

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

**JERRY MUNDT, CHRIS PIERSON,
STEVE VAN'T HUL, GAYLON SCHMIDT,
DAVID BLADES, KATHRYN DANIELS,
AND FRATERNAL ORDER OF POLICE
LODGE #1,**

HF No. 10 G, 2006/07

Grievants,

v.

DECISION

CITY OF SIOUX FALLS,

Respondent.

The above-entitled matter comes before the Department of Labor pursuant to a grievance petition by the above named Grievants pursuant to SDCL 3-18-15.2. A Hearing was held in the matter on March 3, 2008, at Sioux Falls, South Dakota. Mr. Thomas K. Wilka represented Grievants, Jerry Mundt, Chris Pierson, Steve Van't Hul, Gaylon Schmidt, David Blades, Kathryn Daniels, and Fraternal Order of Police Lodge #1 (Grievants). Ms. Gail Eisland represented Respondent, the City of Sioux Falls (City).

The issues presented by the parties are limited by the grievance definition provided for in Article 20 of the Agreement between the parties, in effect from January 1, 2005 through January 31, 2006 (Agreement). SDCL §3-18-1.1 defines a grievance:

The term "grievance" as used in this chapter means 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 authority, commission, or board, or any other branch of the public service, as they apply to the conditions of employment. Negotiations for, or a disagreement over, a nonexistent agreement, contract, ordinance, policy, or rule is not a "grievance" and is not subject to this section.

"Nothing in SDCL ch. 3-18 requires a negotiated agreements definition be as broad as SDCL 3-18-1.1 and nothing prohibits a definition which limits grievances to the terms of a negotiated agreement." *Rapid City Ed. Assc. v. Rapid City Sch. Dist.*, 522 NW2d 494 (SD 1994). The Parties negotiated the definition of "grievance" to be "disputes involving the interpretation or application of this Agreement or changes in working conditions or rules or regulations governing terms or conditions of employment which are not cognizable under the Civil Service procedures."

The Department's role in resolving a grievance is defined by SDCL 3-18-15.2. The statute reads, in part:

If, after following the grievance procedure enacted by the governing body, the grievance remains unresolved . . . it may be appealed to the department of labor . . . 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.

The burden of proof is on the grievant. *Rininger v. Bennett County Sch. Dist.*, 468 N.W.2d 423 (SD 1991).

ISSUES

1. Whether the City, in December 2006, in making hire back decisions in the Patrol Division, misinterpreted or misapplied the terms of the Agreement or has changed the working conditions or rules or regulations governing terms or conditions of employment in violation of the Agreement?
2. If the above allegation occurred, what is the remedy which may be applied?

FACTS

1. The City of Sioux Falls and the Police Officers & Sergeants, Sioux Falls Fraternal Order of Police Lodge #1 L.C., entered into a collective bargaining agreement on December 13, 2005 with an effective date of January 1, 2005 through December 31, 2006.
2. The Sioux Falls Police Department has three major divisions: Patrol, Detective, and Community Services.
3. The Patrol Division has three separate shifts and the Traffic Section.
4. The Traffic Section is a specialized part of the Patrol Division. Most all the Traffic Section officers have worked the regular shifts in the Patrol Division.
5. Within the Patrol Division, shift one works from 6 am to 2:30 pm, shift two works 2 pm to 10:30 pm, and shift three works from 10 pm to 6:30 am. The Traffic Section works from 7 am until 3:30 pm.
6. Each Shift operates under a set of guidelines that are part of the Sioux Falls Police Department (SFPD) policies and procedures. Shift 1 has a set of Guidelines that are considered to be an addendum to the Patrol Division Standard Operating Procedure (SOP).

7. The Traffic Section operates under the rules of the Patrol SOP.
8. The Agreement addresses specific work rules. Article 33 of the Agreement reads:

The City has the right to formulate reasonable and lawful rules and regulations of the governing of the operation of the department. Such rules and regulations shall not conflict with this Agreement. Such rules and regulations shall be submitted to the Union and stewards. Disputes over new or changes rules and regulations shall be subject to the grievance procedure. Each employee shall be provided access to a copy of rules and regulations.
9. Shift 1 requires three supervisors be on duty every day with the possible exception of Sunday. Lt. Nick Boschee, is the Lieutenant for Shift 1 and is responsible for scheduling supervisors for Shift 1.
10. In December 2006, Lt. Boschee realized that there would be shortage of supervisors for the week of Christmas, 2006. Two sergeants had requested vacation time (Mundt and Daniels) and one sergeant was working light duty due to an injury (Lambertz).
11. On December 7, 2006, Lt. Boschee sent an e-mail to the Shift 1 sergeants informing the sergeants there would be "hire backs" from December 25 through December 31, 2006.
12. A hire back is calling back an off-duty officer in situations where manpower is below operational minimums. This potentially leads to officers receiving overtime pay.
13. The Assistant Chief for the SFPD, Patti Lyon, and Captain Monica Meendering suggested to Lt. Boschee that sergeants from the Traffic section be used during the supervisor shortage for Shift 1 during the week of Christmas.
14. The SOP for the organization of the Traffic Section defines their duties. It reads in part, "The Traffic Section, being a part of the Patrol Division of the [SFPD], is considered to be a specialist activity and a support unit to the Patrol shifts during peak workload periods, shift change, and major traffic problems.
15. The Agreement states that it is the right of management to "determine work assignments and establish, alter, or eliminate work schedules, locations, or functions in accordance with municipal and departmental needs." It also assures management that it has the right to "establish work schedules and perform any inherent managerial functions not specifically limited by this Agreement ... so long as it does not conflict with this Agreement."

16. The Shift 1 Guidelines set how scheduling for hire backs will be done within that Shift. The hire back guideline reads:

Scheduled hire backs, for patrol officers and patrol supervisor, will be done in advance. If the shift is in a situation where manpower is below minimum, the following protocol will take place:

Officers, by seniority, who are not scheduled to work, including those on flex leave but excluding those on other authorized leave (comp time, vacation, personal leave, sick leave) will be contacted.

1. Shift 1 officers, by seniority, will be contacted prior to the day they are needed to work the entire shift in scheduled overtime situation.

2. Shift 1 officers will be contacted, by seniority, to work the last four hours of the shift in situation where the manpower shortage does not arise until the start of the shift.

3. Shift 2 officers will be contacted, by seniority, to work the last 4 hours of the shift when shift 1 officers are not available.

All hire backs will be done in accordance with the labor contract. An officer may be denied a hire back if the involved supervisor feels that he or she is not fit for duty due to having worked too many hours without an adequate period of rest.

17. The Agreement, Article 11, Section 8, regarding the issues of seniority and overtime reads in part:

Overtime shall first be offered to senior employees within each respective bureau or section, except when contrary to established department, bureau, or section policy, based upon special abilities, physical fitness, time element, or special training needs. ...

Should it become necessary to hire back replacement supervisors for shift duty due to the absence of a Sergeant, the following procedures shall be followed on a rotating basis:

A. The hire back opportunity will first be offered to off duty Sergeants assigned to the shift wherein the absence has occurred, in order of seniority, highest to lowest.

B. If the absence cannot be filled by a Sergeant from the same shift, the absence shall be offered to Sergeants from the preceding and following shifts on a seniority basis, unless the lowest senior Sergeant remains, in which case he shall be required to take the assignment. This will be accomplished by extending the schedule of a Sergeant from the preceding shift for four hours, and calling a Sergeant in early from the following shift for four hours.

18. Assistant Chief Lyon spoke with Traffic Sergeants Van't Hul and Smidt about assisting Shift 1 during the week of Christmas. Sgt. Van't Hul and Sgt. Smidt agreed to work Shift 1 duties and adjust their hours.
19. On December 8, 2006, Lt. Boschee e-mailed Sgt. Lambertz and Lt. Jerry Miller that Sgts. Van't Hul and Smidt would be assisting Shift 1 during the week of December 25 – 31.
20. On December 23, 2006, Sgt. Mundt was placed on hire back. On December 25 and 31, Sgt. Blades was placed on hire back.
21. On January 7, 2007, Grievants filed a grievance with City alleging a violation of the Agreement regarding hire backs.
22. Grievant alleges that Patrol Sgts. Chris Pearson, Kathryn Daniels and Jerry Mundt were denied overtime because Traffic Section Sgts. Van't Hul and Smidt filled in for the absent Patrol Sergeant.
23. In the recent past, City has reassigned Traffic Sergeants to the Patrol Division during short periods of time, due to injuries or absences of Patrol Sergeants. This practice is in lieu of the use of hire backs and payment of overtime.

