

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

**LENNOX EDUCATION
ASSOCIATION On behalf of
JODI PIXLER and ANY OTHERS
SIMILARLY SITUATED**

HF No. 9G, 2007/08

Petitioner,

DECISION

v.

**LENNOX SCHOOL DISTRICT #41-4
And BOARD OF EDUCATION**

Respondent,

This matter comes before the Department of Labor based on Grievant Lennox Education Association's Petition for Hearing on Grievance filed pursuant to SDCL 3-18-15.2. The Department of Labor conducted a hearing on January 15, 2009, in Canton, South Dakota. Anne Plooster appeared on behalf of Grievant Lennox Education Association (Association). Rodney Freeman represented Respondent Lennox School District #41-4 (District) and Board of Education (Board).

Issues:

Whether Lennox School District #41-4 and Board of Education violated, misinterpreted, or inequitably applied any existing agreements, contracts, ordinances, policies or rules when the School District paid its job sharing teachers leave benefits at one-half the rate of full-time teachers when the sick leave was accumulated while the teachers were working full-time?

Facts:

Based upon the testimony at the hearing and the record, the following facts are found by a preponderance of the evidence:

1. Prior to the 2006-07 school year, Jennifer Thompson and Kristin Campbell were employed as full-time certified teachers by District. Both teachers accumulated sick leave while working full-time.
2. During the 2006-07 school year, Thompson and Campbell began to job share. Under this arrangement, the two teachers filled one full-time teaching position. Each working half-time. One worked full-days every

- Tuesday and Friday and every other Wednesday and the other worked every Monday and Thursday and every other Wednesday.
3. 2006-07 was the first school year in which any of District's teachers job shared.
 4. During the 2006-07 school year, District gave returning full-time teachers ten days of sick leave and two days of personal leave days. The sick leave was added to the sick leave accumulated in prior years. The personal leave had to be used in the year granted.
 5. As a result of their half-time status during the 2006-07 school year, Thompson and Campbell were given five days of accumulating sick leave and one day of non-accumulating personal leave.
 6. During the 2006-07 school year, the District paid Thompson and Campbell a full-time teacher's daily wage for each day of leave taken and deducted from their accumulated leave (charged), one day's leave for each day absent.
 7. During the 2007-08 school year as in previous years, District gave returning full-time teachers ten days of accumulating sick leave and two days of non-accumulating personal leave.
 8. During the 2007-08 school year, Thompson and Campbell again job shared. They worked the same job-sharing schedule that they worked the previous year.
 9. During the 2007-08 school year, District changed its leave allocation for job sharing teachers. District gave Thompson and Campbell ten days of accumulating sick leave and two days of non-accumulating personal leave, rather than five days of sick leave and one of personal leave as it had the previous school year.
 10. The District also altered how leave was paid and charged to the job sharing teachers during the 2007-08 school year. District paid Thompson and Campbell one-half day's wage for each day of leave taken and charged two days leave for each day absent. In addition, District adjusted Thompson and Campbell's leave for the 2006-7 school year to conform to its newly implemented leave policy.
 11. Prior to the 2007-08 school year, Jodi Pixler and Erin Foshier were employed by District as full-time certified teaches. Both had accumulated sick leave as full-timer teachers.

12. During the 2007-08 school year, Pixler and Fosher job-shared, each working half-time. One worked full days every Tuesday and Friday and every other Wednesday and the other worked every Monday and Thursday and every other Wednesday.
13. During the 2007-08 school year, District gave Pixler and Fosher ten days of accumulating sick leave and two days of non-accumulating personal leave. District paid Pixler and Fosher one-half day's wage for each day of leave taken and charged two days leave for each day absent.
14. Pixler gave birth to a child during the 2007-08 school year. Consequently she used sick leave allocated to her during the 2007-08 school year and sick leave that she had accumulated in prior years, as a full-time teacher.
15. Association initiated this action on behalf of Pixler and any others similarly situated by filing a Petition for Hearing dated February 21, 2008. Association challenges the sick leave policy for job sharing teachers implemented by the District during the 2007-08 school year.
16. District's Sick Leave Policy states that "incoming teachers will be granted sick leave of twenty (20) days prorated according to the length of time on the job, for their first year of teaching." "Returning certified teachers shall be granted ten (10) additional days each year to accumulate with any unused sick leave from previous years."
17. District's Certified Employee Workday Policy defines "day" as "one work day regardless of full time or part time status of an employee."
18. District's Job Sharing Policy states that "certified teachers sharing a position will be granted the same rights and privileges as other part time teachers with salary and benefits paid in proportion to the amount of time taught."
19. Additional facts may be discussed in Analysis blow.

Analysis:

Policy Language

In this case, the legal analysis begins with the statutory definition of "grievance". SDCL 3-18-1.1 states:

SDCL 3-18-1. 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.

The Department's role in resolving a grievance is set forth in SDCL 3-18-15.2. That statute states in part:

SDCL 3-18-15. If, after following the grievance procedure enacted by the governing body, the grievance remains unresolved . . . it may be appealed to the department of labor . . . 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.

The point of contention in this case, involves the sick leave Pixler, and any others similarly situated, accumulated while working full-time and then used while job sharing. Association argues that District's failure to pay these teachers for this leave at the full-time teacher's rate violated, misinterpreted, or inequitably applied an existing agreement, policy or rule.

As the grievant, the burden of proof falls on Association. Rininger v. Bennett County School District, 468 NW2d 423 (SD 1991). "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 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." Id. (citations omitted).

"When the terms of a negotiated agreement are clear and unambiguous, and the agreement actually addresses the subjects that are expected to cover, "there is no need to go beyond the four corners of the contract." Id. (internal citations omitted). Further, "[t]he only circumstances in which we may go beyond the actual language of the collective bargaining agreement are where the agreement is ambiguous or fails to address a subject that it is expected to address." Id. (citations omitted).

In this case, the policies are unambiguous. Consequently, the parties are bound by the policies' language. District's Sick Leave Policy states that, "[r]eturning certified teachers shall be granted ten (10) additional days each year to accumulate with any unused sick leave from previous years." This provision makes no exceptions for part-time teachers or those who job share.

Next, District's Certified Employee Workday Policy defines "day" as "one (1) work day regardless of full time or part time status of an employee." This policy also makes no distinction between full-time and part-time teachers and does not categorize them as 4 hour or eight hour days.

Finally, District's Job Sharing Policy states that "certified teachers sharing a position will be granted the same rights and privileges as other part time teachers with salary and benefits paid in proportion to the amount of time taught." In other words, teachers working one-half time are to be paid at one-half the rate of full-time teachers for sick leave taken.

During the 2007-08 school year, Pixler and the other job sharing teachers were granted ten days of sick leave as specified in the sick leave policy. They were then paid one-half days wage for each sick leave day charged. This also conformed to the job share policy. If the teachers wished to receive a full days wage for an absence, it was necessary for the District to charge two days sick leave. The District's actions here were consistent with the plain language of District's written policies.

Past Practice

Association asserts that the sick leave policy implemented during the 2007-08 school year for job sharing teachers altered the past practice established during the 2006-07 school year. Past practice is discussed in Oberle v. City of Aberdeen, 470 NW2d 238, 246-247 (SD 1991). That case states:

If a past practice which does not derive from the express terms of a bargaining agreement becomes a part of the employer's structure and conditions of employment, it takes on the same significance as the other terms of employment and is protected from unilateral change. (citations omitted).

In Oberle, the past practice dealt with the subject of time trading. In that case, time trading was not addressed in the negotiated agreement or city policy. That is not the situation here. In this case, the sick leave procedures are set forth in unambiguous terms in the various District policies.

When confronted with a past practice that conflicted with a written policy, the South Dakota Supreme Court stated:

If and when the instrument is found by the court to be ambiguous, then the admission of parole or extrinsic evidence shall be governed by these rules:

If the intention of the parties is not clear from the writing, then it is necessary and proper for the court to consider all the circumstances

surrounding the execution of the writing and the subsequent acts of the parties[.]

Lemmon Education Association v. Lemmon school District No. 52-2, 478 NW2d 821 (SD 1991) quoting Haggar v. Olfert, 387 NW2d 45, 48 (SD 1986; Jensen v. Pure Plant Food Intern., Ltd., 274 NW2d 261, 263-4 (SD 1979).

The sick leave procedure used for the job sharing teachers in 2006-07 clearly conflicted with the explicit language of the sick leave and job share policies. The District granted the job share teachers five days of sick leave. The sick leave policy clearly states that ten days of sick leave were to be granted. The District then paid a full day's wage for each sick leave day charged, when the policy stated that the teachers were to be paid in proportion to the time they taught which was 50%.

In addition, the policies in this case are unambiguous as discussed above. Consequently, in this case the parties are bound by the plain language of the policies.

District's business manager testified at the hearing that the job sharing sick leave policy used by District during the 2006-07 school year was done so in error. Her testimony was undoubtedly true. Her testimony is buttressed by two facts. First, 2006-07 was the first school year in which any of District's teachers job shared and the process was new. Second, once the error was discovered, District corrected the error.

It should be pointed out that District was obligated to correct its sick leave procedures once the error was discovered. "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, 467 NW2d at 104. Therefore, the 2006-07 sick leave policy is not enforceable as a past practice.

Conclusion

While the sick leave procedures implemented by District during the 2007-08 school year may not seem equitable to the teachers in this case, they are consistent with District's written policies. Therefore, Lennox School District #41-4 and Board of Education did not violate, misinterpret, or inequitably apply any existing agreements, contracts, ordinances; policies or rules when the School District paid its job sharing teachers leave benefits at one-half the rate of full-time teachers when the sick leave was accumulated while the teachers were working full-time

District shall submit proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within twenty (20) days from the date of receipt of this Decision. Association shall have twenty (20) days from the date of

receipt of District's proposed Findings of Fact and Conclusions to submit objections thereto or to submit proposed Findings and Conclusions. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, District shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 27th day of April, 2009.

SOUTH DAKOTA DEPARTMENT OF LABOR

Donald W. Hageman
Donald W. Hageman
Administrative Law Judge