

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

ROBERT REYNOLDS,

HF No. 7 G, 2002/03

Petitioner,

DECISION

vs.

**DOUGLAS SCHOOL DISTRICT 51-1
and BOARD OF EDUCATION,**

Respondent.

This matter came before the Department of Labor based on a grievance complaint filed by Robert Reynolds (Reynolds) pursuant to SDCL 3-18-15.2. A hearing was held before the Division of Labor and Management on April 12, 2005, in Rapid City, South Dakota. Anne Plooster represented Reynolds. Craig A. Pfeifle represented the Douglas School District and Board of Education (District).

This matter involved the involuntary transfer of Reynolds from head high school track coach to assistant middle school track coach. The transfer was initiated on May 29, 2002, and the Douglas Board of Education voted on and approved the transfer on June 10, 2002. Reynolds presented the following four issues at hearing:

- 1) Whether Article X, Section A, Involuntary Transfers and Assignments, of the negotiated agreement applies to extracurricular positions;
- 2) Whether the involuntary transfer provision as it relates to extracurricular positions violates the law;
- 3) Whether the District violated, misinterpreted or misapplied the involuntary transfer provision when it transferred Reynolds from head high school track coach to assistant middle school track coach; and
- 4) Whether the superintendent abused any discretion he may have under the involuntary transfer provision?

FACTS

The Department finds the following facts, as established by a preponderance of the evidence:

1. Teachers in the District, including Reynolds, are employed under a collective bargaining agreement negotiated between the District and the Douglas Education Association. The relevant negotiated agreement here covered the 2001-2002 and 2002-2003 school years.
2. Reynolds has been employed with the District as a middle school physical education teacher for the past twenty-one years. In addition, Reynolds was the head high school track coach since the 1985-1986 school year.

3. After both the 2000 and 2001 track seasons, Reynolds received unsatisfactory performance evaluations from his immediate supervisor, Don Butterbaugh, the District's Activities Director.
4. In the 2000 evaluation, Butterbaugh noted that Reynolds did not meet expectations in the "Administration" and "Relations" categories. Specifically, Reynolds did not meet expectations in the care of equipment, adherence to district and school philosophy and policies, working with students and communication with individual players.
5. In 2001, Reynolds did not meet expectations in the organization of staff, communication with coaches, working with students, working with staff and communication with individual players.
6. Reynolds admitted that he and Butterbaugh had a "disturbing communication problem."
7. Butterbaugh recommended on both the 2000 and 2001 evaluations that Reynolds not be reassigned as the head high school track coach.
8. Despite Butterbaugh's recommendations, Reynolds was given a contract for the head high school track coach position for the 2001-2002 school year.
9. The problems with Reynolds were brought to Superintendent Joe Schmitz's attention by Butterbaugh and also the high school principal.
10. As a result, during the 2002 track season, Reynolds was compensated as head high school track coach, but he was not allowed to perform any coaching duties.
11. In light of the concerns over Reynolds' performance, Superintendent Schmitz "felt that it would be to the betterment of the [high school track] program if we got somebody else in the position."
12. On May 29, 2002, Superintendent Joe Schmitz decided to initiate a transfer of Reynolds from head high school track coach to assistant middle school track coach based upon recommendations from Butterbaugh and the high school principal.
13. Superintendent Schmitz determined that the involuntary transfer of Reynolds to assistant middle school track coach was best for the welfare of the schools and the track program.
14. After Superintendent Schmitz conducted a meeting with Reynolds and his immediate supervisor on May 29th, Schmitz initiated the involuntary transfer.
15. On June 10, 2002, the Douglas Board of Education approved Reynolds' transfer from head high school track coach to assistant middle school track coach.
16. Reynolds appropriately filed his grievance and the Department conducted a hearing to investigate this matter.
17. Other facts will be developed as necessary.

ISSUE I

WHETHER ARTICLE X, SECTION A, INVOLUNTARY TRANSFERS AND ASSIGNMENTS, OF THE NEGOTIATED AGREEMENT APPLIES TO EXTRACURRICULAR POSITIONS?

The District applied Article X, Section A, the involuntary transfer provision, of the negotiated agreement to Reynolds' extracurricular position. Reynolds argued that the

involuntary transfer provision is inapplicable to extracurricular positions and the District erred in using that provision to involuntarily transfer Reynolds from head high school track coach to assistant middle school track coach. “Disputes over the meaning of terms in [a negotiated agreement] are resolved under the general principles of contract law.” Gettysburg Sch. Dist. 53-1 v. Larson, 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.

Article VIII of the negotiated agreement provides, “[i]ndividual teacher’s contracts shall be in the form as provided in Appendix C, and shall include all extra-duty assignments which are agreed to between the teacher and the Board.” (emphasis added). The teacher’s contract, which is Appendix C, states, “[s]uch services are to be rendered in the building and at the level specified below, subject to the assignment and transfer clause of the Negotiated Agreement between the District and the Douglas Education Association.” (emphasis added).

