

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

TEAMSTERS LOCAL UNION # 120,

HF No. 1 G, 2013/14

Petitioner,

v.

DECISION

CODINGTON COUNTY,

Respondent.

This matter came before the Department of Labor & Regulation when Teamsters Local Union # 120, filed a Petition for Hearing on Grievance pursuant to SDCL 3-18-15.2. The Department conducted a hearing on February 13, 2014, in Watertown, South Dakota. The matter was heard by Donald W. Hageman, Administrative Law Judge. Jay M. Smith and Nichole J. Mohning appeared on behalf of Petitioner, Teamsters Local Union # 120. Thomas E. Burns represented Respondent, Codington County.

Legal Issue:

This case presents the following legal issue:

Whether the County violated, misinterpreted or inequitably applied the terms of the Collective Bargaining Agreement when it relieved Marie Suman from her duties as the court officer?

Facts:

Based upon the testimony and evidence presented at hearing, the Department finds the following facts by a preponderance of the evidence:

1. Teamsters Local Union #120 (Union) is the collective bargaining representative for the full-time correction officers of Codington County, South Dakota Sheriff's Department (County).
2. The Union and the County were parties to a collective bargaining agreement, which was effective by its terms from January 1, 2013, through December 31, 2013 (Collective Bargaining Agreement). Correction officer is the only classification of employee covered by the Collective Bargaining Agreement.
3. Sheriff Toby Wishard is the County's chief law enforcement officer. The County maintains a jail in Watertown, South Dakota to house inmates who are in

custody. As part of his job duties, Sheriff Wishard is responsible for the jail and the employees working there.

4. Tom Walder is the Chief Jailer. Walder reports directly to Sheriff Wishard, and the County's correctional employees report directly to Walder. Walder is not covered by the Collective Bargaining Agreement.
5. The County employs approximately twelve to thirteen full-time corrections officers.
6. There are a few part-time corrections officers employed by the County who are not subject to the Collective Bargaining Agreement.
7. Most of the correction officers work a rotating shift and schedule except for three employees. Three corrections officers with the informal titles of "work release coordinator", "24/7 coordinator" and "court officer", work 8:00 AM to 4:00 PM, Monday through Friday.
8. In order to become the court officer, a person must apply for the position by submitting a letter of interest.
9. The primary job duties of all correction officers are the care and custody of the inmates, booking inmates, the daily supervision of inmates, tending to whatever needs the inmates may have and to take disciplinary action, if necessary. The court officer spends most of her time performing these duties. In addition, on Tuesdays and Wednesday afternoons the court officer must accompany inmates to court and record sentencing, work release and similar information related to specific inmates. She must gather information related to tickets and charges to provide to the State's Attorney's Office and communicate with the Clerk of Courts. From time to time, correction officers other than the court officer perform these duties when the court officer or a Deputy is not available.
10. The County hired Marie Suman in August 1990 as a corrections officer. Suman spent approximately the next seventeen and a half years as a corrections officer. She was then chosen to fill the court officer position in 2008.
11. On August 21, 2013, Walder told Suman that she was to meet with Sheriff Wishard at 3:30 p.m. that same day. At that meeting, Suman was told that she was being relieved of her duties as the court officer and returned to the shift rotation. The reason stated for the reassignment was that the State's Attorney had complained about a remark Suman had made in the State's Attorney's Office.
12. Suman had allegedly made a disparaging remark about the State's case, which involved the murder of a child. Suman was not given the opportunity to respond to the allegation, and Sheriff Wishard did not conduct any further investigation.

13. Suman was not suspended or discharged for the incident and no disciplinary action was put in her permanent file.
14. Suman has a history of “talking out of school” and was previously warned about it.
15. Maintaining a good relationship with the State’s Attorney’s Office is essential to the proper operation of the Sheriff’s Department. Therefore, the court officer must maintain a cohesive and professional relationship with the State’s Attorney’s Office.
16. Following Suman’s reassignment, the Union filed a grievance on August 26, 2013, with the County. The County denied the grievance. Failing resolution of the grievance under the contractual procedures, the grievance was appealed to the Department of Labor & Regulation.
17. Article 4 of the Collective Bargaining Agreement states in part the following:

4. Management Rights

Except to the extent expressly modified by a specific provision of this Agreement, the Sheriff and the Codington County Commission reserve and retain solely and exclusively all of their statutory and common law rights to manage the operation of the Sheriff’s Department and the Detention Center, as such rights existed prior to the execution of this Agreement with the Union.

It is expressly recognized merely by way of illustration and not by way of limitation that such rights and functions include, but are not limited to:

1. To utilize personnel, methods and means in the most appropriate and efficient manner possible; to manage and direct the employees of the Sheriff’s Department or Jail; to hire, schedule, promote, transfer, assign, train, or retrain employees in positions with the Sheriff’s Department or Jail, and to suspend, discharge or take other appropriate action against employees for just cause;
3. To determine the objectives of the Sheriff’s Department or Jail and the means and methods necessary to fulfill those objectives, including transfer, alternation, curtailment, or acceptable discontinuance of any service; the establishment of acceptable standards of job performance; the purchase and utilization of equipment; and the utilization of seasonal and part-time employees, as long as no full-time employees are laid off;

6. To determine the method of fulfillment of the objectives of the Department, whether by its employees or by contracting or subcontracting with respect to all of the Department's Services.

