

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

**MINNEHAHA COUNTY DEPUTIES
ASSOCIATION, et al.,**

HF No. 5 G, 2011/12

Grievant,

v.

DECISION

**MINNEHAHA COUNTY, SOUTH
DAKOTA**

Respondent.

This matter came before the Department of Labor & Regulation when Grievant, Minnehaha County Deputies Association, et al. filed a Petition for Hearing on Grievance dated August 19, 2011, pursuant to SDCL 3-18-15.2. The case was heard by Donald W. Hageman, Administrative Law Judge on October 19, 2011, in Sioux Falls, South Dakota. Thomas K. Wilka appeared on behalf of Grievant. Gordon D. Swanson represented Respondent.

Issues:

This case raises the following legal issues:

1. Whether the 5% wage reduction proposed by Minnehaha County for its employees effective December 24, 2011, violates, misinterprets or inequitably applies the provisions of the collective bargaining agreement that the County has negotiated with the Minnehaha County Deputies Association?
2. Whether the 5% wage reduction proposed by Minnehaha County for its employees effective December 24, 2011, violates a county policy established by its past practice of not reducing its employee wages?

Facts:

The facts of this case are as follows:

1. Minnehaha County Deputies Association (Association) is the designated representative and bargaining unit for the employees of the Sheriff's Department of Minnehaha County, South Dakota.
2. In 2008, Condrey and Associates, Inc. submitted recommendations to the Minnehaha County Commission with regard to the County's employee pay structure. These recommendations were titled the Job Classification and Compensation Plan (Condrey Plan).

3. The Condrey Plan is a 23-page document, discussing how the plan was developed, the job analysis and evaluation, how it could be implemented and how it can be maintained to keep the County competitive in the labor marketplace. It also includes pay scales, each containing 26 pay grades and 18 steps within each grade. Employees are placed in grades based on the positions they fill. As a general rule, employees receive step increases annually if warranted by satisfactory performance. Cost of living increases are separate from the step increases.

4. The Condrey Plan states on Page 5 the following:

The pay plan consists of twenty-six grades. Tables II - A and B display the proposed salary scales. The salary range for each grade is approximately fifty percent. The range is deliberately broad so that problems associated with employees reaching the top of their pay range will be minimized. Further, it is recommended that once employees reach the top of the range, performance increases may continue to be earned as a bonus. This will help alleviate retention and motivation problems associated with employees who have "topped out" of their pay range.

5. In 2008, the Minnehaha County Commission adopted significant portions of the Condrey Plan including the pay plan as described in Finding 4, above.

6. Minnehaha County (County) and the Association negotiated a collective bargaining agreement effective December 25, 2010, through December 31, 2012 (CBA). The CBA was signed by the parties on November 23, 2010. The CBA states at Article 15:

Section 1: Employees shall be paid pursuant to the pay plan adopted by the Minnehaha County Commissioners. General increases will be provided at the level approved by the County commission during the annual budget process.

7. The County provides its employees with the Minnehaha County Employee Handbook (Handbook). The Handbook incorporates employee policies adopted by the County: "The objective of these policies and procedures is to assure fair and consistent administration for the benefit of all employees." The CBA takes precedence over the Handbook policies if there is a conflict:

8. The Handbook at Section C-8, Classification and Compensation Plan describes the salary plan: That provision states in part:

A classification plan is maintained for all full-time, non-elected positions within the County. This plan is developed through job analysis and job evaluation and serves as a guide for the administration of a salary plan. Job descriptions are on file with Human Resources.

Salary Plan

The County utilizes a grade and step pay plan. Each of the twenty- six (26) grades range from step 1 to step 18. The interval between steps is 12 months of service. Employees may obtain a copy of the pay plan and their grade and step placement from their department head or Human Resources.

9. On July 19, 2011, the Minnehaha County Commission issued a memorandum to the County employees announcing its intention to lower the County pay plan by five percent, for all county employees, including the Association members effective December 24, 2011.
10. The Association filed a grievance with the County in accordance with the grievance procedures of the CBA. After completing the grievance procedures at the County level, the grievance remained unresolved. The final decision of the County on the grievance was issued at a public meeting of the Minnehaha County Commission on August 16, 2011.
11. The Association timely filed a Petition for Hearing on Grievance dated August 19, 2011, with the Department of Labor and Regulation.
12. Additional facts may be discussed in the analysis below.

Analysis:

Grievance:

The Association initiated this case when it filed its grievance with the County. 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.

SDCL 3-18-1. The definition of a grievance in the CBA is not substantively different from the statute. There it states:

Section 1. Grievances are herein defined to be disputes involving the interpretation of this Agreement or the application of County or department policies and procedures. Employee grievances are restricted to issues directly involving the Employee. The Association may file a grievance on behalf of more than one

employee as long as each employee named in the grievance is directly impacted by the issue.

CBA, Article 14.

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 grievance remains unresolved following the County's procedures. Therefore, the question of the County's 5% wage reduction is now before the Department. The burden of proof falls on the Association as the grievant. Rininger v. Bennett County School District, 468 NW2d 423 (SD 1991).

CBA:

The Department's first inquiry is whether the County's wage reduction violates Article 15, Section 1 of the CBA. The crux of this issue is the meaning of the term "pay plan" as used in that Section. Article 15, Section 1 states: Employees shall be paid pursuant to the pay plan adopted by the Minnehaha County Commissioners. General increases will be provided at the level approved by the County commission during the annual budget process. The Association argues that the "pay plan" is a document which contains the salaries of each County employee classification and each step within those classifications. In contrast, the County argues that the phrase refers to the scheme utilized by the County to set wage and salaries which includes the yearly budget process.