Issue One.

Whether the City, in December 2006, in making hire back decisions in the Patrol Division, misinterpreted or misapplied the terms of the Agreement or has changed the working conditions or rules or regulations governing terms or conditions of employment in violation of the Agreement?

The Agreement between the City and the Grievant encompasses all Standard Operating Procedures (SOP) and other documents regarding work rules. The Divisions, including Patrol, each have a set of SOP. The Traffic Section is a part of the Patrol Division. The Patrol Division also consists of three Shifts. Each Shift has a set of Guidelines, which also govern working conditions or conditions of employment.

It is well settled that in interpreting a contract, we rely on the language of the contract to ascertain the intent of the parties. In a case where, as here, several documents comprise the contract, all are to be read together to learn the parties intent. It is a fundamental rule of contract interpretation that the entire contract and all its provisions must be given meaning if that can be accomplished consistently and reasonably.

Carstensen Contracting, Inc. v. Mid-Dakota Rural Water Sys., Inc., 2002 SD 136, ¶18, 653 NW2d 875, 877 (internal citations omitted).

The City, by and through the management of the Police Department, specifically Asst. Chief Lyon and Capt. Meendering, made the decision to reassign Supervisors from the Traffic Section to Patrol Shift 1 during the week of December 25 – 31, 2006. Traffic Sgt. Smidt assisted Shift 1 on December 26, 27, and 28 and Traffic Sgt. Van't Hul assisted Shift 1 on December 29 and 30. These Traffic Sgts. did not work any overtime hours during that week. This decision by City reduced the amount of overtime the Sgts. may have been required to work.

The assistance of the Traffic Sgts. did not totally eliminate the need for hire backs. City hired back Sgt. Mundt on December 23 and Sgt. Blades on December 25 and 31. Grievants do not allege that these hire backs were done against the Agreement. They do allege that City's reassigning Traffic Sgts. to cover the shifts of the Patrol Sgts.

'[A] contract is ambiguous only when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire agreement.'" Hill City Education Assn. v. Hill City School District 51-2, 2004 SD 47, 678 NW2d 817 (quoting Estate of Fisher v. Fisher, 2002 SD 62, 12, 645 NW2d 841, 845 (citation omitted)). The contract is not ambiguous. When a situation arises that change work assignments. This change of assignment was done well in advance of the occasion and with the permission of the affected personnel, as required by the Agreement. The Traffic Sgts. adjusted their scheduled time at work to comply with the requirements of the Patrol Shift. The two Traffic Sgts. came to work and left work one hour earlier than normal. There was no need for overtime to be paid out. The use of the Traffic Sgts. eliminated the need for a hire back situation on five (5) of eight (8) days.

The Agreement does not forbid management from eliminating the need for hire backs by adjusting schedules or exercising their managerial prerogatives. Management used their prerogative and made adjustments in the schedule to eliminate the need for hire backs. The practice is not prohibited by contract. The contract specifies who will be hired back when the need arises. By reassigning and adjusting the work schedule of two Traffic Sgts, the manpower minimum of the Patrol Division was met. There was no need for hire backs. City did not misinterpret or misapply the terms of the Agreement or changed the working conditions or rules or regulations governing terms or conditions of employment in violation of the Agreement.

District and Petitioner shall submit Proposed Findings of Fact and Conclusions of Law and a Proposed Order, consistent with this Decision, within 20 days from the date of receipt of this Decision. Both sides will then have 10 days to make written objections. The parties may stipulate to waiver of Findings of Fact and Conclusions of Law and if they do so, the parties will submit such Stipulation, along with an Order in accordance with this Decision.

Dated this 15th day of October, 2008.

SOUTH DAKOTA DEPARTMENT OF LABOR



Catherine Duenwald
Administrative Law Judge