

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

**I.O.U.E. Local #49**

**HF No. 12 G, 2009/10**

**Petitioner,**

**v.**

**DECISION**

**CITY OF PIERRE,**

**Respondent.**

This matter came before the Department of Labor when Petitioner, I.U.O.E. Local # 49 filed a Petition for Hearing on Grievance pursuant to SDCL 3-18-15.2. The Department conducted a hearing on June 7, 2010, in Pierre, South Dakota. Gil Koetzle appeared on behalf of Petitioner. Robert C. Riter, Jr. represented Respondent.

***Issue:***

This case presents the following legal issue:

Whether Orië Bramblee is entitled to sick leave for a doctor's appointment on January 11, 2010?

***Facts:***

Based upon the testimony at the hearing and the record, the following facts are found by a preponderance of the evidence:

1. Orië Bramblee (Bramblee) is the Animal Control Officer for the City of Pierre (City). In January 2010, part of his responsibilities was working with the "deer deprivation program" within the city.
2. Bramblee was under the supervision of Police Chief Eldon Blemaster in January 2010.
3. Bramblee was able to set his own hours for that activity, understanding that he would not work more than 40 hours during the work week.
4. Bramblee was required to notify the Game, Fish and Parks (GF&P) when he was going to hunt so that they would have someone available to pick up the carcasses of any deer that were eliminated.

5. Bramblee notified the GF&P that he would be hunting on Monday, January 11, 2010.
6. On January 8, 2010, Bramblee informed his supervisor that he had a doctor's appointment scheduled on Monday, January 11<sup>th</sup> at 8:00 a.m.
7. On January 11, 2010, Bramblee's work day began at 6:00 a.m. He went to his doctor's appointment at 8:00 a.m. The appointment took one hour. Bramblee then worked an additional 15 hours.
8. Bramblee filled out his time sheet for January 11, 2010, as 1 hour of sick leave and 17 hours worked, for a total of 18 hours.
9. Laurie Gronlund (Gronlund) changed Bramblee's time sheet for the week of January 9-15, 2010. Gronlund removed the one hour of sick leave from January 11<sup>th</sup> and attributed one hour of annual leave to another day during that week, so that Bramblee's time sheet reflected a total of 40 hours for the week.
10. On January 27, 2010, Bramblee received an e-mail from Human Resource Director Laurie Gronlund stating that he could not use sick leave to accumulate more than 8 hours in a day.
11. Bramblee is classified as a public safety employee. The City has a negotiated contract with the public safety employees. Article 36 of that agreement states in part as follows:

Eligible employees may be required to work overtime when determined necessary by their supervisor or the City. Overtime is defined as time that is worked in excess of the first 40 hours within the standard work week. Birthday leave, compensatory time, suspension with pay, annual leave and sick leave hours are not counted as hours worked in total hours and will not be credited to overtime compensation. Annual leave, sick leave and compensatory time will not be used to accumulate more than eight hours in a work day, except when "call back" is required after leave has been approved and taken.

12. Additional facts may be discussed in the Analysis below.

***Analysis:***

***Grievance***

In this case, the analysis begins with the statutory definition of "grievance". SDCL 3-18-1.1 states:

SDCL 3-18-1. 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 nonexisting agreement, contract, ordinance, policy or rule is not a “grievance” and is not subject to this section.

The Department’s role in grievance cases is set forth in SDCL 3-18-15.2. That statute states 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.

SDCL 3-18-15.2. In this case, the Department must determine whether the City misinterpreted the provisions of the negotiated agreement. As the grievant, the burden of proof falls on Petitioner. *Rininger v. Bennett County School District*, 468 NW2d 423 (SD 1991).

### ***Sick Leave***

The City states that it did not allow Bramblee to use sick leave on January 11, 2010, based on one sentence within Article 36, of the negotiated agreement. That sentence states:

Annual leave, sick leave and compensatory time will not be used to accumulate more than eight hours in a work day, except when "call back" is required after leave has been approved and taken.

Petitioner argues that this provision is not applicable in this case because Article 36 is titled, “Overtime”. Consequently, the provision is only meant to prohibit leave from being used to accumulate overtime, and overtime is not an issue in this case. The Department disagrees.

It is clear that this language is applicable in situations other than overtime. Article 36, defines overtime as, “time that is worked in excess of the first 40 hours of the standard work week.” The article then states, “[b]irthday leave, compensatory time, suspension with pay, annual leave and sick leave hours are not counted as hours worked in total hours and will not be credited to overtime compensation. Had the goal only been to prevent leave from being used to accumulate overtime, the article’s language could have ended there.

However, the language does not end; it goes on to prohibit the use of leave to be used to accumulate more than 8 hours per day. This language pertains to this case and prohibited Bramblee from using sick leave on January 11, 2010.

***Conclusion:***

In accordance with the discussion above, Petitioner's grievance is dismissed. The District shall submit proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within twenty (20) days from the date of receipt of this Decision. Association shall have twenty (20) days from the date of receipt of District's proposed Findings of Fact 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, District shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 5th day of October, 2010.

SOUTH DAKOTA DEPARTMENT OF LABOR

H Donald W. Hageman  
Donald W. Hageman  
Administrative Law Judge