"Disputes over the meaning of provisions of collective bargaining agreements are settled by application of general contract principles. Wessington Springs Education Association v. Wessington Springs Sch. Distr. No. 36-2, 467, NW 2d 101, 104 (SD 1991). Contract interpretation is a question of law reviewable de novo. Schulte v. Progressive Northern Ins. Co., 2005 S.D. 75, 'lf 5, 699 N.W. 2d 437, 438 (citation omitted).

"When the meaning of contractual language is plain and unambiguous, construction is not necessary. If a contract is found to be ambiguous the rules of construction apply." Pesicka v. Pesicka, 2000 S.D. 137, 'lf 6, 618 N.W. 2d 725, 726 (citing Alverson v. Northwestern Nat' Cas. Co., 1997 S.D. 9, 'lf 8, 559 N.W. 2d 234, 235). "Whether the language of a contract is ambiguous is...a question of law." Id. (quoting Enchanted World Doll Museum v. Buskohl, 398 N.W. 2d 149, 151 (S.D., 1986)).

The CBA does not define the term, "pay plan" and the contract itself provides little guidance as to its meaning. Therefore, when the contract is viewed in isolation, the meaning of the

term is uncertain, i.e., ambiguous.¹ However, when the evidence presented during the hearing is considered as a whole, it becomes clear that the term, “pay plan” as used in Article 15. Section 1 of the CBA refers to a document containing the salaries or wage scales of the County employees by classification and step.

The County’s Answer to the Association’s Petition for Hearing on Grievance states in part:

The County's current pay plan was adopted in 2008. A copy of the pay plan is attached as Appendix A. It was prepared by a consultant hired by the County. The plan is a 23-page document, discussing how the plan was developed, how it could be implemented, and how it can be maintained to keep the County competitive in the labor marketplace. It also includes proposed pay scales, each containing 26 pay grades and 18 steps within each grade.

Answer, page 1. (emphasis added). In 2008, the County Commission adopted significant portions of the Condrey Plan. The Condrey Plan states in part:

The pay plan consists of twenty-six grades. Tables II - A and B display the proposed salary scales. The salary range for each grade is approximately fifty percent. The range is deliberately broad so that problems associated with employees reaching the top of their pay range will be minimized. Further, it is recommended that once employees reach the top of the range, performance increases may continue to be earned as a bonus. This will help alleviate retention and motivation problems associated with employees who have "topped out" of their pay range.

Condrey Plan, page 1. (emphasis added.)

Consequently, the “pay plan” consists of the salary and wage scales recommended by the Condrey Plan and adopted by the County Commission in 2008. The “pay plan” has evolved since that time with periodic increase approved by the County Commission through the budgetary process.

Once equipped with meaning of “pay plan, the analysis of Article 15, Section 1 of the CBA can be completed. The first sentence of that Section addresses the wages to be paid to the employees during the course of the contract. It states: Employees shall be paid pursuant to the pay plan adopted by the Minnehaha County Commissioners. The word, “adopted” is in the past tense. Consequently, this sentence refers to salaries or wages adopted by the County Commission prior to the November 23, 2010, execution of the CBA.

The second sentence describes how the wages referenced in the first sentence may be altered during the contract period. The second sentence states: General increases will be provided at the level approved by the County commission during the annual budget process. The phrase “increases will be provided” is in the future tense, thus referring to action taken by the County Commission following the November 23, 2010, execution of the contract.

¹ Ambiguous is defined as “1. open to or having several possible meanings or interpretations; equivocal: an ambiguous answer. 3. of doubtful or uncertain nature; difficult to comprehend, distinguish, or classify; a rock of ambiguous character.” Dictionary.com, <http://dictionary.reference.com/browse/ambiguous>, December 21, 2011.

The County argues that the “pay plan” referenced in Article 15 of the CBA is contained in Section C-8 of the Handbook. The Department disagrees. The Handbook states in Section C-8, “[e]mployees may obtain a copy of the pay plan and their grade and step placement from their department head or Human Resources.” This language indicates that the “pay plan” is a distinct document, separate from the description of the pay system outlined by Section C-8.

The County also argues that the absence of a provision in the CBA specifically authorizing a wage reduction does not necessarily mean that the County does not have the authority to do so. This may be true, but if the County does so, it will breach of the CBA.

As stated above, the first sentence of Article 15, Section 1 dictates that the employees are to be paid in accordance with the salary and wage scales set forth in the “pay plan” that is in effect at the time the CBA was executed. The second sentence describes how that “pay plan” may be altered during the contract period. If the County reduces the pay scale without authorization by the contract, it will breach the terms of the first sentence. In other words, the employees will no longer be paid pursuant to the “pay plan” in effect when the CBA was executed. Consequently, the Department concludes that the 5% wage reduction proposed by Minnehaha County for its employees effective December 24, 2011, violates Article 15, Section 1 of the CBA.

Past Practice:

In light of the holding above, the Department need not consider the issue of past practices here.

Conclusion:

The Association has met its burden of showing that the 5% wage reduction proposed by the County for its employees violates the CBA. The Association’s attorney shall submit Proposed Findings of Fact and Conclusions of Law, and an Order consistent with this Decision within 20 days from the date of receipt of this Decision. County’s attorneys shall have 20 days from the date of receipt of the Association’s Proposed Findings of Fact and Conclusions of Law to submit objections and/or 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 Association’s attorney shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 22nd day of December, 2011.

SOUTH DAKOTA DEPARTMENT OF LABOR & REGULATION

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