

**SOUTH DAKOTA DEPARTMENT OF LABOR and REGULATION
DIVISION OF LABOR AND MANAGEMENT
Pierre, South Dakota**

**ANDES CENTRAL TEACHERS
ASSOCIATION,**

HF No. 15G-5U, 2010/11

Petitioner,

v.

DECISION

**ANDES CENTRAL SCHOOL DISTRICT
#11-1 and BOARD OF EDUCATION,**

Respondents.

The Petitioner, the Andes Central Teachers Association (ACTA), filed with the Department of Labor and Regulation, pursuant to SDCL §§3-18-1.1, 3-18-3.1, 3-18-3.4 and 3-18-15.2, a Grievance Petition and Petition of Unfair Labor Practice against Respondent, the Andes Central School District #11-1 and the Board of Education (District). A hearing on the above matter was conducted by the Department on January 25, 2012. Attorney Anne Plooster represents ACTA. Attorney Timothy R. Whalen represents District. Both parties have submitted post hearing briefs and the Department being advised fully, hereby makes this Decision.

ISSUES

- I . Whether the Andes Central School District #11-1, Board of Education and/or its agents violated, misinterpreted and/or inequitably applied the policies, rules or regulations, or negotiated agreement of the school district when it voted to eliminate the concession supervisor, school paper advisor and yearbook advisor positions and reassigned these positions to faculty without compensation as other duties as assigned?

- II . Whether the Andes Central School District #11-1, Board of Education and/or its agents committed an unfair labor practice when it voted to eliminate the concession supervisor, school paper advisor and yearbook advisor positions; and reassigned these positions to faculty members without compensation; and when it changed the negotiated compensation for these positions to zero without negotiating said change?

FACTS

In early 2011, after finding out the funding for the 2011/12 school year, the District Superintendent, Mr. Darrell Mueller, sent an e-mail to the Andes Central staff inviting them to a meeting on March 21, 2011. The purpose of the meeting was to receive input from the staff regarding possible cuts the District would have to take for the 2011/12 school year. The staff was also invited to a special Board meeting on March 24 to address the same topic. The community was also specifically informed about the pending cuts to the school budget and invited to attend the March 24 meeting.

Members of ACTA were given the opportunity to voice their opinions as to which cuts can and should be made to the District Budget. The local president of the ACTA provided District with a list of cuts suggested by its members. The ACTA and the District did not negotiate the elimination of pay to certain extracurricular activity advisors.

During a subsequent Board meeting on March 28, 2011, the District voted to eliminate the positions of concession stand supervisor, school yearbook advisor, and school paper advisor, among other budget items eliminated. After these positions were eliminated, and the extra pay for these duties was eliminated, the District assigned the positions to current staff as unpaid “other duties as assigned.” The District did not ask for volunteers to perform these duties.

The duties of the concession stand supervisor were assigned to the three Junior Class advisors. The advisors are expected to perform the duties without compensation. Many of these duties take place after the regular school day and during the summer months when school is not in session.

The duties of the school paper advisor and the school yearbook advisor stayed with the two teachers who co-teach the school yearbook/school paper class. Previously, these two teachers were paid for the extra duties as co-advisors, as the class has other topics besides just the school paper and the school yearbook. For the current 2011/12 school year, the two teachers are expected to complete these extra duties without additional compensation. Many of the duties expected of these advisors, takes place after the regular class day and during the summer months when school is not in session. The school yearbook contains photos and pages from graduation and is not sent into the publisher until early to mid-June.

The 2011/12 Negotiated Agreement between ACTA and the District sets the school day as 8 am to 4 pm, unless permission to leave is granted by the principal or superintendent. The District contracts with the teachers for 178 school days. The provision in the individual teacher contracts which deals with days prior to and after the school year, reads as follows:

It is agreed that Employee will attend such preschool meetings institutes, and professional meetings during this contract as they are listed on the school calendar and those deemed necessary by the school board or administration; and that Employee will be present at the school the necessary days preceding the beginning of the teaching term and the necessary days after the close of the

teaching term for the purpose of preparation for the beginning of the term and the proper closing of the term.

The extra duty section of the negotiated agreement reads in pertinent part, “1) Extracurricular salary shall be as set forth in Appendix B, which is attached to and incorporated into this agreement. 2) Extra duty pay shall be paid by separate paycheck upon conclusion of the supplemental activity.”

Some activities listed on Appendix B do not have participants; those activities do not have an advisor assigned. There are three positions listed on Appendix B with volunteer advisors. In 2011, the weight-room supervisor position was also eliminated; staff and non-staff volunteered to supervise the weight room. The 5th and 6th grade boys and girls basketball programs were eliminated, but a volunteer offered to coach the 5th and 6th grade teams. There were no involuntary assignments to these three positions.

The positions of Concession Supervisor, School Annual Advisor and School Paper Advisor are non-voluntary, unpaid positions. These are the only advisor positions listed on Appendix B for which the staff is not voluntary and is unpaid. These positions are also the only positions which are expected to work prior to the beginning of school and past the end of school, without compensation. The individual extracurricular contracts with the District note that the duties associated with School Annual and Concession Supervisor may begin prior to or end after the regular school term.

ANALYSIS

I. Whether the Andes Central School District #11-1, Board of Education and/or its agents violated, misinterpreted and/or inequitably applied the policies, rules or regulations, or negotiated agreement of the school district when it voted to eliminate the concession supervisor, school paper advisor and yearbook advisor positions and reassigned these positions to faculty without compensation as other duties as assigned?

As the grievant, the burden of proof falls upon ACTA to show that the District violated, misinterpreted, and/or inequitably applied its existing policies, rules or regulations or failed to follow the contracts or agreements. *Rininger v. Bennett County School District*, 468 NW2d 423 (SD 1991).

“The law requires public employers to negotiate matters of pay, wages, hours of employment, or other conditions of employment.” *Sisseton Educ. Ass’n v. Sisseton Sch. Dist. No. 54-8*, 516 N.W.2d 301, 303 (S.D. 1994) (citing SDCL 3-18-3). The law regarding contract construction and interpretation is also well-settled. The South Dakota Supreme Court recently wrote:

Trade agreements or collective bargaining agreements are contracts under South Dakota law. Contracts negotiated between teachers and public school districts are like any other collective bargaining agreement. Disputes over collective

bargaining agreements negotiated between school districts and teachers are settled by application of general contract principles. Disputes over the meaning of terms in teacher contracts are settled by applying general principles of contract law.

When the terms of a negotiated agreement are clear and unambiguous, and the agreement actually addresses the subjects that it is expected to cover, there is no need to go beyond the four corners of the contract. When the language of the collective bargaining agreement is ambiguous, we may go outside the four corners of the contract to interpret its meaning.

Hanson v. Vermillion Sch. Dist., 2007 S.D. 9, ¶ 27-28, 727 N.W.2d 459, 468 (internal citations and quotes omitted).

The Negotiated Contract and the individual teaching Contracts are clear and unambiguous. There is no need for the analysis to go beyond the four-corners of the contract. The teachers are expected to work for 178 days with a few days before school or after school for “preschool meetings, institutes, and professional meetings” or for the “proper [close] of the term.” There is no requirement in either contract that staff members start the term early or stay afterwards to start or complete extracurricular activity job requirements that are not contracted for, or for which they are not being compensated.

The South Dakota law regarding the hours in a school day is located at SDCL §13-26-1. It states that the “local school board shall set the number of days in a school term, the length of a school day, and the number of school days in a school week. ... The number of hours in the school term for grades four through twelve may not be less than nine hundred sixty-two and one-half hours.” *Id.* The District carried out their legal requirement and set the hours and the days in the Negotiated Contract.

District clearly had the right to eliminate the advisor positions in question, without negotiation. The setting of school classes and activities is a managerial right that does not need to be negotiated. On the other hand, the Reduction in Force policy is not a managerial right and has been negotiated between the parties. The Reduction in Force policy contained within the Negotiated Agreement applies to activities as well as classes. So when the District chose to eliminate an advisor position, the RIF policy for rehire went into effect.