Pursuant to Article VIII of the negotiated agreement, all extra-duty assignments are included in the teacher’s contract. As per the teacher’s contract, including the contract signed by Reynolds, all extra-duty assignments are subject to the assignment and transfer clause of the negotiated agreement. Reading the contract as a whole, the negotiated agreement unambiguously provides that the assignment and transfer clause applies to all extra-duty assignments. Therefore, Reynolds’ argument that the involuntary transfer provision is inapplicable to extracurricular positions is without merit. The negotiated agreement clearly contemplates that all assignments and transfers are subject to Article X of the negotiated agreement. The District did not err in using the assignment and transfer provision to transfer Reynolds from head high school track coach to assistant middle school track coach.

ISSUE II

WHETHER THE INVOLUNTARY TRANSFER PROVISION AS IT RELATES TO EXTRACURRICULAR POSITIONS VIOLATES THE LAW?

Reynolds next argued that the application of the involuntary transfer provision to extracurricular positions violates the law in two ways: a) it is an illegal circumvention of Reynolds’ protected property interests and b) it is an illegal demotion. Reynolds’ arguments must be rejected.

The District must abide by the terms of the Negotiated Agreement. See Wessington Springs Educ. Ass’n v. Wessington Sch. Dist. No. 36-2, 467 N.W.2d 101, 104 (S.D. 1991). Not only is the District bound by the terms of the negotiated agreement, but Reynolds is as well. “Contracting parties are held to the terms of their agreement[.]” Gettysburg, 2001 SD 91, ¶ 11.

The negotiated agreement, which Reynolds is subject to, enumerates a specific policy regarding assignments and transfers. The negotiated agreement is not ambiguous. The negotiated agreement clearly sets forth the procedure and constraints for an involuntary transfer. The negotiated agreement places no restrictions to which positions a district employee may be transferred. Reynolds failed to show that the District's application of the involuntary transfer provision violated any terms of the negotiated agreement.

ISSUE III

WHETHER THE DISTRICT VIOLATED, MISINTERPRETED OR INEQUITABLY APPLIED THE INVOLUNTARY TRANSFER PROVISION WHEN IT TRANSFERRED REYNOLDS FROM HEAD HIGH SCHOOL TRACK COACH TO ASSISTANT MIDDLE SCHOOL TRACK COACH?

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.

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 other authority, commission, or board, or any other branch of the public service, as they apply to the conditions of employment." The burden of proof is on Reynolds, the party alleging the violation. Rininger v. Bennett County Sch. Dist., 468 N.W.2d 423 (S.D. 1991).

The District's involuntary transfer provision is found at Article X, Section A of the negotiated agreement. This section specifically provides:

A. Involuntary Transfers and Assignments:

Each employee of the Board of Education shall be assigned to a specific position at the discretion of the superintendent of schools and may be transferred to any other position as the superintendent may direct.

Transfers may be at the initiative of the superintendent or other administrative officers for any purpose, which, in the judgment of the superintendent, is for the welfare of the employee or the schools. An administrative transfer or reassignment shall be made only after a conference between the teacher involved, the superintendent, and the teacher's immediate

supervisor, at which time the teacher will be notified of the reason therefor. (emphasis added).

Article X provides the District's superintendent with broad powers to assign, reassign or transfer teachers.

Article X is clear and unambiguous and the terms of this section are to be given their plain and ordinary meaning. Thus, Superintendent Schmitz may initiate a transfer when it is for the welfare of the employee or the schools. Here, the evidence established that Superintendent Schmitz initiated the transfer of Reynolds from head high school track coach to assistant middle school track coach due to Reynolds' unsatisfactory performance evaluations and Schmitz's concerns about Reynolds' performance as head high school track coach. Schmitz was concerned with Reynolds' inability to generate more enthusiasm, his lack of organizational skills, his poor interaction with the student athletes and his inability to build a successful track program. Also, Butterbaugh and the high school principal recommended the change to Schmitz for "the betterment of the [high school track] program."

Additionally, pursuant to the negotiated agreement, a conference between the teacher involved, the superintendent and the teacher's immediate supervisor must occur before the transfer takes place in order to notify the teacher of the reasons for the transfer. In compliance with the negotiated agreement, Superintendent Schmitz met with Reynolds and his immediate supervisor before the transfer was executed to inform Reynolds of the transfer and the reasons for the transfer. Superintendent Schmitz complied with all the terms of the involuntary transfer provision.

Reynolds also raised the issue that Superintendent Schmitz abused any discretion he may have under the involuntary transfer policy. Reynolds' argument is misplaced. The appropriate standard of review is found in the language of SDCL 3-18-15.2. "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 Department shall determine whether there has been a violation, misinterpretation or inequitable application of the negotiated agreement. The evidence established that Superintendent Schmitz appropriately followed the requirements of the involuntary transfer provision. Superintendent Schmitz determined it was necessary to transfer Reynolds for the welfare of the employee and the schools. Furthermore, the negotiated agreement gives the District's superintendent broad discretion as any District employee "may be transferred to any other position as the superintendent may direct."

Reynolds' grievance is denied in all respects. The District did not violate, misinterpret or inequitably apply the involuntary transfer provision when it transferred Reynolds from head high school track coach to assistant middle school track coach. Reynolds' request for relief is denied.

The District 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 (10) days from the date of receipt of this Decision. Reynolds shall have ten (10) days from the date of receipt of the Findings and Conclusions to submit objections thereto or to submit his own proposed Findings and Conclusions. The parties may

stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, the District shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 31st day of October, 2005.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge