

November 2, 2017

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***Letter Decision and Order***

David A. Pfeifle  
City Attorney  
100 S. Dakota Ave., Ste 200  
Sioux Falls, SD 57102

RE: HF No. 7 G, 2016/17 – James Buteyn, Robert Forster, Thomas Schmitz, Andrew Siebenborn, and Fraternal Order of Police, Lodge #1 L.C. and The City of Sioux Falls

Dear Mr. Wilka and Mr. Pfeifle:

This letter addresses Grievants' Brief filed July 24, 2017; Respondent's Brief In Support of Denial of Grievance filed September 5, 2017; and Grievants' Reply Brief filed September 15, 2017.

Facts:

The facts in this case are as follows:

1. The Fraternal Order of Police (FOPLC) is the sole collective bargaining representative for all police officers (patrol) and sergeants of the Sioux Falls Police Department, pursuant to SDCL ch. 3-18.
2. The Agreed Ground Rules for Negotiations entered into by the FOPLC negotiating team and the City of Sioux Falls (City or Respondents) negotiating team include:
  - The representative of the City and FOP shall mutually agree upon a date after which neither side shall introduce new contract demands or proposals on bargaining subjects not previously discussed in either context.
3. Article 7 of the collective bargaining agreement (CBA) provides; in relevant part; Section 2. Negotiation Time.
  - Members of the Union negotiating team, who are City employees, will be allowed to attend negotiation sessions during the regularly scheduled duty hours. The time of each City employee spent on attendance at negotiation

sessions during their regularly scheduled duty hours will be compensated by the City at his regular hourly rate, subject to the following limitations:

A. Total compensation paid to the Union negotiation team will not exceed 240 hours for all members combined.

B. No compensation will be paid for the time spent preparing for negotiations, nor will this preparation be done by an employee during regularly scheduled duty hours.

Any additional time spent attending negotiations by the employee during his regularly scheduled duty hours may be taken as vacation, compensatory leave, personal leave, or time off without pay.

4. Art. 6 of the CBA provides, in pertinent part: The Union representative shall be permitted a reasonable time, not exceeding two hours per week, to conduct necessary Union business during working hours without loss of pay, providing it does not interfere with efficient operation of the department, and providing that the Union representatives' supervisor(s) is advised in advance of the absence. Such time spent on necessary Union business during duty hours shall be used in computing weekly overtime.
5. The primary dispute, during contract negotiations in 2016-2017, involved the rate of wage increase; the FOPLC proposed a 3% increase, and the City's last proposal, in August, 2016 was a 1.5% proposed wage increase.
6. The City and the Grievants engaged in seven active negotiation sessions from May through August, 2016.
7. The City stated in August, 2016, that the 1.5% wage increase was its last, best offer and maintained that position until it imposed a contract in February, 2017.
8. On September 13, 2016, representatives of the FOPLC appeared before the Sioux Falls City Council for an informational meeting about the issues and status of the contract negotiations, as provided for by the Ground Rules.
9. The City did not alter its stance regarding the 1.5% wage increase offer after the informational meeting, so on October 21, 2016, FOPLC sent a letter to the City formally declaring impasse.
10. On October 28, 2016, counsel for the FOPLC sent a letter to the Department of Labor (Department) requesting a conciliation.
11. The December 21, 2016 conciliation was unsuccessful.
12. On January 12, 2017, the Fact Finding proceeding was conducted in Pierre.
13. On January 27, 2017, the Fact Finding report was released.
14. Four of the FOPLC attendees at the Fact Finding requested compensation pursuant to Art. 7 of the CBA for their attendance time and travel that day to and from Pierre.
15. The request was denied by Chief Burns.
16. The Grievants each filed grievances pursuant to Art. 20 of the CBA.
17. On January 24, 2017, Chief Burns denied the grievances in writing.
18. On February 22, 2017, the Grievants submitted their Petition for Hearing on Grievances with the Department.

