

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

**MITCHELL EDUCATION
ASSOCIATION,
Grievant,**

HF No. 6G, 2010/11

v.

DECISION

**MITCHELL SCHOOL DISTRICT #17-2
and BOARD OF EDUCATION,
Respondent.**

This matter comes before the Department of Labor and Regulation based on Grievant's Petition for Hearing on Grievance filed pursuant to SDCL §3-18-15.2. Anne Plooster appeared on behalf of Grievant Mitchell Education Association. Rodney Freeman Jr. represented Respondent Mitchell School District #17-2 and Board of Education. The Department of Labor and Regulation conducted a hearing in Mitchell, South Dakota. Upon consideration of the live testimony given at hearing and the evidence presented, Grievant's Petition for Hearing and request for relief is hereby denied.

Issue(s):

Did Respondent violate, misinterpret, or inequitably apply the policies, rules or regulations or negotiated agreement when it required teachers to supervise locker rooms without additional pay?

Facts:

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

Mitchell Education Association (MEA) and Mitchell School District #17-2 and Board of Education (District or Board) are parties to a Negotiated Agreement.

Due to a reduction in force, one of the two high school PE teacher positions was eliminated after the 2009-10 school year. The male PE teacher now instructs all of the PE sections, and supervises the boys' locker room, but was unable to supervise the girls' locker room before and after class while the students changed clothes.

On May 24, 2010, Mitchell High School Principal Yvonne Palli emailed the staff her intentions to assign girls' locker room duty for the 2010-11 school year to female staff. There was not to be any additional compensation for these assignments. On August 16, 2010, Palli emailed her staff with the actual locker room supervision assignments.

Other facts will be developed as necessary.

Analysis

Did Respondent violate, misinterpret, or inequitably apply the policies, rules or regulations or negotiated agreement when it required female teachers to supervise the girls' locker rooms without additional pay?

SDCL §3-18-1.1 defines a grievance:

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 defined by SDCL §3-18-15.2. SDCL§ 3-18-15.2 reads, in part:

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 burden of proof is on the grievant. *Rininger v. Bennett County Sch. Dist.*, 468 N.W.2d 423 (S.D. 1991).

Grievant argues that the assigned female teachers were substituting for the male PE teacher, requiring the District to compensate them under Policy 715.11, Extra Payments to Contracted Teachers.

Policy 715.11 provides in part,

Contracted teachers have traditionally been required to perform certain activities for the school district and the children, which it serves without additional pay. Certain activities, however, have earned additional pay beyond that noted in the contract. In order to eliminate confusion over which activities earn extra pay and which do not, the following list shall be respected by both the district and contracted teachers:

...

9. Substituting: When a contracted teacher is asked to substitute for another during their open period, they shall be compensated at a rate of \$20.00 per hour or \$30.00 per middle school/high school block.

Contracted teachers substituting beyond fifteen (15) consecutive days in the same assignment will receive, on the 16th day, their daily rate of pay. Such additional FTE, however, may be reduced when appropriate at the discretion of the administration and not fall under staff reduction language provisions.

Grievant argues that the female teachers are performing the exact same duties the male PE teacher is, and essentially doing his job, the only difference being that the male PE teacher is being paid and the female teachers are not. Grievant argues that this is in violation of Policy 715.11(9).

Respondent argues that the policies of the District permit supervision duties without additional pay. Respondent argues that Policy 723 of the negotiated agreement allows for the assignment of supervision during non-class periods.

Policy 723 provides in relevant part,

Each full time senior high teacher ... shall be assigned five periods or blocks of classes. The non-class periods or block assignments may include Student Responsibility Block, supervision, or comparable activity. Each assignment shall include, at a minimum, one planning period or block.

Respondent further argues that in the 2010-11 school year, when the full time male PE teacher was absent and a female substitute was hired, male teachers were assigned supervision duty without additional pay; therefore it was an established practice that had not previously been contested.

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...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. 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.

Wess. Spgs. Ed. Assc. v. Wess. Spgs. Sch. Dst. 467 N.W.2d 101, 104 (citations omitted).

In this case, the negotiated agreement between MEA and the District specifically addresses supervision assignments. Policy 723 is clear and unambiguous in that it allows for the assignment of supervision or comparable activity during non-class periods.

The supervision of the girls' locker room for a few minutes before and after class does not constitute substitution that would require additional compensation under Policy 715.11. The supervision duty in question takes place during the female teachers' non-class period and still allows a substantial period for teacher preparation. Also the supervision does not require instructional time or duties that would be in substitute of another teacher.

Grievant has failed to show that the District violated, misinterpreted, or inequitably applied the policies, rules or regulations or negotiated agreement when it assigned female teachers to supervise the girls' locker rooms without additional pay.

Respondent shall submit proposed Findings of Fact, Conclusions of Law, and an Order consistent with this Decision within fifteen (15) days from the date of receipt of this Decision. Grievant shall have ten (10) days from the date of receipt of Respondent'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, Respondent's shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 12th day of October, 2011.

SOUTH DAKOTA DEPARTMENT OF LABOR AND REGULATION

/s/ Taya M Runyan

Taya M Runyan
Administrative Law Judge