

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

WILLIAM LILLIBRIDGE,

HF No. 4 G, 2005/06

Petitioner,

DECISION

vs.

**MEADE SCHOOL DISTRICT #46-1
and BOARD OF EDUCATION,**

Respondent.

This matter came before the Department of Labor based on a grievance complaint filed by William Lillibridge (Lillibridge) pursuant to SDCL 3-18-15.2. A hearing was held before the Division of Labor and Management on March 23, 2006, in Sturgis, South Dakota. Anne Plooster represented Lillibridge. Bruce A. Hubbard represented the Meade School District and Board of Education (District).

At the hearing, three witnesses testified live including Lillibridge, Barry Furze and James Heinert. Exhibits 1 through 31 were offered and received into evidence, with the exception of Exhibit 25, which was withdrawn by the District. The sole issue presented was whether the District violated, misinterpreted or inequitably applied the negotiated agreement of the District by failing to follow Appendix D, Termination and Non-Renewal of Contract, of the 2004-2005 Agreement between Meade Education Association and Meade School District 46-1 when terminating or non-renewing Lillibridge's employment.

FACTS

The following facts were established by a preponderance of the evidence.

Lillibridge is a retired Major in the United States Marine Corps. Lillibridge has an MA in educational development and management. In addition, Lillibridge has over twenty-one years of active duty experience in the Marine Corps.

In July 1996, the District hired Lillibridge as an instructor for the newly established Marine Corps junior ROTC program. Lillibridge obtained the required certification from the Marine Corps to be certified to teach the ROTC program and maintained such certification throughout his employment with the District. Lillibridge did not hold a teaching certificate issued by the South Dakota Department of Education. However, such teaching certificate was not required as part of his employment with the District.

Lillibridge was a member of MEA, which is the sole and exclusive bargaining representative for all regularly employed certificated personnel, also known as the Certified Staff. The District was aware that Lillibridge was a member of MEA. The District treated Lillibridge as a member of the Certified Staff throughout his employment. Lillibridge received the same salary adjustments to his contract as teachers received each year. At one point during his tenure, Lillibridge was placed on the MA lane on the salary schedule and then appropriately moved for salary adjustments according to his educational level. Lillibridge also had retirement taken out of his salary, the same as

any other teacher employed by the District. With two exceptions, Lillibridge was evaluated using the same forms used to evaluate teachers. Lillibridge received the same benefits as other teachers who were members of the Certified Staff and represented by MEA. Lillibridge was covered by the appropriate negotiated agreement between the District and MEA.

Lillibridge worked as the District's ROTC instructor from 1996 through the 2004-2005 school year. In the spring of 2005, the District did not renew Lillibridge's contract. On May 11, 2005, the District issued Lillibridge a Notice of Termination. Lillibridge received the notice on May 13, 2005. Lillibridge filed a grievance challenging the dismissal. The District denied Lillibridge's request for a due process hearing pursuant to Appendix D, Termination and Non-Renewal, of the 2004-2005 Negotiated Agreement.

Lillibridge filed his Petition for Hearing on Grievance with the Department and the hearing ensued. Lillibridge was a credible witness. This is based on his consistent testimony and based on the opportunity to observe his demeanor at the hearing.

Other facts will be developed as necessary.

ISSUE

WHETHER THE DISTRICT VIOLATED, MISINTERPRETED OR INEQUITABLY APPLIED THE NEGOTIATED AGREEMENT OF THE DISTRICT BY FAILING TO FOLLOW APPENDIX D, TERMINATION AND NON-RENEWAL OF CONTRACT, OF THE 2004-2005 AGREEMENT BETWEEN MEADE EDUCATION ASSOCIATION AND MEADE SCHOOL DISTRICT 46-1 WHEN TERMINATING OR NON-RENEWING LILLIBRIDGE'S EMPLOYMENT?

SDCL 3-18-1.1 defines a grievance as "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." SDCL 3-18-15.2 provides, in part:

If, after following the grievance procedure enacted by the governing body, the grievance remains unresolved, except in cases provided for in § 3-6A-38, it may be appealed to the Department of Labor, if notice of appeal is filed with the department within thirty days after the final decision by the governing body is mailed or delivered to the employee. 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.