## ***Grievances***

The Grievants claim that the City has violated, misinterpreted and/or inequitably applied the CBA between the Sioux Falls FOP and the City of Sioux Falls. The Grievant request as remedy, the following; that the City and its agents be ordered to cease and desist from violating, misinterpreting, or inequitably applying these provisions as alleged in the grievance; that the affected members of the FOP be awarded all back pay due to the failure by the City to pay for the negotiation time described in the Grievances; and that the Department grant any other additional remedy deemed necessary and appropriate to make the Grievants whole.

***Jurisdiction:***

The Department's role in reviewing grievances is defined under SDCL 3-18. 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.

***Issues:***

- 1. If a party declares impasse during labor negotiations, does that declaration end the negotiations process?***
- 2. Are the Grievants entitled to pay for the time spent at the hearing and travel time to and from Pierre?***

***Analysis:***

The first issue before the Department is whether impasse ends the negotiation process, and more specifically, whether a Fact Finding hearing before the Department is considered part of the negotiation process. The Supreme Court of South Dakota has stated that "[i]mpasse allows the negotiation process to continue, and emphasizes good faith negotiations by both sides." *Council of Higher Educ. V. South Dakota Bd. Of Regents*, 2002 SD 55, ¶16, 645 N.W.2d. 240, 245. SDCL 3-18-8.1 states in pertinent part "Nothing in this section prohibits the parties to an impasse from adopting any other procedure to facilitate a settlement that is mutually agreeable." This section of 3-18 allows parties to continue to attempt to reach a mutually agreeable solution which indicates that impasse is not considered to be a halting point in the negotiation process. The Department encourages parties to continue to amicably resolve issues between them throughout the conciliation and fact finding process.

The Second issue is whether the Grievants are entitled to compensation for the time spent at the fact finding hearing and travel to and from Pierre. The City has agreed to

compensate the Grievants for the time spent in the Fact Finding hearing under Article 6 of the CBA which allows Union Negotiation Team members two hours a week for Union business. Article 6 states, in pertinent part, "The Union representative shall be permitted a reasonable time, not exceeding two hours per week, to conduct necessary Union business during working hours without loss of pay..." This leaves the remaining issue of compensation for the time spent traveling to and from the Fact Finding hearing. While Articles 6 and 7 of the CBA do not specifically mention travel time, Article 13 of the CBA establishes the policy for City-related business travel. "It is a fundamental rule of contract interpretation that the entire contract and all its provisions must be given meaning if that can be accomplished consistently and reasonably." *Prunty Const., Inc. v. City of Canistota*, 682 N.W.2d 749, 12 (S.D. 1989). Article 13 of the CBA states:

When employees are required to travel for City-related business all time spent traveling shall be counted as hours actually worked. This provision applies irrespective of whether an employee is driving or riding as a passenger or whether travel occurs outside the employee's regular work schedule.

Reimbursement of travel and expense money shall be as provided by department of policy and city executive order.

The City has agreed to compensate Grievants for the time spent at the Fact Finding under Section 6's two hours a week for Union Activity. By stating that the two hours of Union Activity under Section 6 will be without loss of pay and will be "used in computing weekly overtime" the CBA has established the two hours of union time are part of the negotiation team's work as city employees. Therefore, the two hours of union activity are considered City-related business and Article 13 governing traveling expenses for City-related business activities applies.

**Order:**

For the reasons stated above, the Department has decided that The City of Sioux Falls has violated, misinterpreted and/or inequitably applied the CBA between the Sioux Falls FOP and the City of Sioux Falls. The remedy sought by Grievants, that the affected members of the FOP be awarded all back pay due to the failure by the City to pay for the negotiation time described in the Grievances, is granted.

This letter shall constitute the order in this matter.

Sincerely,

*/Michelle Faw/*

Michelle M. Faw

Administrative Law Judge

MMF/dbm