18. Article 13 of the Collective Bargaining Agreement states in part the following:

It is understood that there are other offenses of extreme seriousness that an employee will be discharged for without a warning letter. Depending upon the circumstances and upon just cause, a lesser discipline to include demotion, suspension, or any other appropriate disciplinary action, short of discharge, may in the discretion of the Department Head, be implemented. It is further understood that a warning notice shall mean that further disciplinary action up to and including suspension or dismissal may occur if the condition causing the issuance of the warning letter is repeated during the • effective time of the warning notice. Warning notices shall be in effect for twelve (12) months.

Analysis:

SDCL 3-18-1.1 defines "grievance" as:

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.

SDCL 3-18-1.

In this case, the Union contends that the County demoted Suman without good cause in violation of the Collective Bargaining Agreement. On the other hand, the County argues that Suman was not demoted, but was only reassigned to other duties. The Department agrees with the County that the action taken by the sheriff in this case was a reassignment and not a demotion.

The Collective Bargaining Agreement grants the Sheriff broad authority to manage the detention center/jail employees as he deems appropriate. Those management rights include, but are not limited to, the right to "utilize personnel, methods and means in the most appropriate and efficient manner possible; to manage and direct the employees of the Sheriff's Department or Jail; to hire, schedule, promote, transfer, assign, train, or retrain employees in positions with the Sheriff's Department or Jail, and to suspend,

discharge or take other appropriate action against employees for just cause.” The Sheriff also has the authority choose what action is appropriate in each case.

Dictionary.com defines “demote” as, “to lower in rank or position.”¹ The Collective Bargaining Agreement only recognizes one class of employee, correction officer/jailer. The court officer title is only an informal title. The corrections officers all have the same supervisor, Tom Walder. The primary duties of all the correction officers are the care and custody of the inmates. While Suman had additional duties on court days, Tuesdays and Wednesday afternoons, there is nothing in the record to suggest that these duties were any more important than those performed by the other corrections officers. Further, other corrections officers perform the duties of the court officer from time to time. There is also no pay distinction between the court officer and the other corrections officers. These factors all suggest that Suman’s rank was no higher as a court officer than any other correction officer.

The primary fact upon which the Union relies is that Suman worked a five day week from 8:00 a.m. to 4:00 p.m. as court officer, and was returned to a rotating shift and schedule after being relieved of those duties. However, this fact alone does not signify a demotion. In many situations, a supervisor on a night shift may out-rank a worker on a day shift.

Application for the court officer role is made by sending a letter of interest. But it is a “stretch” to suggest that this is a formal application process when there is not a separate job description or classification for the court officer position.

The Union’s reliance on Bucholz v. City of Pierre, HF 7G, 2002 WL 32151855 (SD Dept. of Labor, 2002) is also misplaced. That case is clearly distinguishable from this one. Buchholz was a member of the Pierre Police Department, who had earned the rank of detective on the drug task force. From there he was transferred to the patrol division which also resulted in the loss of this detective rank. While that transfer required Buchholz to move to a rotating shift as did Suman’s transfer, he did not object to the change of shifts. Indeed, he stated, “I do not object to this assignment, however I do object to my assigned rank or status on this shift.” As a detective, he lost the authority to exercise a supervisory role over the patrol officers on duty. As such, he suffered a loss of both rank and prestige. In this case, no evidence was presented to show that Suman’s transfer resulted in the loss of either a supervisory role or any prestige.

Article 4 of the Collective Bargaining Agreement also grants the Sheriff the authority to set the objectives of the Sheriff’s Department and jail and to determine how to fulfill those objectives.

Here, the Sheriff correctly determined that it was essential for his office to maintain a good working relationship with the State’s Attorney’s Office and he also correctly determined that moving Suman out of court officer position was necessary in fulfilling

¹ Dictionary.com (June 13, 2014) - <http://dictionary.reference.com/browse/demote?s=t>

that objective. The Department concludes that Suman transfer was a reassignment and not a demotion.

Conclusion:

The County shall submit Findings of Fact and Conclusions of Law and an Order consistent with this Decision within twenty days of the date of the Decision. If it desired, the County may also submit Proposed Findings of Fact and Conclusions of Law. The Union shall have twenty days from the date of the receipt of the County's Findings of Fact and Conclusions of Law to submit objections thereto and/or Proposed Findings and Conclusions of Law. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law. If they do so, the County shall submit such Stipulation along with an Order consistent with this Decision.

Dated this _____ day of June, 2014.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

/s/ Donald W. Hageman
Donald W. Hageman
Administrative Law Judge