

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

SHARON HANSON,

HF No. 12 G, 2003/04

Grievant,

vs.

DECISION

**VERMILLION SCHOOL DISTRICT 13-1
and BOARD OF EDUCATION,**

Respondents.

This matter comes before the Department of Labor based on a grievance complaint filed by Sharon Hanson (Hanson) pursuant to SDCL 3-18-15.2. A hearing was held before the Division of Labor and Management on September 14, 2004, in Vermillion, South Dakota. Anne Plooster represented Hanson. James E. McCulloch represented Vermillion School District and the Board of Education (District). The sole issue presented was whether the District violated, misinterpreted or inequitably applied the policies, rules or regulations, or negotiated agreement in using the Staff Reduction provision of the negotiated agreement to reduce-in-force Hanson.

STIPULATION

The parties stipulated and agreed to the following:

1. Grievant Sharon Hanson possesses a K-12 Computer Science certification designated by the 6700 number. Eric VanLaecken has a K-12 Educational Technology certification designated by the 671 number. The 671 number is the one issued in lieu of the old number 6700 since September 1, 2000 when expansion of the course requirements for certification occurred. The 6700 certification is no longer issued and if the current holder of that former certification allows it to lapse, recertification as a 671 is required. (See attachment to this stipulation obtained from www.state.sd.us/deca/opa demonstrating the difference between old certification requirement from 6700 and new ones for 671, which attachment is incorporated into this stipulation by reference as if set forth in full).¹

2. The following is [R]espondent's only certified position that has special qualification requirements to teach the position along with the date the requirements were adopted by the school board:

Position: Technology modules instructor.

Requirements adopted: K-12 Educational Technology certification; training by Pitsco (maker of the modules); middle school math endorsement, and middle school science endorsement.

¹ The facts set forth here are taken directly from the parties' Stipulation, marked as Exhibit 10. Although the Stipulation makes reference to documents attached to the Stipulation, none of the documents are attached to this Decision. See Exhibit 10 for these documents.

Date of adoption: April 12, 2004.

3. There is no South Dakota statute or S.D. Department of Education and Cultural Affairs (DECA) regulation governing coaching since the 2000-01 academic year. Previous to 2000-01, however, there was. Since 2000-01, the South Dakota High School Athletics Association (SDHSAA) has regulated coaching educational requirements. The former DECA and current SDHSAA coaching requirements can be obtained from www.sdhsaa.com. An attachment from that website is attached and incorporated by reference as if set forth in full.

FACTS

In addition to the facts set forth in the Stipulation, the Department finds the following facts, as established by a preponderance of the evidence:

For the 2003-2004 school year, there were four teachers on the District's computer education/technology staff. Cheryl Lessmann had the most seniority of the four as she had taught in the District for over thirty years and was the high school business/computer teacher. Hanson had been a District employee for seventeen years and was the elementary and middle school computer teacher. Marlys Larson had taught in the District for ten years and was a part-time high school business teacher, part-time elementary computer teacher and taught one middle school computer class during the second semester. Erik VanLaecken was in his first year of teaching with the District and was the technology modules instructor, middle school technology coordinator, head cross country coach and performed middle school website work.

The Teacher Certificate, issued by the Department of Education², shows what a teacher "is certified to teach in the schools of South Dakota within the prescribed endorsements³ and in accordance with the statutes and regulations currently in force." Lessmann's Teacher Certificate shows she is certified to teach the following:

Education Staff Assignment Endorsements:

204 SECONDARY SCHOOL TEACHER
210 OFFICE OCCUPATIONS TEACHER
212 LIBRARIAN

Teaching Majors:

520 BUSINESS EDUCATION

Additional Subjects/Assignments:

6400 LIBRARY/MEDIA (K-12)
6700 COMPUTER SCIENCE
2001 LANG ARTS-MID SCH/JR HI

Hanson's Teacher Certificate shows she is certified to teach the following:

Education Staff Assignment Endorsements:

204 SECONDARY SCHOOL TEACHER

² DOE was formerly known as the Department of Education and Cultural Affairs.

³ More recent Certificates refer to endorsements as "authorization."

216 MIDDLE SCHOOL/JR HIGH EXPERIENCE

Teaching Majors:

520 BUSINESS EDUCATION

630 HEALTH/PHYS ED (K-12)

Additional Subjects/Assignments:

2001 LANG ARTS-MID SCH/JR HI

6700 COMPUTER SCIENCE

Larson's Teacher Certificate shows she is certified to teach the following:

Education Staff Assignment Endorsements:

204 SECONDARY SCHOOL TEACHER

Teaching Majors:

520 BUSINESS EDUCATION

Additional Subjects/Assignments:

2001 LANG ARTS-MID SCH/JR HI

5420 FRENCH (K-12)

6010 HISTORY

6040 ECONOMICS

6060 PSYCHOLOGY

Larson has been teaching computer science courses for the District even though she does not have a 6700 or 671 listing on her Teacher Certificate. Van Laecken's Teacher Certificate shows he is certified to teach the following:

Education Staff Assignment Authorizations:

202 K-8 Elementary Education

Degree Program Authorization:

460 Elementary Education

671 K-12 Educational Technology Education

Endorsement Program Authorization:

2001 5-8 Middle Level Education – Language Arts

2002 5-8 Middle Level Education – Social Science

2003 5-8 Middle Level Education – Natural Science

7011 Basketball

7012 Football

7017 Track/Cross Country

7021 7-12 Assistant Varsity Coach

7022 Middle School/Junior High Coach

7023 K-8 Elementary Coach

On March 8, 2002, the school board voted to eliminate several positions for the 2004-2005 school year due to budgetary constraints. One of the positions subject to reduction-in-force (RIF) included the high school computer education position held by Lessmann.

According to the Staff Reduction policy in the negotiated agreement, “[s]eniority shall have priority in making staff reduction[.]” Lessmann, as the most senior teacher on the computer education/technology staff, invoked her rights under this policy. The District then had to ascertain which positions Lessmann was certified to teach in order to determine which teacher Lessmann would “bump.” The District determined the only position Lessmann was certified and qualified to teach was the middle school computer education position held by Hanson. Therefore, Lessmann was allowed to “bump” Hanson after applying the seniority provision of the Staff Reduction policy.

On March 22, 2004, the school board voted to non-renew Hanson’s contract for the 2004-2005 school year due to the RIF. On March 23, 2004, the District sent Hanson a letter notifying her that the District did not renew her contract for the 2004-2005 school year.

On April 12, 2004, Hanson filed a grievance with the District alleging that the District improperly non-renewed her teaching contract. Hanson did not take issue with Lessmann’s ability to “bump” her according to the Staff Reduction policy. However, Hanson claimed that she should, in turn, be able to “bump” one of the two less senior teachers on the computer education/technology staff. The District denied Hanson’s grievance and Hanson filed her appeal with the Department.

Although Hanson’s teaching contract was non-renewed, she is currently employed with the District as a tutor in the special education department at the middle school. Other facts will be developed as necessary.

ISSUE

WHETHER THE DISTRICT VIOLATED, MISINTERPRETED OR INEQUITABLY APPLIED THE POLICIES, RULES OR REGULATIONS, OR NEGOTIATED AGREEMENT IN USING THE STAFF REDUCTION PROVISION OF THE NEGOTIATED AGREEMENT TO REDUCE-IN-FORCE HANSON?

SDCL 3-18-15.2 provides for an appeal to the Department of Labor when a public employee’s grievance remains unresolved. 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, [or] ordinances . . . of the state of South Dakota or the government of any one or more of the political subdivisions thereof, or . . . any other branch of the public service, as they apply to the conditions of employment.” The burden of proof is on Hanson as she is the party alleging the violation. Rininger v. Bennett County Sch. Dist., 468 N.W.2d 423 (S.D. 1991).

There is no dispute that VanLaecken was the least senior of the four computer education/technology teachers. Hanson argued that under the clear and unambiguous language of the Staff Reduction policy, VanLaecken was the teacher who should have been non-renewed. The Staff Reduction policy in the negotiated agreement states:

Whenever, in the judgment of the Vermillion School Board it is advisable to reduce staff in the district, the following procedure will be used:

1. The school board, or its designee, will through the use of a verbal communication with the teaching staff, explain the situation confronting the district and allow the Association a reasonable opportunity, not to exceed ten (10) days from the date of the communication to present possible alternatives.
2. The school board hereby states that the following areas are the overall guidelines for any staff reduction:
 - A. Balanced cuts as to grade level and curriculum area to be determined by the student population and the pressure this population places on grade level or on subject area.
 - B. The superiority of academic areas over extracurricular activities.
3. The board may consider the following, not necessarily in order of priority, any of which may be used in determining which staff members will be nonrenewed for staff reduction purposes: student needs, financial condition of the district, priority of programs, program elimination, recommendations of administrative staff, evaluation records, competency, qualifications, certification, education background, continuing contract status, federal mandates, and any other relevant consideration. Seniority shall have priority in making staff reduction: (1) provided the teacher has the necessary certification stated on his/her certificate that is on file in the Administrative Services Building and, (2) provided the teacher has taught in one or more of the grades and certification of the respective level of education (Early Childhood-5, 6-8, 9-12, or support services; i.e. K-12 art, K-12 music, K-12 computer, EC-12 special education, K-12 library, K-12 counselors, K-12 P.E., and respective K-12 foreign language) during the last seven years in the Vermillion School District.