"Deference is not given to the school board's decision by the department in a grievance review under SDCL 3-18-15.2." Cox v. Sioux Falls Sch. Dist. 49-5, 514 N.W.2d 868 (S.D. 1994). The burden of proof is on Lillibridge, the party alleging the violation. Rininger v. Bennett County Sch. Dist., 468 N.W.2d 423 (S.D. 1991).

At issue is whether the District should have complied with Appendix D, Termination and Non-Renewal of Contract, of the 2004-2005 Agreement between Meade Education Association and Meade School District 46-1 (Agreement) when the District terminated or non-renewed Lillibridge's employment. The District's position was that Lillibridge was not a continuing contract employee; therefore, not subject to the provisions of the Agreement. Lillibridge argued that he was covered by the Agreement and the District failed to comply with the due process rights guaranteed by the Agreement when the District non-renewed his employment.

Lillibridge was a member of MEA, the sole and exclusive bargaining representative for the Certified Staff. Even so, the District argued that the Agreement did not apply to Lillibridge because his position as ROTC instructor was outside the scope of the Recognition Clause in Article 1, Section 1.1 of the Agreement. The Recognition Clause stated:

Pursuant to the provision of SDCL 3-18, the School Board of School District 46-1, Meade County, South Dakota, hereinafter referred to as the "Board," recognizes Meade Education Association, hereinafter referred to as the "Association," as the sole and exclusive representative for all regularly employed certificated personnel, hereinafter referred to as "Employee," except for the Superintendent, Business Manager, Principals, Assistant Principals, Director of Community Education/Curriculum Coordinator, Director of Special Services, Activities Director, and any future position established by the Board where the person filling the position is required by the State of South Dakota, either by law or regulation to have an administrative endorsement.

There was no dispute that Lillibridge was regularly employed by the District as a ROTC instructor. The District argued that Lillibridge was not a "certificated" employee.

The District contended that "certificated personnel" refers only to those individuals who hold South Dakota teaching certificates pursuant to SDCL Chapter 13-42. The District's argument must fail because the District is attempting to add language to the Agreement that is not contained within the Agreement. As the South Dakota Supreme Court stated, "[a] school board cannot rewrite an incompletely specified agreement, inserting or deleting to make it mean more than its words plainly declare." Gettysburg Sch. Dist. 53-1 v. Larson, 2001 SD 91, ¶ 14. If the parties wanted to define "certificated personnel" as only those individuals holding a valid teaching certificate from the South Dakota Department of Education, the parties could have adopted such terms when the Agreement was created. This was not done. The Agreement does not define "certificated personnel" as only those individuals who hold teaching certificates pursuant to SDCL Chapter 13-42.

The plain meaning of "certificated personnel" is clear and unambiguous. The term encompasses all those who must be certified to do their positions. The term is not limited to only those with teaching certificates. The credible evidence established that Lillibridge was, in fact, a "certificated" employee. In order to teach in the ROTC program, Lillibridge was required to be certified by the Marine Corps. Throughout his employment, Lillibridge maintained the necessary certification required by the Marine Corps in order to teach the ROTC program. Lillibridge was a "certificated personnel"

and falls within the Recognition Clause of the Agreement. As such, the District was bound to follow the Agreement when it non-renewed Lillibridge's employment.

In addition, Lillibridge was subject to the terms and conditions of the Agreement because the District treated Lillibridge as a member of the Certified Staff (or as a continuing contract employee) during his tenure with the District. In other words, the District treated Lillibridge's employment as subject to the Agreement. For example, from 1996 through the 2004-2005 school year, each individual employee contract signed by Lillibridge contained the following language:

The party of the first part is to perform all duties assigned by the party of the second part under the supervision of its Superintendent of Schools and in accordance with the provisions of the laws of the State of South Dakota, school policy, the applicable Negotiated Agreement between the Meade Education Association and Meade School District 46-1, and all administrative directives relating to the duties of the party of the first part.

(emphasis added). In fact, all individual employee contract with members of MEA's bargaining unit contained this language. As Lillibridge was a member of MEA, his individual employment contract mirrored the individual contracts of other members of MEA.

