

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

**TEAMSTERS LOCAL 749**

**HF No. 10 G, 2009/10**

**Petitioner,**

**v.**

**DECISION**

**CITY OF STURGIS, SOUTH DAKOTA,**

**Respondent.**

The above-referenced matter is a Hearing upon a Grievance filed pursuant to SDCL 3-18-15.2. The Department of Labor conducted a hearing on the matter in Sturgis, South Dakota on November 16, 2010. Grievant Teamsters Local 749 (Grievant) appeared personally and through attorneys of record, Jay M. Smith appearing pro hac vice, and local counsel, Onna B. Houck. Attorney Gregory J. Barnier represented Respondent City of Sturgis (Respondent). Upon consideration of the live testimony given at hearing, the evidence presented at hearing, and the parties' written submissions, the Department makes this Decision.

Petitioner, General Drivers & Helpers Union Local 749 affiliated with the International Brotherhood of Teamsters (Teamsters) is the collective bargaining representative for the employees of Respondent's, City of Sturgis, South Dakota (City), Police Department. The Teamsters and the City are parties to a collective bargaining agreement (Contract), which is effective by its terms from January 1, 2010 through December 31, 2012.

**Issue**

Did City violate, misinterpret, or inequitably apply the Contract when a member of the Teamsters, Mr. Michael O'Bryan, was demoted from position of patrol sergeant to patrol officer on January 5, 2010?

## **Relevant Contract Provisions**

The Contract contains several definitions and provisions relevant to this proceeding. The definitions are:

**Disciplinary Action:** An action, formal or informal, which brings to the employee's attention a deficiency in the employee's conduct, unsatisfactory job performance, or other employment related behavior(s). Disciplinary action imparts the seriousness of the situation to the employee so that the employee can take immediate corrective action(s). Disciplinary action can include, but is not limited to, warning, suspension, demotion, and termination (discharge). A verbal counseling or coaching is not considered disciplinary action, but the occurrence and subject matter of counseling or coaching shall be documented.

**Just Cause:** Guiding principle used when the City engages in disciplinary action, progressive discipline, and / or termination of an employee for misconduct, negligence, job performance, insubordination, gross inefficiency, or other performance related reason(s).

**Progressive Discipline:** Philosophy towards disciplinary action in which an employee receives increasingly more stern disciplinary action. Exceptions from the progressive discipline philosophy will be made in instances of an employee's severe misconduct, gross inefficiency, blatant disregard for City policies, procedures or practices, or other severe infraction.

## **Facts**

The City employs sixteen police officers including the Chief of Police. Mr. James Bush is and has been the Chief of Police since 1990. At the time of this incident, the Assistant Chief of Police was Mr. Branden Bestgen. The Police Department operates three shifts. Each shift has a shift sergeant who assists in supervision of the patrol officers. The first shift is from 5 am to 1 pm, the second shift is from 1 pm to 9 pm, and the third shift is from 9 pm to 5 am. Typically, there is one patrol officer and a sergeant on duty during the first shift, two officers and a sergeant on duty during second shift, and two officers and a sergeant on duty during the third shift.

When an officer works overtime hours, he or she must have the hours approved by the Chief of Police or his designee. The City has mandated that the officers fill out on "overtime approval slip." This paper slip has blank lines to designate the officer's name, "Date of Overtime", "Amount of Overtime," "Overtime Reason (not just C.R. number),"

“Employee Signature,” “Immediate Supervisor Signature,” and “Department Head Signature.” These slips are also used for designation of holiday pay.

Mr. Michael O’Bryan is currently employed as a patrol officer for the City and has been for the past 25 years. Mr. O’Bryan was a patrol sergeant with the City for about 20 of those years, until January 2010. On April 15, 2008, Mr. O’Bryan received three disciplinary action reports in his personnel file for various performance deficiencies. On October 17, 2008, Asst. Chief Bestgen again gave Mr. O’Bryan a disciplinary action report for performance. Chief Bush met with Mr. O’Bryan and gave him the option of either being demoted to patrol officer or becoming the night or third shift supervisor. Mr. O’Bryan accepted the night position in which he had less administrative and supervisory duties.

In December 2010, Chief Bush, through Asst. Chief Bestgen, instructed shift supervisors to reduce overtime and holiday pay on New Year’s Day. Mr. O’Bryan asked his two patrol officers to volunteer to take off New Year’s Day, and patrol officer Mr. Maxon volunteered. Mr. Maxon worked the third shift from December 31 into New Year’s Day, he did not work from New Year’s Day into January 2, 2011.

After his shift was completed on January 1, Mr. Maxon filled out an overtime approval slip with 5 hours of overtime for January 1. The reason given was “contract holiday – New Years 0000 hrs to 0500 hrs” (midnight to 5 am). Mr. Maxon asked Mr. O’Bryan to sign the slip.

Mr. O’Bryan signed the overtime approval slip and told Mr. Maxon that he did not think it would go through (be approved) as holiday pay was paid out when an officer starts the shift on a holiday, not ends the shift on the holiday. Mr. O’Bryan did not know he could refuse to sign the slip, he thought he was under a duty to sign as Mr. Maxon did work the hours indicated. Mr. O’Bryan did not know that Chief Bush had authorized him to approve or reject overtime requests from employees.

The overtime slip was given to Chief Bush, who also signed the overtime approval slip. Chief Bush indicated his confusion or reluctance to approve by putting a question mark behind his name. Chief Bush also signed Mr. Maxon’s time card for that pay period. Mr. Maxon did not work on the shift starting on New Year’s Day and did not receive holiday time for a full eight-hour period. Chief Bush had never changed a time card or rejected an overtime slip if previously approved by a direct supervisor, and did not know that he was able to do so. Chief Bush relied upon the immediate supervisors to approve or reject overtime or holiday pay when appropriate. Chief Bush knew the request was not right, but instructed City to pay it despite the error. Chief Bush did not question Mr. O’Bryan in

regards to this error until after the payroll was completed. Mr. Maxon was paid time and a half for the 5 hours he worked on New Year's Day.

Just after the approval of the time cards and overtime slips, Chief Bush met with Mr. O'Bryan and a representative from the Teamsters. During this meeting, Mr. O'Bryan was given a demotion to patrol officer. This demotion was grieved by Mr. O'Bryan on January 8, 2011. The reassignment or demotion was upheld throughout the levels of grievance.

## **ANALYSIS**

Mr. O'Bryan was given the duty to approve or sign off on overtime slips. He had this duty because he also was given the duty to schedule the officers. It seems that both Mr. O'Bryan and Chief Bush thought the other was in charge of authorizing overtime, partially because both men were expected to sign the overtime request slips. More importantly, Mr. O'Bryan knew that Mr. Maxon was not entitled to overtime or holiday pay for working the first five hours of 2011. However, Mr. O'Bryan signed the overtime approval slip anyways, expecting Chief Bush to reject the request. Mr. O'Bryan's approval of holiday pay for Mr. Maxon, when Mr. O'Bryan knew it should not be authorized, was the reason for the disciplinary action.

Chief Bush had already given progressive discipline to Mr. O'Bryan due to his supervisory performance. Mr. O'Bryan had just been transferred to a shift where his supervisory and administrative duties were at a minimum. This overtime authorization was a supervisory and administrative duty that Mr. O'Bryan did not perform in the manner expected by the City.

The Contract's definition of "just cause" is "misconduct, negligence, job performance, insubordination, gross inefficiency, or other performance related reason(s)." Mr. O'Bryan's action was not misconduct or gross inefficiency, but it was negligent performance of his job and the misuse of his administrative authority. The City instructed Mr. O'Bryan not to authorize more than one patrol officer for holiday pay on New Year's Day and Mr. O'Bryan did so. By giving Mr. O'Bryan the authority to schedule officers, City and Chief Bush implicitly gave Mr. O'Bryan the authority to authorize and reject overtime or holiday pay. His failure to reject the obviously incorrect overtime request or at least ask the Chief before signing the form was a failure to perform his administrative tasks as a patrol sergeant.

Chief Bush had reason to discipline Mr. O'Bryan. The Contract calls for progressive discipline and Mr. O'Bryan had already been threatened with demotion on the most

