

March 17, 2021

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RE: HF No. 2G, 2020/21 – Michael Meinzer v. Lincoln County Sheriff’s Office

Dear Mr. Meinzer and Mr. Golden:

This letter addresses Lincoln County’s Motion for Summary Judgment submitted February 3, 2021; Meinzer’s Brief in Opposition to the Motion for Summary Judgment submitted February 24, 2021; and Lincoln County’s Reply to Petitioner’s Brief in Opposition to the Motion for Summary Judgment submitted March 3, 2021.

On May 19, 2020, Michael Meinzer (Meinzer) submitted a written notice of resignation to Sheriff Steve Swenson of the Lincoln County Sheriff’s Office (Lincoln County). The resignation letter included a twelve-day notice period with the final day of employment noted as May 31, 2020. Meinzer was scheduled to begin new employment on June 1, 2020. Also, on May 19, 2020, Sheriff Swenson received an email from a first-year deputy, Deputy Garrett Welsh. The email explained that Deputy Welsh had given Meinzer a ride home the previous evening, and that Deputy Welsh was concerned about negative comments Meinzer had made about the Sheriff’s office and the office staff. On May 20, 2020, Meinzer attended a meeting with Sheriff Swenson. Sheriff Swenson accepted Meinzer’s resignation immediately. He informed Meinzer that if he had not resigned on May 19, Meinzer would have been disciplined and terminated for the language he used about county officials as it violated the Agreement between

Lincoln County, South Dakota and Lincoln County Deputy Sheriff's Fraternal Order of Police Lodge #1 Labor Council (Agreement). Meinzer submitted a grievance request to the Lincoln County Director of Human Resources regarding his resignation. Lincoln county agreed to meet to attempt to settle the dispute. No settlement was reached. Meinzer submitted a Petition for Hearing on Grievance on September 29, 2020 alleging that the process for his resignation and discipline was not properly followed.

The Department will address three issues related to Meinzer's grievance; whether the Department has jurisdiction over Meinzer's grievance; whether Lincoln County was obligated to allow Meinzer to complete his notice period and whether the equipment Meinzer used while an employee should be returned to him.

Whether the Department has jurisdiction over Meinzer's grievance

The first issue is whether the Department has jurisdiction over Meinzer's grievance. The Department's role in reviewing grievances and authority to dispose of grievances prior to hearing is established by SDCL 3-18-15.2 which states:

If, after following the grievance procedure enacted by the governing body, the grievance remains unresolved, except in cases provided in § 3-6D-15, the grievance may be appealed to the Department of Labor and Regulation by filing an appeal with the department within thirty days after the final decision by the governing body is mailed or delivered to the employee. The department shall conduct an investigation and hearing and shall issue an order covering the points raised, which order is binding on the employee and the governmental agency. However, the department, upon the motion of any party, may dispose of any grievance, defense, or claim:

- (1) If the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and a party is entitled to a judgment as a matter of law; or
- (2) At the close of the evidence offered by the proponent of the grievance, defense, or claim if the department determines that the evidence offered by the proponent of the grievance, defense, or claim is legally insufficient to sustain the grievance, defense, or claim.

For the Department to have jurisdiction over this grievance, Meinzer must have followed the grievance procedure enacted by Lincoln County, and he must have been an employee of Lincoln County at the time the aggrieved action took place. SDCL 3-18-1.1. defines grievance as follows,

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 grievance procedure established by Article 19 of the Agreement provides, in pertinent part:

Step 1. an aggrieved employee must print, sign, and deliver the written grievance to department administration within thirty (30) calendar days following the aggrieved action. The grievance shall contain a statement of the facts, the provision or provisions of the Agreement or working conditions of employment which is alleged to have been violated, and the relief requested.

An employee may consult with the local Union representative any time during this process. If a grievance is not presented within the thirty (30) day time period specified, it shall be considered waived.

Step 2. Upon receipt of timely filed grievance, management shall have fifteen (15) business days (i.e. Monday through Friday) to file a written response. Upon receipt of management's response, the aggrieved employee shall have fifteen (15) days to respond to management with an acceptance or denial of the disposition. If an employee does not agree with management's written response, the employee may request a conference with department leadership as specified in Step 3 below.