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). "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.

The negotiated agreement is clear and unambiguous so there is no reason to look beyond the language of the Staff Reduction policy. The first sentence of paragraph 3 in the Staff Reduction policy sets forth various areas for the District to consider when determining which staff member should be non-renewed. None of the 13 areas listed has a greater priority than the other. However, the next sentence provides that seniority shall have priority in making staff reduction only if two specific conditions are met. These conditions are 1) if the teacher has the necessary certification on his or her certificate and 2) if the teacher has taught in one or more of the grades and certification of the respective level of education during the last 7 years in the District.

At the hearing, Pat Anderson, principal at the middle school, explained the District's reasoning for non-renewing Hanson. First, Lessmann could not "bump" Larson because Lessmann did not meet Part 2 of the seniority conditions. Although Lessmann and Larson had the same necessary certification, Lessmann had not taught business education classes within the past seven years. Lessmann could not "bump" VanLaecken because Lessmann did not meet Part 1 of the seniority conditions. Lessmann did not have the same certification and "[s]he didn't do some of the things that Erik VanLaecken's job required, such as coaching." In addition, Lessmann had not taught technology modules at the middle school level within the past seven years. Lessmann was able to "bump" Hanson because Lessmann met both Part 1 and Part 2 of the seniority conditions. Both Lessmann and Hanson had the same necessary certification for computer science and Lessmann had taught at the middle school within the last seven years. For these reasons, Lessmann was able only to "bump" Hanson. Therefore, the District determined that it would non-renew Hanson's contract.

For the 2003-2004 school year, Hanson taught 6th, 7th and 8th grade computer science at the middle school. Larson taught an elementary school computer class and business education classes at the high school. VanLaecken taught computer classes at one of the elementary schools, a 6th grade "math-based measurements" class and 7th and 8th grade technology modules. In addition, VanLaecken was the head cross country coach for the District.

According to the Staff Reduction policy, Hanson could not "bump" Larson because Hanson did not meet Part 2 of the seniority conditions. Both Hanson and Larson had the same necessary certification, but Hanson had not taught business education courses at the high school within the past seven years. Hanson could not "bump" VanLaecken because Hanson did not meet Part 1 of the seniority conditions. Hanson did not have a K-8 elementary or coaching endorsement. Therefore, Hanson did not possess the necessary certification on her certificate as required by the Staff Reduction policy to replace VanLaecken. The District did not violate, misinterpret or inequitably apply the Staff Reduction policy when it determined it was necessary to non-renew Hanson's teaching contract. Lessmann could "bump" only Hanson, but Hanson could not "bump" either Larson or VanLaecken.

In addition, Hanson argued that she should have been allowed to "bump" into parts of both Larson's and VanLaecken's teaching positions. Hanson argued that she should have been allowed to "bump" into Larson's computer science courses and "bump" into VanLaecken's classes teaching first and second grade computers. Anderson testified the District's "position was that we weren't going to piecemeal the positions." Anderson explained this approach would reduce Larson and VanLaecken to part-time status, but not reduce the budget by the intended amount.

The Staff Reduction policy does not speak to partial “bumping.” There was no evidence presented to show a past practice of partial “bumping.” The District determined that due to the financial condition of the District, it was necessary to RIF the high school computer position. The District determined it would not be financially feasible to piecemeal the positions.

The District did not violate, misinterpret or inequitably apply the policies, rules or regulations, or negotiated agreement in using the Staff Reduction provision of the negotiated agreement to RIF Hanson. Hanson’s grievance must be dismissed with prejudice.

The District shall submit Findings of Fact, 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. Hanson shall have ten days from the date of receipt of the District’s 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, the District shall submit such Stipulation, along with an Order in accordance with this Decision.

Dated this 20th day of April, 2005.

SOUTH DAKOTA DEPARTMENT OF LABOR

Elizabeth J. Fullenkamp
Administrative Law Judge