

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

AFSCME COUNCIL 65, Kevin Curd,

HF No. 2G, 2025/26

Petitioner,

v.

DECISION

KINGSBURY COUNTY,

Respondent,

This is a workers' compensation case brought before the South Dakota Department of Labor & Regulation, Division of Labor and Management pursuant to SDCL § 62-7-12 and ARSD 47:03:01. The case was heard by Michelle M. Faw, Administrative Law Judge, on March 25, 2026, at 9:03 am. Petitioner, AFSCME Council 65, was present and represented by Darby Boyd and Kate Black of AFSCME Council 65. Respondent, Kingsbury County, was represented by Lisa Hansen Marso and Sara Mangan of Boyce Law Firm.

Background:

On August 5, 2025, AFSCME Council 65 (AFSCME) and Kevin Curd (Curd) (jointly Petitioners) filed a grievance (Grievance One) with Kingsbury County (County) asserting the County violated, misrepresented or misinterpreted (1) Art. 8 of the Collective Bargaining Agreement (CBA) regarding his wage by designating him as a Highway Operator rather than as a Heavy Equipment Operator; and (2) Art. 18 of the CBA related to the alleged retaliation by an immediate supervisor based on Curd's wage placement. Petitioners requested the following adjustments: (1) A full review between the County and the Union, without the immediate supervisor present, of Curd's wage placement with the wage study's recommendations will take place between the Union and the County and the County will issue a correction of that wage placement if it is found to be inconsistent or unjust with the

findings; and (2) An investigation of the immediate supervisor will be done to determine if there was retaliation in this wage placement due to Curd's role as the union president, and issue appropriate corrective actions to ensure such retaliation is not tolerated if retaliation is determined to be found. Ex. A at AFSCME 004.

Due to the involvement of Curd's immediate supervisor in Step I, the County agreed to allow Curd to skip to Step II. Curd and AFSCME were notified of the County's agreement to skip Step I on August 5, 2025. Under Art. 17, Sec. 17.2 of the Agreement, Step II of the grievance procedure required AFSCME to present Grievance One to the County Commissioner's chairman. On August 13, 2025, the County offered three different date options for the meeting to be held. The County also wrote, "that following this meeting, the County has an additional 5 days to complete their investigation and provide their response in writing, making that date 8/25/25. If this is not correct, please let me know!" Ex. D. AFSCME responded that it would work with Curd to confirm a meeting date. The County replied asking if the proposed timeline for written response was correct. AFSCME emailed back stating, "If we present on August 19th, the Chairman's response would be due by August 25th. If we present earlier, it's 5 working days from the date of presentation. When we read Article 17.0-17.2 of the CBA with our timeline, we believe it follows these dates: The original grievance was filed August 5th (5 working days from date of occurrence). The Superintendent's adjustment is due August 12th (5 working days from filing grievance), the union will need to present by August 19th (5 working days after the response from Superintendent was due) Chairman of the Commission response in writing due by August 25th. (5 days after presentation)." Ex. D. On August 15, 2025, AFSCME presented Grievance One to the county. The parties discussed a variety of issues. AFSCME and Curd did not demand anything beyond what was requested in the relief stated in Grievance One.

The County reviewed Curd's wage scale placement and investigated the allegations of retaliation. On August 25, 2025, the County provided Petitioners with the County's Step II written response. The County found that Curd's wage placement was correct due to him not having a Class A CDL. The County found that retaliation did not occur and that the request made by his immediate supervisor for him to operate a chip sealer was consistent with the language of Curd's job description. The County offered for Curd to obtain his Class A CDL certification within a set period of time and, upon completion, increase his pay and discuss possible revisions to the job descriptions.

On August 29, 2025, Petitioners submitted a response to the County's Step II written response in which they asserted that the County was untimely in its written response and made counteroffers including a request for differential pay and back pay until Curd obtains his Class A CDL. On September 5, 2025, the County provided a written response to Petitioner's counteroffer stating that the submission of the County's written response on August 25, 2025, was based on a verbal confirmation at the August 15, 2025, meeting. The City rejected Petitioner's counteroffer but offered to pay Curd to obtain his Class A CDL certification under certain conditions. After he received the Class A CDL, he would move to the higher pay grade.

On September 9, 2025, Petitioners filed a second grievance (Grievance Two) which requested the following adjustments; (1) The Highway Superintendent send Grievance Two to Step II immediately and without time delay; and (2) That the County honor the proposed demands in Petitioners' response to Step II Grievance; and (3) Pursuant to Art. 17, Sec. 17.3 of the CBA, if the grievance remains unsettled, the parties submit the matter to the Department for Resolution. Ex. H. On September 10, 2025, County agreed to allow Petitioners to move to Step II of the grievance procedure. On September 12, 2025,

Petitioners filed their Petition for Hearing on Grievance to the Department of Labor & Regulation.

Petitioners presented Grievance Two to the County on September 23, 2025. The County denied Grievance Two because: (1) the County believed there was good cause for it to have submitted its written response on August 25, 2025: (2) the relief sought by Curd was greater than what was sought in Grievance One: and (3) Grievance Two was untimely as the CBA required it to have been submitted within five working days of knowledge of the occurrence of the alleged violation.