Step 3. A conference will be scheduled between aggrieved employees, a management representative and, at the discretion of the aggrieved employee, a Union representative may be present for this conference. The conference shall be scheduled within twenty (20) business days of receipt of the employee's denial response in Step 2, or at an agreed upon time between the aggrieved employee and management.

Step 4. Failing settlement at the conference level, the matter may be appealed to the Department of Labor pursuant to SDCL 3-18-15.2

If the County does not answer a grievance within the specified time limit, the aggrieved employee may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. If the employee fails to meet a specified time limit, the grievance shall be considered waived.

Meinzer's resignation was accepted on May 20, 2020. Meinzer then submitted a grievance form to Lincoln County. Lincoln County agreed to meet with Meinzer and his

Union Representative to resolve and settle the complaint but has maintained that Meinzer resigned, was no longer part of the Union, and was not disciplined. Meinzer issued a final offer on September 1, 2020 to settle. He said that if the matter was not resolved by September 8, 2020, he would then file an appeal with the Department. No settlement was reached.

Lincoln County asserts that following his resignation, Meinzer was no longer a part of the Union and could not file a grievance. Meinzer agrees that he resigned. However, he asserts that Sheriff Swenson verbally agreed that he would be able to finish his scheduled shifts and have his last day on May 31, 2020. Meinzer further argues that he submitted his request for grievance before May 31, 2020, which was within the allotted 30 days, and that he was still an employee when the aggrieved action took place. Lincoln County asserts that Meinzer was no longer a member of the Union following his resignation on May 20, 2020 and was, therefore, no longer subject to the Agreement, meaning he was ineligible to submit a grievance.

Meinzer claims that the procedure followed for his resignation was not appropriate. At the time of his resignation, Meinzer was employed by Lincoln County. Therefore, Department finds that Meinzer was a public employee of Lincoln County for purposes of SDCL 3-18-1.1 and subject to the Agreement at the time the alleged aggrieved action occurred. The Department further finds that Meinzer submitted his grievance within the thirty (30) days required by Article 19 of the Agreement. The timeline regarding Lincoln County's response to the grievance is unclear. However, the Agreement provides two paths to appeal to the Department. First, if the procedure is properly followed but no agreement is reached the grievant may move on to appeal to the Department. Second, if the County does not answer the grievance within the specified time limit, the grievant may elect to treat the grievance as denied and move immediately to appeal. Therefore, regardless of whether Lincoln County responded as required by Article 19 of the Agreement, Meinzer would be able to bring an appeal to the Department. Therefore, the Department concludes that it has jurisdiction over Meinzer's grievance.

Whether Lincoln County was obligated to allow Meinzer to complete his notice period

Next the Department will address Meinzer's resignation. Meinzer has stated that he provided the twelve days of notice in the resignation letter he submitted on May 19, 2020 as a professional courtesy. He argues that Sheriff Swenson agreed to allow him to work his remaining shifts over that time period, but the next day, Sheriff Swenson informed him the resignation would be effective immediately. Meinzer argues that not being allowed to work those remaining shifts caused him financial hardship. He further asserts that the reason he was not permitted to complete these shifts was due to the email sent by Deputy Welsh alleging statements made by Meinzer that were never investigated. At the meeting between Sheriff Swenson and Meinzer, Sheriff Swenson discussed Deputy Welsh's email, and he explained that he "would rather accept [Meinzer's] resignation than fire [him]." Lincoln County Br. 2. Sheriff Swenson informed Meinzer that had he not resigned, he "would have been disciplined and terminated for the language he used about county officials under Article 5." Lincoln County Br. 1. Article 5 of the Agreement provides in pertinent part,

Section 2(d) Wantonly offensive conduct or language towards the public or toward County Officers or employees, or other conduct unbecoming a deputy or employee of the County

Section 7(b) An employee is scheduled to go on duty, or is on duty, and some matter comes to the attention of his superior which in their opinion is of such serious nature that would warrant his being removed from duty.

