

December 29, 2016

Laborers Local 620
Attn: Peter Bardeson & Tony Penn
606 N. Kiwanis Ave.
Sioux Falls, SD 57104

Donald P. Knudsen
Gunderson, Palmer, Nelson & Ashmore LLP
PO Box 8045
Rapid City, SD 57709-8045

RE: HF No. 5 U, 2015/16 – Laborers 620, on Behalf of Shari Winslow v. Fall River County

Greetings:

This letter addresses Respondent's Motion to Dismiss Petition filed on October 31, 2016; Affidavit of Donald P. Knudsen In Support Of Motion To Dismiss Petition filed on October 31, 2016; Petitioner's Response to Respondent's Motion To Dismiss filed on November 21, 2016; and County's Reply To Union's Brief In Opposition To County's Motion To Dismiss filed on December 12, 2016.

Shari Winslow (Petitioner) was employed by Fall River County (Respondent) as a paralegal. She is a member of Laborer's 620 which had an active collective bargaining agreement (Agreement) with Respondent at all times pertinent to this matter. Petitioner asserts that she was subjected to a hostile work environment starting in November 2015. She claims that her employer became generally hostile towards her. He would not respond to her emails, speak to her, and he would verbally harass her.

On April 1, 2016, Petitioner claims that she was unable to tolerate the working conditions any longer and was, therefore, constructively discharged from her employment. On April 6, 2016, after leaving her employment with Respondent, Petitioner filed a grievance with the County Commissioners of Fall River County. On April 13, 2016, Respondent rejected Petitioner's grievance and refused to schedule a hearing as is required in Article 14 of the Agreement. Respondent claims that as Petitioner is no longer an employee, she is not entitled to the grievance procedure outlined in the Agreement.

Respondent has moved to dismiss on the grounds that Respondent has not committed an Unfair Labor Practice as defined by SDCL §3-18-3.1 which states:

Unfair practices of employers defined. It shall be an unfair practice for a public employer to:

- (1) Interfere with, restrain, or coerce employees in the exercise of rights guaranteed by law;
- (2) Dominate, interfere, or assist in the formation or administration of any employee organization, or contribute financial or other support to it; provided, an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;
- (3) Discriminate in regard to hire or tenure or employment or any term or condition of employment to encourage or discourage membership in any employee organization;
- (4) Discharge or otherwise discriminate against an employee because he has filed a complaint, affidavit, petition, or given any information or testimony under this chapter;
- (5) Refuse to negotiate collectively in good faith with a formal representative; and
- (6) Fail or refuse to comply with any provision of this chapter.

Petitioner argues that Respondent committed an unfair labor practice by violating part one of §3-18-3.1 when the County refused to allow her to exercise her right to the County's grievance procedure as outlined in the Agreement.

Chapter 3-18 of the South Dakota Codified Law was designed and intended to provide the Department of Labor the ability to ensure a power balance between collective bargaining groups and their employers. Matters regarding this chapter must depend on the effect of membership in a collective bargaining group or collective bargaining in general. As nothing in the current record indicates that Ms. Winslow's alleged treatment or constructive discharge was driven by an effort to undermine collective bargaining power or due to her membership in a collective bargaining group the present issue does not fall under the Department of Labor's jurisdiction for Unfair Labor Practice.

Order:

As this matter does not fall under the jurisdiction of the Department of Labor, it is hereby ordered that Summary Judgment is granted in favor of Respondent. This letter shall constitute the Department's Order in this matter.

Sincerely,

/Michelle Faw/
Michelle M. Faw
Administrative Law Judge

MMF/jjm