

BEFORE THE IMPARTIAL HEARING OFFICER

In the Matter of the Grievance of

MICHELLE KOPFER

Under the Grievance Procedure of

DODGELAND SCHOOL DISTRICT

Case ID: 103.0001

Case Type: IHO

DECISION NO. 35776

Appearances:

John D. Horn, WEAC Region 5, P.O. Box 19, Baraboo, Wisconsin, appearing on behalf of Michelle Kopfer.

Shana R. Lewis, Strang, Patteson, Renning, Lewis & Lacy, 660 West Washington Avenue, Suite 303, Madison, Wisconsin, appearing on behalf of the Dodgeland School District.

DECISION OF THE IMPARTIAL HEARING OFFICER

On July 13, 2015, the Dodgeland School District filed a request with the Wisconsin Employment Relations Commission, seeking to have the Commission appoint Rodney G. Pasch, Commissioner, to serve as the Impartial Hearing Officer in a grievance proceeding involving employee Michelle Kopfer. District Board Policy 527 states, in part, that the Impartial Hearing Officer is only authorized to “screen the grievance and determine whether it falls within one of the categories subject to the grievance procedure, whether the informal process was exhausted, if applicable, and whether it has been timely filed.”

DISCUSSION

I. WAS THE INFORMAL GRIEVANCE PROCESS EXHAUSTED AND WAS THE GRIEVANCE TIMELY FILED?

The parties agreed during the prehearing conference that both the informal grievance process had been exhausted and the grievance was timely filed. In addition, arguments to the contrary were not raised by either party in their briefs.

II. DOES THE GRIEVANCE FILED BY KOPFER FALL WITHIN ONE OF THE CATEGORIES SUBJECT TO THE GRIEVANCE PROCEDURE?

District Board Policy 527 states:

A grievance is a formal written complaint by an employee that a final administrative decision related to termination, discipline, or workplace safety violated, misapplied, or misinterpreted a local Board policy, administrative regulation or procedure, or specified federal or State law or rule, or in the case of an employee with a written employment contract, the terms of such written employment contract.

The grievance filed by Kopfer on June 18, 2015 specifically addresses only discipline and does not raise an issue with other items listed in the definition of potential grievances. Consequently, I have only considered the discipline argument in the screening as to whether the issue is grievable.

The District Board Policy defines the term "employee discipline" as follows:

Definitions:

* * *

2. Employee Discipline: The term "employee discipline" shall be narrowly construed to mean a suspension without pay, or a demotion or reduction in rank, pay, or other benefits, imposed by the employer for disciplinary reasons, but shall not include, without limitation by enumeration, the following:
 - a. Termination, non-renewal of teacher contracts under Wis. Stat. § 118.22, non-renewal of administrator contracts under Wis. Stat. § 118.24, layoffs or workforce reduction activities;
 - b. Adverse employment actions other than a suspension without pay, or a demotion or reduction in rank, pay or other benefits, imposed upon the employer for disciplinary reasons;
 - c. Lateral transfers or reassignments;
 - d. Plans of correction or performance improvement;
 - e. Performance evaluations or reviews;
 - f. Documentation of employee acts and/or omissions in an employment file;
 - g. Oral or written reprimands or warnings;
 - h. Administrative suspension with or without pay pending investigation of misconduct or nonperformance; or
 - i. Non-disciplinary wage, benefit, or salary adjustments, or reductions in assigned hours.

There is some discussion by the parties addressing whether the performance improvement constitutes discipline. Section 1(d) as stated above clearly excludes performance plans in themselves as non-disciplinary and I concur.

The main argument by Kopfer is that putting her on a performance improvement plan and declaring her ineligible to advance a salary tier for the 2015-2016 school year constitutes a “reduction in rank, pay, or other benefits” qualifying as discipline under District Board Policy 257. The Alternative Compensation System, as reflected in Exhibit 2, states in part that “[u]ntil the required elements of the Plan for Improvement are met, that individual is not eligible for advancement on the system.” Furthermore, the Alternative Compensation System does not guarantee that a teacher will receive a pay or benefit increase. In any case, Kopfer did not experience a “reduction in rank, pay, or other benefits” as presented in her grievance. I conclude the grievance is not grievable as defined in District Board Policy 257.

Dated at Madison, Wisconsin, this 12th day of August 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

Rodney G. Pasch, Impartial Hearing Officer