

May 25, 2010

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Letter Decision and Order

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Re: AFSCME Local 1025 vs. Sioux Falls School District, 14 G, 2007/08; Sioux Falls Education Assistants Association vs. Sioux Falls School District, 1 G, 2008/09; Sioux Falls Education Assistants Association vs. Sioux Falls School District, 1 U, 2008/09

Dear Counsel:

Submissions:

This letter addresses the following submissions by the parties:

- November 6, 2009 Petitioner Sioux Falls Education Assistants Association's Motion to Compel;
- November 30, 2009 Letter from Linda Lea Viken;
- December 8, 2009 Respondent's Opposition to Sioux Falls Education Assistants Association's Motion to Compel;
- December 16, 2009 Respondent Sioux Falls School District's Motion for Judgment as a Matter of Law Pursuant to SDCL 1-26-18;

Appendix of Respondent in Support of Motion for Judgment as a Matter of Law;

Affidavit of Todd Vik;

Brief in support of Respondent's Motion for Judgment as a
Matter of Law;

December 18, 2009 Petitioner Sioux Falls Education Assistants Association's
Reply to Respondent's Opposition to Sioux Falls Education
Assistant's Association's Motion to Compel;

January 14, 2010 AFSCME Local 1025's Response and Brief in Response to
Respondent's Motion for Judgment as a Matter of Law;

Motion for Summary Judgment;

JANUARY 19, 2010 Petitioner Sioux Falls Education Assistants Association's
Answer to Respondent's Motion for Judgment as a Matter of
Law Pursuant to SDCL 1-26-18 and Petitioner's Brief in
Support Thereof;

Petitioner Sioux Falls Education Assistant's Association's
Motion for Summary Judgment and Petitioner's Brief in Support
Thereof;

Petitioner Sioux Falls Education Assistants Association's
Statement of Undisputed Material Facts;

Affidavit of Jan Dalseide'

Affidavit of Anne Plooster;

January 29, 2010 Reply Brief in Support of Respondent's Motion for Judgment
as a Matter of Law Pursuant to SDCL 1-26-18 and
Respondent's Brief in Resistance to AFSCME Local 1025's
Motion for Summary Judgment;

Reply Brief in Support of Respondent's Motion for Judgment
as a Matter of Law Pursuant to SDCL 1-26-18 and
Respondent's Brief in Resistance to Sioux Falls Education
Assistants Association's Motion for Summary Judgment;

February 8, 2010 Petitioner Sioux Falls Education Assistants Association's
Reply Brief to Respondent's Brief in Resistance to Petitioner
Sioux Falls Education Assistants Association's Motion for
Summary Judgment;

February 16, 2010 Petitioner AFSCME Local 1025's Reply to Respondent's
Brief in Resistance to AFSCME LOCAL 1025'S Motion for
Summary Judgment;

Background:

The facts of these cases as reflected by the above submissions and supporting documentation are as follows:

1. AFSCME Local 1025 (Local 1025) and Sioux Falls Education Assistants Association (SFEAA) are organized bargaining units (Bargaining Units) whose member are non-instructional employees of the Sioux Falls School District (District).
2. Local 1025 and SFEAA have negotiated and signed respective multi-year agreements (Negotiated Agreements) with the District related to the wages and hours of their members. These agreements extended through June 30, 2013. The 2007-2008 and 2008-2009 school year are the second and third year of these multi-year agreements.
3. The Negotiated Agreements tie the wages and yearly wage increases of Local 1025 and SFEAA's members to the state's "Per Student Allocation".
4. The provisions of the Negotiated Agreements which address the issue of yearly wage increases are set forth in Article 29, Section 22.03 and 22.04. Those provisions state:
 - 03: The [multi] year agreement is for 10 percent the first year and yearly increases in years two through [duration of agreement] will be at the state rate. For each year of the agreement the cost of steps is applied first and the remaining dollars will be put on the schedule.
 - 04: State Rate is the "Per Student Allocation" as defined in section 13-13-10.1 (4). If during the six-year term in the contract there is a change in the State funding formula for education, the District and the Bargaining units will meet to determine the effect on the salary portion of the agreement. The District and the [Bargaining Unit] agree to modify the contract definition of State Rate if other sources of revenue are added to the State Rate Previous year "Per Student Allocation" to reflect the change in formula, then calculating the percentage difference between the previous year "Per Student Allocation" and the revised "Per Student Allocation."
5. During the 2008 legislative session, Senate Bill 187 (SB 187) was enacted. A section of that Bill codified at section 13-13-10.1 (4) set the "Per Student Allocation" at a rate that was 3% above the FY 2008 level.
 - a. A section of SB 187 codified at SDCL 13-13-10.6 set a contingency whereby a school district would receive a 2.5 % increase in its FY 2009, "Per Student Allocation" if the school district did not certify to the secretary of education that its average teacher salary and benefits will increase by at least three percent, and that it would spend at least \$22.64 per fall enrollment as defined in subdivision 13-13-10.1(2A) on teacher salaries and benefits in excess of the school district's FY 2008 expenditures on teacher salaries and benefits.
6. SB 187 was titled "An Act to revise the state aid to education formula."
7. SB 187 became effective on July 1, 2008 in accordance with SDCL 2-14-16.
8. School districts within the state received their first payment of state funding for FY 2009 in July of 2008.
9. On April 8, 2008, a meeting was held with the Bargaining Units and School Districts administration, including Superintendent Homan and Business Manager

- Todd Vik. At that meeting both Bargaining Units were provided with a copy of a Memorandum of Understanding (MOU) that had been prepared by the District.
10. The MOU set forth the District's interpretation of the new legislation, including SDCL 13-13-10.6 and its impact on the salary increases for non-instructional employees. The MOU set forth the District's intended wage increase for FY 2009 of 2.5%, unless the MOU was accepted by the bargaining units, in which case the increase would be 3%.
 11. Local 1025 and SFEAA were advised by District to discuss the MOU with their membership.
 12. At the conclusion of the meeting on April 8, 2008, Jan Dalseide signed the MOU on behalf of SFEAA and Ruth Anderson signed on behalf of Local 1025. Both added the initials "T.A." indicating that it was a "tentative agreement."
 13. At the conclusion of the meeting, the bargaining units, including SFEAA and Local 1025, asked for a breakdown on the difference between a 2.5% and 3% wage increase. That information was provided to SFEAA on April 10, 2008.
 14. On April 18, 2008, Ruth Anderson sent Dr. Homan an email indicating that Local 1025 had voted unanimously to reject the MOU after "much discussion".
 15. On April 22, 2008, SFEAA's members voted not to sign the MOU.
 16. On May 12, 2008, the District certified to the secretary of education that its average teacher salary and benefits would increase by at least 3%
 17. On June 23, 2008, the Sioux Falls School Board voted to offer its non-instructional employees a 2.5% raise for FY 2009.

Grievances:

Both Petitioners in this case have initiated these proceedings when they filed a grievance against the District. Grievance is defined by statute as "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." SDCL 3-18-1.1. Here, Petitioners allege that the District violated the terms of the Negotiated Agreements when the District provided the Bargaining Unit's members with a 2.5% wage increase for FY 2009 rather than a 3% increase.

Summary Judgment

The District filed a motion for judgment as a matter of law pursuant to SDCL 1-26-18. SDCL 1-26-18 states in part:

Opportunity shall be afforded all parties to respond and present evidence on issues of fact and argument on issues of law or policy. However, each agency, upon the motion of any party, may dispose of any defense or claim:

- (1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law; or

SFEAA and AFSCME Local 1025 both filed cross-motions for summary judgment. Summary judgments in workers' compensation cases are governed by ARSD 47:03:01:08: That regulation states:

ARSD 47:03:01:08. A claimant or an employer or its insurer may, anytime after expiration of 30 days from the filing of a petition, move with supporting affidavits for a summary judgment. The division shall grant the summary judgment immediately if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

The requirements of SDCL 1-26-18 (1) and ARSD 47:03:01:08 are essentially identical. The party seeking summary judgment bears the burden of demonstrating the lack of any genuine issue of material fact, and all reasonable inferences from the facts are viewed in the light most favorable to the non-moving party. Railsback v. Mid-Century Ins. Co., 2005 SD 64, ¶ 6, 680 N.W.2d 652, 654.

The burden is on the moving party to clearly show an absence of any genuine issue of material fact and an entitlement to judgment as a matter of law. *Estate of Elliott*, 1999 SD 57, ¶15, 594 NW2d 707, 710 (citing *Wilson*, 83 SD at 212, 157 NW2d at 21). On the other hand, [t]he party opposing a motion for summary judgment must be diligent in resisting the motion, and mere general allegations and denials which do not set forth specific facts will not prevent issuance of a judgment. *Breen v. Dakota Gear & Joint Co., Inc.*, 433 NW2d 221, 223 (SD 1988) (citing *Hughes-Johnson Co., Inc. v. Dakota Midland Hosp.*, 86 SD 361, 364, 195 NW2d 519, 521 (1972)). See also *State Auto Ins. Companies v. B.N.C.*, 2005 SD 89, 6, 702 NW2d 379, 382. [T]he nonmoving party must substantiate his allegations with sufficient probative evidence that would permit a finding in his favor on more than mere speculation, conjecture, or fantasy. *Elliott*, 1999 SD 57, ¶16, 594 NW2d at 710 (quoting *Himrich v. Carpenter*, 1997 SD 116, 18, 569 NW2d 568, 573 (quoting *Moody v. St. Charles County*, 23 F3d 1410, 1412 (8thCir 1994))).

McDowell v. Citicorp USA, 2007 SD 53, ¶ 22, 734 N.W.2d 14, 21.

In this case, there is no dispute of the material facts related to the grievance actions. Resolution of the matter requires the interpretation of statutes and contracts. The interpretation of both statutes and contracts present a question of law. Sanford v. Sanford, 2005 SD 34, ¶ 12, 694 NW2d 283, 287.

Per Student Allocation

The parties Negotiated Agreements tie the yearly salary increases of the Bargaining Unit's members to the yearly increases provided by the legislature to the "Per

Student Allocation” funding. Specifically, Article 29, Section 22.03 and 22.04 of the agreements state:

- 03: The [multi] year agreement is for 10 percent the first year and yearly increases in years two through [duration of agreements] will be at the state rate. For each year of the agreement the cost of steps is applied first and the remaining dollars will be put on the schedule.
- 04: State Rate is the “Per Student Allocation” as defined in section 13-13-10.1 (4). If during the six-year term in the contract there is a change in the State funding formula for education, the District and the Bargaining units will meet to determine the effect on the salary portion of the agreement. The District and the [Bargaining Unit] agree to modify the contract definition of State Rate if other sources of revenue are added to the State Rate Previous year “Per Student Allocation” to reflect the change in formula, then calculating the percentage difference between the previous year “Per Student Allocation” and the revised “Per Student Allocation.”

During the 2008 legislative session, two “Per Student Allocation” rates were enacted. A “Per Student Allocation” increase of 3% over FY 2008 was enacted at SDCL 13-13-10.1 (4). That statute states:

SDCL 13-13-10.1 (4) (2008) “Per student allocation," for school fiscal year 2009 is \$4,664.66. Each school fiscal year thereafter, the per student allocation is the previous fiscal year's per student allocation increased by the index factor;

A 2.5% increase was enacted at SDCL 13-13-10.6. That provision states

SDCL 13-13-10.6 (2008). For school fiscal year 2009, for any school district that does not certify to the secretary of education that its average teacher salary and benefits will increase by at least three percent, and that it will spend at least \$22.64 per fall enrollment as defined in subdivision 13-13-10.1(2A) on teacher salaries and benefits in excess of the school district's FY 2008 expenditures on teacher salaries and benefits, increased by the index factor as defined in subdivision 13-13-10.1(3), the per student allocation pursuant to subdivision 13-13-10.1(4) is \$4,642.02.

The District argues that the Negotiated Agreements entitle the Bargaining Unit’s member to a 2.5% wage increase for FY 2009 based on the “Per Student Allocation” proscribed in SDCL 13-13-10.6. On the other hand, SFEAA and AFSCME Local 1025 argue that their members were entitled to a 3% wage increase based on the “Per Student Allocation” proscribed in SDCL 13-13-10.1 (4).

The District argues that the “Per Student Allocation” referred to in the Negotiated Agreements is the 2.5% rate increase because that rate applies to all school districts unless the school districts certifies a 3% salary increase for its teachers at which time they qualified for the 3% “Per Student Allocation.” increase. The Bargaining Units argue that 3% is the intended rate increase for all school districts and that the “Per Student Allocation” is only decreased if the district fails to certify the 3% salary increase.