Meinzer argues that Sheriff Swenson's decision to enforce the resignation immediately based on uninvestigated information provided by Deputy Walsh is inappropriate. He argues that he should have had a union representative with him at the meeting with the sheriff and that he should have had a disciplinary hearing. However, the Agreement does not require an employee to provide notice nor does it obligate Lincoln County to allow an employee to work through a notice period. As Meinzer has said, he provided notice as a "professional courtesy to Lincoln County." Meinzer Br. 1. While providing notice showed professionalism, the Agreement does not obligate Lincoln County to accept that courtesy, and it could choose to accept Meinzer's resignation as of the day it

was submitted which was May 19, 2020. Sheriff Swenson may have been motivated by Deputy Walsh's email, however that does not change that he was not obligated to allow Meinzer to work the noticed period. Meinzer was not disciplined, his resignation was merely accepted, and therefore, the disciplinary procedure outlined in the Agreement was not necessary. The Department finds that Meinzer resigned his position with Lincoln County and was not entitled to work the additional days he provided as notice nor was he entitled to pay for those noticed days.

Whether the equipment Meinzer used while an employee should be returned to him

The last issue regards Meinzer's equipment. Meinzer asserts that under the Agreement, he is entitled to keep his uniform and firearm. Lincoln County responds that the property belongs to the county and will not be given to Meinzer. Meinzer argues that he was informed that the clothing would be returned to him through his union representative, but it was never returned. Meinzer also argues that upon retirement, a sergeant of the Lincoln County Sheriff's Office was allowed to keep his firearm. Article 12 of the Agreement addresses equipment, and it provides, in pertinent part:

Section 1. The Employer will provide and issue all normally armed employees with a hand gun, holster, collapsible baton, pepper spray, badges, batteries, handcuffs, and any other equipment, such as protective head gear which, in the opinion of the Employer, is needed to properly and safely perform their duties.

Section 3. Each Deputy who has completed 2 years of services shall receive a uniform allowance for the purchase and maintenance of uniforms and equipment.

This uniform and maintenance allowance shall be paid to the employee in the second pay period of each year. Require uniform specifications and maintenance standards for all officers shall be established by Sheriff's Department general orders.

The uniform allowance shall be \$686.50.

Section 4. The County will provide each new Deputy with the following uniform and equipment upon initial hire: three pairs of pants, three short-sleeved shirts, three long-sleeved shirts, one pair of work boots or shoes, one trouser belt, one duty belt, one handcuff case, one collapsible baton holder, one collapsible baton, one dual magazine pouch, one flashlight holder, four belt keepers, service weapon and holster, two turtlenecks, one tie, one winter jacket, one rechargeable flashlight with one

set of rechargeable batteries and charger, and soft body armor (which is less than five years old).

In the event a new Deputy terminates or is discharged from employment with the County during his probationary period, the uniform and equipment items as provided shall be returned to the Sheriff.

Meinzer asserts that by specifying that new deputies terminated or discharged within their probationary period must return their uniforms and equipment, the Agreement is implying that other employees are not required to return their uniforms and equipment. However, the Agreement does not specify that employees may keep issued equipment, merely that employees must maintain the equipment to a certain standard, and that a uniform allowance will be provided for that purpose. Therefore, there is nothing in the text that indicates the Agreement requires that provided equipment (uniform, handcuffs, firearm etc.) becomes the permanent property of the Employee. As the property belongs to Lincoln County, if it decides to allow a staff member to keep a piece of equipment, it may. It is however not obligated to do so under the Agreement. Additionally, the fact that one officer was permitted to keep a piece of equipment does not indicate a policy to allow officers to keep equipment. The equipment is property of Lincoln County and does not need to be provided to Meinzer.

For the reasons stated above, the Department finds that no genuine issue as to any material fact and Lincoln County is entitled to a judgment as a matter of law.

ORDER:

Lincoln County's Motion for Summary Judgment is GRANTED.

Meinzer's Grievance is DISMISSED.

This letter shall constitute the order in this matter.

Sincerely,



Michelle M. Faw
Administrative Law Judge