Further, Article 10, Effect of Agreement, Section 10.2 of the Agreement stated, "Individual Contract – The terms and conditions of this Agreement shall be reflected in individual contracts or employment agreements. The contract document shall be set forth in Appendix G attached hereto and made part hereof. This document shall be issued to each teacher hired." The language in Lillibridge's individual employment contracts and the Agreement is clear and unambiguous. Lillibridge's individual contracts provided that his employment will be governed by the Agreement. The District failed to abide by the clear terms of the individual employment contracts and the Agreement. The District failed to show why the terms and conditions of the individual employment contracts and the Agreement should not be enforced. Therefore, Lillibridge's employment was governed by the Agreement and the District is bound by the terms and conditions contained within the Agreement.

In addition, the District's actions during Lillibridge's years of employment showed that the District considered and treated Lillibridge as a part of the Certified Staff. On March 31, 2004, Lillibridge received an "Employment Notification" from Principal Tim Drone. The notification stated:

The Negotiated Agreement states:

All teachers shall receive written notice from their evaluators by April 1 of each year indicating the evaluator's employment recommendation. This notice shall indicate one of the following three recommendations:

- A. Recommended for continued employment.
- B. Recommended for continued employment with qualifications.
- C. Not recommended for continued employment.

(emphasis added). Once again, the District treated Lillibridge as a member of the Certified Staff. In addition, Lillibridge received virtually identical employment contracts each year and received the same raises as the teachers who were covered by the Agreement. If negotiations were not completed when the individual employment contracts were issued, he received the same addendum notice that the teachers received. Lillibridge received credit for educational course work just like the teachers. He was evaluated under the same system as the teachers, with two exceptions during his first and last year of employment. Lillibridge had SDRS retirement taken from his salary from the beginning of his employment, the same as the teachers. The District disputed Lillibridge was a part of the MEA bargaining unit only after the District decided to remove Lillibridge from his position. But, as the evidence established, Lillibridge was a member of MEA, a member of the Certified Staff and his employment was governed by the Agreement.

As Lillibridge's employment was subject to the Agreement, the District must abide all terms in the Agreement. Appendix D, Termination and Non-Renewal of Contract, of the Agreement provided, "[t]he legal provisions applying to termination and non-renewal of a teacher's contract are contained in SDCL 13-43-6.1 to SDCL 13-43-6.6, inclusive." "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 Ed. Ass'n v. Wessington Springs Sch. Dist. #36-2, 467 N.W.2d 101, 104 (S.D. 1991). "Disputes over the meaning of terms in [a negotiated agreement] are resolved under the general principles of contract law." Gettysburg, 2001 SD 91, ¶ 11. Terms in a contract are to be given "their plain and ordinary meaning." Harms v. Northland Ford Dealers, 1999 SD 143, ¶ 12 (citation omitted). "When the terms of a negotiated agreement are clear and unambiguous, and the agreement actually addresses the subject that it is expected to cover, 'there is no need to go beyond the four corners of the contract.'" Wessington Springs, 467 N.W.2d at 104 (citation omitted). "The 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.

The Agreement is clear and unambiguous. The Agreement indicated "[t]he legal provisions applying to termination and non-renewal of a teacher's contract are contained in SDCL 13-43-6.1 to SDCL 13-43-6.6, inclusive." As Lillibridge was subject to the terms and conditions of the Agreement, he was guaranteed a due process hearing pursuant to SDCL 13-43-6.2. The District must abide by the terms of the Agreement. See Wessington Springs Educ. Ass'n v. Wessington Sch. Dist. No. 36-2, 467 N.W.2d 101, 104 (S.D. 1991) and Gettysburg, 2001 SD 91, ¶ 11 ("Contracting parties are held to the terms of their agreement[.]"). The District failed to provide Lillibridge with his due process rights guaranteed by the Agreement when his employment was non-renewed.

The District violated and misinterpreted the Agreement when it failed to afford Lillibridge due process rights guaranteed by the Agreement. Lillibridge's request for relief as set forth in his Petition for Hearing on Grievance is granted in all respects.

Lillibridge shall submit Findings of Fact and Conclusions of Law, and an Order consistent with this Decision, and if necessary, proposed Findings and Conclusions, within ten days from the date of receipt of this Decision. The District shall have ten days from the date of receipt of the Findings 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, Lillibridge shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 29th day of August, 2006.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge