

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

TEAMSTERS LOCAL UNION NO. 120,

HF No. 4E, 2011/12

Petitioner,

v.

DECISION

MEADE COUNTY SHERIFF'S OFFICE,

Respondent.

Petitioner filed a Petition for Election on March 12, 2012, pursuant to ARSD 47:02:02:02 and Respondent filed an Answer with objections to the make-up of the proposed unit. The Department provided a Hearing under ARSD 47:02:02:17 that was held on May 17, 2012 at the Meade County Courthouse. Petitioner was represented by Mr. Steve Sullivan. The Respondent was represented by Mr. Ken Chleborad, with the Meade County State's Attorney office. Each of the parties had an opportunity to present their case to the Department through evidence and witnesses. Witnesses testifying at hearing were: Jerry Derr, Robert Lehrkamp, and Kevin Forester. Oral Argument was given by the parties at the close of testimony. The Department having been fully advised in the premises makes this Decision and Order.

ISSUE

Whether the maintenance employees of Meade County are properly included in the proposed unit?

FACTS

Petitioner's proposed unit is defined as "All full-time jailers, dispatchers, cooks, and maintenance employees employed by the County of Meade in South Dakota, excluding the Sheriff, Jail Administrator, Chief Jailer and all other County employees and supervisors as defined by the Act."

According to the initial paperwork from Petitioner, the total number of employees in the defined unit is 29. During the hearing, evidence was presented that showed the total number of employees within the proposed unit to be 45; there are 33 employees that work in the jail, 7 non-supervisory employees in the Dispatch Center, and 5 maintenance workers. Of the five maintenance workers, one is a computer technician, two are custodians, and two are general maintenance workers.

All jail and dispatch personnel are supervised first by mid-level managers and ultimately the Sheriff, an elected official. The five maintenance workers in the proposed unit are ultimately supervised by Kevin Forester, the Meade County Facilities Manager who is hired and works under the control of the Meade County Commission (also elected officials).

There are 8 Communication Operators or Dispatch workers that work in the Law Enforcement Center, in the dispatch room or call room. There are four cooks that work in the Law Enforcement Center. There is one medical assistant and one secretary that work in the Law Enforcement Center. There are also control room operators and correctional officers, which make up the bulk of the jail staff.

There are three custodians that work for Meade County. One custodian is the supervisor. Each custodian has a specific building in which she spends about 75% of her time. Ms. Lemmel works about 75% of the time in the Law Enforcement Center. Ms. Stansbury works about 75% of her time in the Courthouse (the two buildings have a connecting parking lot). The other 25% of the time is spent working in one of the other county buildings. All the buildings are within walking distance of each other.

The work schedule for all maintenance workers is set by their supervisor. If a special project needs immediate assistance, the supervisor is contacted, not the employee. Only the dispatch and the jail employees work shifts that run around the clock. None of the other employees within the proposed unit work shifts that rotate or run 24 hours.

The wage scale for all employees is set by the Meade County Commission. The Human Resource Director testified in regards to how wages are set within the County. All employees that are employed by the County have similar steps and levels by which their salary is set. The benefits for all County employees are the same. There are not different benefits for employees of the different elected officials' offices. The Sheriff's Office employees receive the same benefits as the Maintenance workers.

The Human Resource Director for the County manages the personnel policies within the County. These policies and procedures also encompass those employed in the elected officials' offices, such as those in the Sheriff's office. Job openings are handled through the Human Resource Office and the specific supervisors (whether elected or not) do the hiring and firing. Performance appraisals and the hiring and firing of employees are performed by either the elected official in the specific department or the appointed official.

ANALYSIS AND DECISION

Administrative rules have been promulgated by the secretary of labor, pursuant to SDCL 3-18-6, that give requirements for filing a petition for bargaining unit determination or redetermination. The particular rule regarding petitions for certification of a bargaining unit is found at ARSD 47:02:02:04. The rule reads:

When a petition is filed by an employee organization, it must state that the organization:

- (1) Represents at least 30 percent of the members of the proposed unit;
- (2) Does not assert the right to strike against the state of South Dakota or any subdivision of the state or to assist or participate in a strike and does not impose a duty or obligation to conduct, assist, or participate in a strike in violation of South Dakota law;
- (3) Does not advocate the overthrow of the constitutional form of government in the United States;
- (4) Does not discriminate with regard to the terms or conditions of membership because of race, color, creed, or national origin. This section shall not be construed as limiting the right to advocate peaceful and legal changes in existing law.

ARSD 47:02:02:04. Petitioners' Petition meets the requirements of ARSD 47:02:02:04.

The Amended Petition is legally sufficient for the Department to determine an appropriate bargaining unit. SDCL §3-18-1 defines "public employee." Public employees are eligible for membership in a public employee union. The statute for defining an appropriate unit is SDCL 3-18-4, which states:

When a governmental agency declines to grant formal recognition or when a question concerning the designation of a representation unit is raised by the governmental agency, labor or employee organization, or employees, the department of labor or any person designated by it shall, at the request of any of the parties, investigate such question and, after a hearing if requested by any party, rule on the definition of the **appropriate representation unit**. The department shall certify to the parties in writing the proper definition of the unit. *In defining the unit, the department shall take into consideration, along with other relevant factors, the principles of efficient administration of government, the principles and the coverage of uniform comprehensive position classification and compensation plans in the governmental agency, the history and extent of organization, occupational classification, administrative and supervisory levels of authority, geographical location, and the recommendations of the parties.*

SDCL § 3-18-4 (emphasis added). The South Dakota Supreme Court in the case *Appeal of the City of Aberdeen*, 270 NW2d 139, 141 (SD 1978) said, "[w]e do not construe the statute to require that there necessarily be evidence in the record before the [Department] as to each factor nor that a separate finding must invariably be made by the [Department] as to each factor." *Id.*

The factors listed in §3-18-4 are not exclusive. Other factors not listed above, may be relevant in the determination of whether a proposed unit is appropriate.

There are five maintenance employees that may be part of this unit or may make up a separate unit. There are two separate supervisors of the proposed unit that are in charge of the hiring and firing of employees. There are also a number of mid-level