A fair reading of these statutes does not indicate whether either of these arguments is correct. There is no language which suggests that either percentage rate is common to all school districts and that the district then moves to the other rate based on its actions or non-action. Rather, the statutes establish two separate and distinct "Per Student Allocation" rates. A school district has the option to receive either rate increase based on whether it certifies a 3% salary increase for its teachers or does not.

In this case, the District certified to the secretary of education that its average teacher salary and benefits would increase by at least 3% on May 12, 2008. SB 187 did not become effective until July 1, 2008. Consequently, when the law came into effect on July 1st, the District no longer met the conditions of the contingency set forth in SDCL 13-13-10.6. The District's "Per Student Allocation" rate was established by SDCL 13-13-10.1 (4) which reflected a 3% increase over FY 2008. Indeed, by the time SB 187 became effective on July 1, 2008, all school districts intending to certify their teacher salary increases would have probably done so in order to receive the increased funding amounts when the first funding payments began in July of 2008.

In addition, it is unreasonable to suggest the parties negotiated contracts in which they based salary increases on a "Per Student Allocation" rate other than the rate chosen and received by the District. Therefore, the Bargaining Unit's members were entitled to a 3% salary increase for FY 2009 under the terms of the Negotiated Agreements.

State Funding Formula for Education

The District argues that enactment of SB 187 constituted a change in the state funding formula for education whereby the Negotiated Agreements dictate that the parties must meet to determine the affect on the salary portion of the contracts. The District further argues that this condition was met by the April 8, 2008 meeting when the District presented its MOU to the Bargaining Units. The Bargaining Units contrarily argue that the legislation was not a change to the state funding formula that required modification of the contracts, they contend that the legislation only provided a change of the "per student " amount received by the Distinct. The Bargaining Unit's position on this issue is correct.

First, from the perspective of the parties in this case, SB 187 did not change the formula. The District received its money in the form of a "Per Student Allocation" just as it had in preceding years. The only distinction between the FY 2009 funding and that received in previous years is the amount of the allocation

Second, The Negotiated Agreements state:

The District and the [Bargaining Unit] agree to modify the contract definition of State Rate if other sources of revenue are added to the State Rate previous year "Per Student Allocation" to reflect the change in formula, then calculating the percentage difference between the previous years "Per Student Allocation" and the revised "Per Student Allocation."

[emphasis added]. There were no other sources of revenue other than the "per Student Allocation" added to the funding. Consequently, the agreements do not require modification of the contracts.

Even if SB 187 constituted a change in the formula, the language of the agreements, as reflected above, suggest that the Bargaining Unit's member should receive the benefit of any additional moneys. Moreover, the agreements do not authorize the District to unilaterally interpret legislation or the terms of the contracts.

Unfair Labor Practice:

SFEAA also filed an unfair labor practice action against the District. State law defines an unfair labor practice as follows:

SDCL 3-18-3.1. It shall be an unfair practice for a public employer to:

- (1) Interfere with, restrain, or coerce employees in the exercise of rights guaranteed by law;
- (2) Dominate, interfere, or assist in the formation or administration of any employee organization, or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;
- (3) Discriminate in regard to hire or tenure or employment or any term or condition of employment to encourage or discourage membership in any employee organization;
- (4) Discharge or otherwise discriminate against an employee because he has filed a complaint, affidavit, petition, or given any information or testimony under this chapter;
- (5) Refuse to negotiate collectively in good faith with a formal representative; and
- (6) Fail or refuse to comply with any provision of this chapter.

SFEAA has failed to show that the District has violated any of the provision of this statute under the facts presented in this case.

Motion to Compel:

SFEAA filed a Motion to Compel. AFSCME Local 1025 joined that motion. The above determinations have rendered the question posed by those motions moot.

Order:

The District violated the terms of the Negotiated Agreements when it gave the SFEAA and AFSCME Local 1025's members a 2.5% salary increase for FY 2009, rather than the 3% increase provided in the Negotiated Agreements. Petitioner SFEAA and AFSCME Local 1025's Motions for Summary Judgment on their grievances are granted. The Respondent District's Motion for Judgment as a Matter of Law Pursuant to SDCL 1-26-18 is denied. Petitioner SFEAA's Motion for Summary Judgment on its unfair labor practice action is denied. This letter shall constitute the order in this matter.

Sincerely,

Donald W. Hageman
Administrative Law Judge