of Education advised him that the Board and District had been extremely embarrassed by a class motto that appeared in a local newspaper which was by then well known to area legislators and many parents had called to complain about the motto. Therefore, during the

first day of in-service for the 2013-14 school year, Superintendent East and Principal Huffman instructed the staff that if a teacher was going to be speaking on behalf of the Smee School District, then all statements should be cleared with administration prior to one holding oneself out as a spokesman for the Smee School District.

3. In the fall of 2013, Crane became aware of an opportunity to apply to be a member of the South Dakota Department of Education (DOE) Science Standards workgroup.
4. Neither the District nor the DOE has a written policy which required Crane to seek prior approval from the District before applying for a position on the DOE workgroup.
5. The DOE's notice of the Science Standards workgroup stated:

South Dakota Science Standards Workgroup

The Department of Education is gathering a group of teachers and science leaders to study the issue of science standards further to help make a recommendation for future action. Therefore, the following representation is needed to compose a workgroup to study the issue of science standards. Postsecondary, Informal STEM Education, Business/Industry, Parents/School Board Members, Curriculum Director/Principal, and K-12 teachers. *Preference will be given to those with experience in science education and standards writing. This is paid work for and by the State of South Dakota. Stipends of \$125 (or substitute reimbursement) will be paid per day and also travel, meals, and hotel will be reimbursed. The meetings will be held on Friday/Saturday to accommodate for teacher schedules.

Dates:

- January 24-25
- February 28-March 1
- March 28-29

Location: Chamberlain, SD

[Apply Here](#) Application closes 11/29/13

For more information contact: Sam.Shaw@state.sd.us

6. The District's professional leave policy states:

B. Professional Leave Professional leave shall be granted at the discretion of the Superintendent/Chief Executive Officer. Expenses for professional leave must be approved by the Superintendent/Chief

Executive Officer. Expenses for approved leave will be reimbursed at the Board approved rates for in-state and out-of-state travel (meals, lodging and mileage). The district will not pay any late fees. The reimbursement for expenses will be made on the following payroll date contingent upon all claims being submitted to the business manager by the deadline date for submission of claims prior to that payroll. If more than one teacher is going to the same event, car pooling with a school vehicle and sharing motel rooms will be determined by the Superintendent/Chief Executive Officer. Professional leave expenses will be paid if the teacher is at an event and due to an act of God, school is not held on that day. The teacher will be required to teach on the make-up day. Professional leave may be granted for days used by coaches or directors to attend state tournaments or playoffs for which they are not participants, however, no district travel expenses shall be granted.

7. Crane applied for the workgroup without receiving prior approval from the District administration.
8. Crane was chosen by DOE to be part of the Science Standards workgroup.
9. On December 12, 2013, Michelle sent her principal, Curtis Huffman, an email informally requesting leave for the days she would need to be gone for the Science Standards workgroup:

From: Crane, Michelle
Sent: Thursday, December 12, 2013 11:44 AM
To: Huffman, Curtis
Subject: FW: South Dakota Science Standards Workgroup

Hi.

I was chosen to help develop the (new) science standards for our state. There are a few dates that I will need to be gone for this (listed below). Please review the document below and let me know if this how I should go about asking for leave for this. I am looking to see where I can find more information on this for you...

To'ksa,

Michelle

....

10. Following Crane's December 12, 2013 email, Principal Huffman verbally denied her request. Consequently, she never made a formally requesting professional leave.

11. Michelle was reprimanded and placed on a POA because she did not seek and obtain the District's approval, prior to applying for the workgroup.

Analysis:

SDCL 3-18-1.1 defines "grievance" as:

The term "grievance" as used in this chapter means 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, ordinances, policies or rules of the government of the state of South Dakota or the government of any one or more of the political subdivisions thereof, or of the public schools, or any authority, commission, or board, or any other branch of the public service, as they apply to the conditions of employment. Negotiations for, or a disagreement over, a nonexisting agreement, contract, ordinance, policy or rule is not a "grievance" and is not subject to this section.

SDCL 3-18-1.

As the grievant, the burden of proof falls on Crane. Rininger v. Bennett County School District, 468 NW2d 423 (SD 1991). SDCL 3-18-15.2 requires the "Department of Labor and Regulation 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."

"Policies of a school district, especially those negotiated with bargaining representatives for the protection of teachers, have the full force and effect of law, and legally bind the school district." Wessington Springs Education Association v. Wessington Springs School District #36-2, 467 NW2d 101, 104 (SD 1991) citing Schnabel v. Alcester School District, 295 NW2d 340 (SD 1980).

The District is correct when it states the District's professional leave policy is not at issue here. That policy clearly grants the authority to the Superintendent to deny Crane's use of professional leave at his discretion. Accordingly, the question of whether permission to attend the workgroup was properly denied to Crane will not be addressed here.

In this case, the issue is whether Crane's punishment for not seeking prior approval before applying for a position in the workgroup, was proper. The District has no written policy which requires prior approval in such cases. Therefore, the only policy that the District could have believed Crane violated was the verbal policy statement made by the administration at the first day of in-service for the 2013-14 school year. At that meeting, Superintendent East and Principal Huffman instructed the staff that if a teacher was going to be speaking on behalf of the Smeeth School District, then all statements should be cleared with administration prior to one holding oneself out as a spokesman for the

Smee School District. The entire staff knew that this policy resulted because of a class motto that was made public during the previous school year which many in the community thought was inappropriate. The policy clearly meant to give the District the ability to stop or edit any statements made to the public which could reflect negatively on the school district.

The Department is of the opinion that the District “inequitably applied” its verbal policy when it punished Crane in this matter. There is simply no comparison between publicizing an inappropriate class motto and applying for a DOE sponsored workgroup. Applying for and participating in such a workgroup is not inappropriate and does not reflect badly on the school district. Quite the opposite, participation in the workgroup would have been a distinction for which the District could have taken pride.

A workgroup application does not contain the type of statement to which the District staff could have reasonably expected the policy to pertain. The application contained little more than Crane’s name and the fact that she was employed by the District. If providing that information requires prior approval, any staff member who has told a relative that they were hired by the District would be subject to punishment under the policy.

In addition, Crane did not hold herself out as a spokesperson of the District when she applied for the workgroup. The Department of Education sought “a group of teachers and science leaders” to participate in the workgroup. It did not seek input from school districts or the representatives of school districts. Her participation in such a group would have been based on her personal qualifications as a science teacher, not as a representative of a particular school district.

The District stated that it was “embarrassed” that it had to deny Crane’s participation in the workgroup after she had been selected by DOE to participate. First, it is unclear from the record that “not embarrassing the District’s administrators” was a policy. Second, the District’s embarrassment here is a subjective test and an inappropriate standard upon which to punish Crane. Crane cannot be expected to know what may or may not embarrass the District’s administrators.

An objective reasonable person test is more appropriate whether determining whether Crane’s actions were professional or not. The Department finds that they were. After all, the DOE is a state agency. It does not have feelings or emotions. It is not offended by social foibles and there is nothing in the record to suggest that DOE downgraded the Districts standing because of the situation.

Conclusion:

As provided above, District inequitably applied its verbal policy when it punished Crane. Cranes’ written reprimand dated December 16, 2013, shall be permanently removed from her personnel file and Crane’s POA dated December 20, 2013, is deemed null and void and shall be permanently removed from her personnel file. Crane shall submit

Findings of Fact and Conclusions of Law and an Order consistent with this Decision and if desired Proposed Findings of Fact and Conclusions of Law within twenty days of the date of the Decision. The District shall have twenty days from the date of the receipt of Crane's Findings of Fact and Conclusions of Law to submit objections thereto and/or Proposed Findings and Conclusions of Law. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law. If they do so, Crane shall submit such Stipulation along with an Order consistent with this Decision.

Dated this 11th day of March, 2015.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

/s/ Donald W. Hagemana

Donald W. Hageman
Administrative Law Judge