The Department is granted authority to hear grievances by SDCL Chapter 3-18. Petitioners carry the burden of proving the County violated, misrepresented, or misinterpreted the CBA. *Rininger v. Bennett Cnty. Sch. Dist.*, 468 N.W.2d 423, 425 (S.D. 1991). The first question before the Department is whether the County failed to respond to the grievance within the contractual deadline. Step II for Grievance One was presented to the County on August 15, 2025. Article 17, Section 2 of the CBA provides, in pertinent part, “The Chairman of the County Commission shall respond in writing to the Chief Steward of the Union, his designee or representative, within five (5) working days thereafter.” Ex. O at AFSCME 158. According to the CBA, the required deadline for the County’s response was August 22, 2025. The County responded on August 25, 2025. Therefore, the response was not within the contractual deadline.

Next the question becomes, whether the County established good cause for its untimely response. Art. 17, Section 4 of the CBA provides, “If either the Union or the County, other than for good cause, fails to respond timely as herein required the dispute will be resolved as last demanded by the party timely responding.” Ex. O at AFSCME 158. The County asserts that at the end of the meeting on August 15, 2025, the Petitioners were notified that the Commissioners were not scheduled to meet until August 21, 2025, and

asked to confirm it would be acceptable for the County's written response deadline to be August 25, 2025. The County alleges that Petitioner responded to the request by stating that the end of that day would be fine.

At hearing, the County provided witness testimony asserting the alleged oral agreement was made by the parties on August 15, 2025, regarding the response deadline. Natalie Remund (Remund) is the Human Resource consultant for the County. Remund testified that at the end of the meeting on Step II for Grievance One she had stated, "Just to clarify, the commissioners won't meet again until Thursday, the 21st. Typically they meet on a Tuesday. They moved a meeting. They said they won't meet until the 21st. We'll get you our response which is due then on Monday, the 25th; is that correct?" HT 53:5-9¹. She further testified that she was told by Darby Boyd (Boyd), AFSCME representative, "Yes, end of day is fine." HT 53:10. This is consistent with the Grievance 2 Response sent by Remund and Kingsbury County Commission Chairman, Kyle Lee (Lee), on September 5, 2025. In the response, the County states that Remund asked Boyd, "'Our response is due Monday August 25th then, is that correct?' to which she replied, 'By end of day is fine.'" Ex. G at AFSCME 128. Lee also testified at hearing, and he recollected that Remund and Boyd had agreed the response was due on August 25, 2025.

AFSCME denies that there was an agreement to extend the deadline. In the response to Grievance Two, the County included the following, "Looking back at the email exchange, the County concedes to the Union's timeframe — the meeting took place on the 15th instead of the 19th and therefore, the response would have been due on the 22nd instead of the 25th. This was simply a clerical error and was based on the verbal confirmation given from Labor Representative Boyd regarding the 25th. The County

¹ References to the Hearing Transcript for the March 25, 2026, hearing before the Department will be marked as HT.

intended no malice or disrespect to the Union by responding in this timeframe.” Ex. G at AFSCME 128. AFSCME argues that a clerical error is not “good cause”. At hearing, Curd testified that he did not recall hearing a discussion between Remund and Boyd about the August 25th date. At hearing, Boyd was reminded that in the answer to Request for Admissions, she had affirmed that AFSCME had been told that the Commission Board did not meet until August 21, 2025, and would need to approve any settlement. She testified that Remund had said the Commission was meeting on that day and that implied they would have to approve. She stated that her answer to the Request for Admissions was incorrect.

The Department is persuaded that a verbal agreement was made between AFSCME and the County that established the response would be due on August 25, 2025. The Department bases this conclusion on the consistent account of Remund regarding what was said at the meeting, the fact that all parties knew the Commission would need to approve any agreement, and that it would not meet again until August 21, 2025. Further, Curd did not remember whether there had been a conversation on the response deadline, and there was some inconsistency between the Requests for Admissions and Boyd’s testimony. However, Remund and Lee both testified that the agreement had been made. The Department found the testimony asserting the agreement had been made to be credible and consistent with the record. Further, as everyone knew the Commission would need to approve, it appears more likely than not that an agreement was made to extend the deadline beyond the meeting date to give time for a response.

The County offered the case *Johnson v. Sellers*, 2011 S.D. 24, 798 N.W.2d 690. In *Johnson*, the South Dakota Supreme Court held that an oral agreement to extend a contractual deadline can constitute a waiver. *Id.* at 695. “[A] waiver of the time for performance is not an alteration of a written contract.” *Id.* Applying the Court’s rationale in

Johnson to this matter, the Department finds that the oral agreement to extend the deadline was a waiver and further, relying on that waiver provided good cause for the late response by the County.

In conclusion, the County failed to respond to the grievance within the contractual deadline. However, the County established good cause for its untimely response. Petitioners' grievance is dismissed with prejudice.

The County shall submit 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. Petitioners shall have an additional twenty (20) days from the date of receipt of Proposed Findings and Conclusions to submit objections thereto and/or to submit their own proposed Findings of Fact and Conclusions of Law. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, the County shall submit such Stipulation along with an Order consistent with this Decision.

Dated this day 30 of July 2026.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION



Michelle M. Faw
Administrative Law Judge