The RIF policy more clearly comes into play when and if the District wanted to rehire an advisor position that was eliminated. In this case, the District rehired, but did not budget for or provide the salary assigned to the position in the negotiated agreement. The only position that was not assigned to the previous advisor was the position of concessions supervisor. That position was previously held by a staff member who is no longer employed by the District. The RIF policy was followed by the District in assigning the advisor positions in question.

If an advisor position has a volunteer advisor, then the negotiated salary does not attach to the position. But when the advisor is not voluntary, then the negotiated salary is not expected to be attached to the position. The advisor positions in question here today, are not voluntary advisors. Therefore, the negotiated salary needs to be budgeted for and provided to the advisors,

if the position is expected to start prior to the start of the school year and end after the end of the school year.

There is the argument that these advisor positions are “other duties as assigned.” This argument would be a compelling argument, if the advisors were not required to work outside the school year. The school has no authority to assign to teachers “other duties” when the duties are carried out beyond the school year and number of days listed in the contract. If that was the case, then the school could require the teachers to teach extra classes, coach football, give music lessons, wax floors, paint walls, and generally work during the summer *without pay*. The teachers’ contracted yearly salary, although split into 9 or 12 monthly payments (depending upon the choice of the staff member), is for teaching duties performed during the 178 day school year with a few days prior to and post school year.

To interpret the paragraph regarding pre and post term duties taken from the individual teaching contracts, as set out in the facts above, the phrase “those deemed necessary” in the first sentence, is modified by the preceding terms, “preschool meetings, institutes, and professional meetings.” The term “proper closing” is not defined within the contract, but would be defined by past practice.

The District violated and misinterpreted the negotiated agreement between ACTA and the District when it voted to eliminate the concession supervisor, school paper advisor and yearbook advisor positions and reassigned these positions to faculty without compensation as other duties as assigned. The District must either compensate the advisors for the non-voluntary and uncontracted work performed prior to and after the end of the school year, or the advisors are not required to perform any duties outside the 178 contracted days, unless set forth in the contract or negotiated agreement.

II. Whether the Andes Central School District #11-1, Board of Education and/or its agents committed an unfair labor practice when it voted to eliminate the concession supervisor, school paper advisor and yearbook advisor positions; and reassigned these positions to faculty members without compensation; and when it changed the negotiated compensation for these positions to zero without negotiating said change?

As Petitioner, the burden of proof falls on ACTA to show that District committed an unfair labor practice. *Rininger*, 468 NW2d 423.

The statute regarding unfair labor practice for employers is found at SDCL §3-18-3.1. It reads:

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.

SDCL §3-18-3.1. ACTA is the exclusive bargaining representative in respect to wages, hours of employment, rate of pay, or other conditions of employment. SDCL §3-18-3 states in pertinent part:

Representatives designated or selected for the purpose of formal representation by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all employees in such unit for the purpose of representation in respect to rates of pay, wages, hours of employment, or other conditions of employment;

SDCL §3-18-3. Before making cuts to the budget, the District reached out to the public, including all the teachers. The President of the ACTA wrote a letter regarding the budget cuts to the District and used his title in signing the letter. As previously stated, it is a managerial right for the district to cut specific activities or classes. It is not a managerial right to set the wages or rates of pay without negotiation.

The rates of pay for the advisor positions are still set out in the negotiated agreement. The negotiated wages for the advisor positions in question were not changed. However, the District failed to recognize that the amounts should be paid out to the advisors. The District did not refuse to negotiate with ACTA, as ACTA did not request that negotiations be reopened. The District simply failed to follow the Negotiated Agreement. The District did not commit an Unfair Labor Practice, as defined by law.

REMEDY

The District shall compensate, pursuant to the 2011/12 negotiated agreement, the concession supervisors, the school paper advisor, and the yearbook advisor for any time spent prior to the start of the school year and any time spent after the close of this school year for completion of the non-voluntary duties associated with the extracurricular activities advisor positions assigned to them by the District.

ACTA shall submit Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within twenty (20) days from the receipt of this Decision as well as any Proposed Findings and Conclusions. The District shall have twenty (20) days from the date of

