

SOUTH DAKOTA DEPARTMENT OF LABOR
DIVISION OF LABOR AND MANAGEMENT

IUOE, LOCAL #49,

HF No. 5G, 2009/10

Petitioner,

v.

DECISION

CITY OF PIERRE,

Respondent.

This matter comes before the Department of Labor based on Grievant's Petition for Hearing on Grievance filed pursuant to SDCL 3-18-15.2. Gill Koetzle appeared on behalf of Grievant, IUOE, Local #49. Robert C. Riter, Jr. represented Respondent, City of Pierre. The Department of Labor conducted a hearing on December 8, 2009, in Pierre, South Dakota. Upon consideration of the live testimony given at hearing and the evidence presented at hearing, Grievant's Petition for Hearing and request for relief is hereby denied.

Issues:

1. Whether Petitioner timely filed the Petition for Hearing on Grievance.
2. Whether Respondent violated, misinterpreted, or inequitably applied the Agreement when Officer Dusty Pelle was not given a 1 percent step increase for the year 2009.

Facts:

Based upon the record and the live testimony at hearing, the following facts are found by a preponderance of the evidence:

IUOE Local #49 (Union) is the recognized collective bargaining representative for the Pierre Police officers. The Agreement Between the City of Pierre and Local Union 49 International Union of Operating Engineers (Agreement) governs the parties and is at issue in this matter. Officer Dusty Pelle (Officer Pelle) is a union member and is employed by the Pierre Police Department.

In August of 2008, Officer Pelle was arrested for DUI while off duty, and subsequently pled guilty to that offense. Pelle was found to have violated Policy 101(1) of the Police Department manual (Manual), the commission of any violation of local, state or federal laws and Policy 101(7) of the Manual, conduct unbecoming to an officer which might be detrimental to the service or bring discredit to the department on or off duty.

On August 27, 2008, Assistant Chief of Police, Elton Bleemaster informed Officer Pelle of the proposed disciplinary action. The proposed disciplinary action stated,

In order to retain your position as a Patrol Officer with the Pierre Police Department, you must attend the [alcohol] evaluation and agree to comply with the recommendations, if any...

You will be suspended without pay for 15 days. Also, you will not receive a step increase for 2009.

The proposed disciplinary action was acknowledged by Pelle and also signed by Assistant Chief of Police Bleemaster, and Officer Pelle's supervisor, Lt. Brian Hines. Officer Pelle was also informed that he had the right to object to the proposed disciplinary action. Officer Pelle did not object to the proposed disciplinary action.

On September 3, 2008, Officer Pelle received a letter notifying him that his 15 day suspension without pay was effective September 2, 2008, he was not going to receive a step increase in 2009, and that he had to comply with the recommendations resulting from the alcohol evaluation. Officer Pelle was also informed that if he so elected, he had five working days from receipt of the letter to initiate an appeal of the discipline action to the City Administrator. Officer Pelle acknowledged receipt of this letter, and it was signed by Assistant Chief of Police Elton Bleemaster.

On December 17, 2008, Officer Pelle's supervisor, Lt. Brian Hines, completed an evaluation for the year 2008. Officer Pelle received a rating of 5 in the area of Information Collection and Processing, 4 in the area of Written Communications, and 3 in Overall Impression. Due to the DUI incident, Officer Pelle received a rating of only 2 in the area of Judgment, however it was noted that since the incident Pelle had worked hard to put the incident behind him and become a more productive officer. Officer Pelle was also commended on his evaluation for his written communications, work with the department's computer system and web page.

It is not disputed that Officer Pelle is a good police officer, and that in many areas he is a valued asset to the Pierre Police Department. However, the DUI incident was of such serious consequence, that despite his evaluation rating that made Officer Pelle eligible for a step increase, Assistant Police Chief Bleemaster felt that no step increase was part of an appropriate punishment. No step increase for the year 2009 was recommended for Officer Pelle.

Officer Pelle filed notice of a grievance against the City of Pierre, on July 21, 2009. On July 27, 2009, Officer Pelle's grievance was denied by Chief of Police, Robert Grandpre. Officer Pelle appealed his grievance on August 3, 2009, which was again

denied by City Administrator, Leon Schochenmaier. A petition for hearing on grievance was filed with the Department of Labor on August 22, 2009.

Issue:

SDCL §3-18-1.1 defines a grievance:

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 Department’s role in resolving a grievance is defined by SDCL §3-18-15.2. SDCL §3-18-15.2 reads, 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.

The burden of proof is on the grievant. *Rininger v. Bennett County Sch. Dist.*, 468 N.W.2d 423 (S.D. 1991).

Whether Petitioner timely filed the Petition for Hearing on Grievance

Article 7 of the Agreement addresses the grievance procedure and when a grievance must be filed. Article 7, Section 2 provides in part,

The employee or Union must present in writing her or his grievance to his or her supervisor, or appropriate representative of the City, within five (5) days of the alleged occurrence. The written notice outlining the grievance shall specify the time and place that the grievance occurred, the relief sought and the specific areas of the contract or other policy which have been misapplied or violated.

Officer Pelle filed his grievance on July 21, 2009, nearly 11 months after Officer Pelle was initially notified of the proposed disciplinary action including no 1% step increase for 2009.

Grievant argues that not getting the 1% step increase for 2009, resulted in a reduction of pay under Article 6 of the Agreement. Article 6, which addresses Disciplinary Action, specifically reduction in pay, states in relevant part,

The Chief may reduce the salary of an employee for a period not to exceed six (6) months. The reduction in pay will not exceed 10%. The Chief will furnish the employee with a written statement giving specific reasons for the reduction in pay. Employees will be subject to a reduction in pay for at least a full pay period.

Grievant contends that Officer Pelle was aggrieved when he did not receive his 1% pay increase on July 1, 2009 and that he did not realize a grievance had occurred until he received his July 15, 2009 paycheck, when there was economic injury to Officer Pelle. Grievant's argument is rejected. Officer Pelle knew on August 27, 2008, that the proposed disciplinary action included not receiving an increase of 1% for the year 2009. Again on September 3, 2008, Officer Pelle was informed that his disciplinary action, including not receiving a 1% step increase for the year 2009 was effective. In each instance Officer Pelle was informed that he had the right to contest that disciplinary action within 5 days and he chose not to do so.

Grievant failed to meet his burden to show that the Petition for Hearing on Grievance was timely filed. Although notice issue is a threshold issue and must be met before relief can be granted, the Department gives the analysis and ruling on the remaining issue brought forward.

Whether Respondent violated, misinterpreted, or inequitably applied the Agreement when Officer Dusty Pelle was not given a 1% step increase for the year 2009.

Grievant argues that when Officer Pelle did not getting the 1% step increase for 2009, it resulted in a lifetime reduction of pay which is governed by Article 6 of the Agreement. Grievant asserts that under the terms of Article 6, Officer Pelle should be eligible for a 1% increase effective on July 1, 2009, which represents the maximum six months allowed for a reduction of pay under Article 6 of the Agreement.

Grievant also argues that Officer Pelle's rating of 56 on his 2008 evaluation was above the minimum rating of 54, and therefore he was qualified to receive the 1% step increase for the year 2009.

Respondent argues that the disciplinary action in this matter is not a reduction in pay governed by Article 6 of the Agreement. Step Increases are governed by Addendum A of the Agreement. Addendum A provides in relevant part,

[E]mployees will receive a 2.9% increase on January 1, 2009. Eligible employees who are performing satisfactorily will also receive a 1% step increase on January 1, 2009.

City Finance Officer, Lori Gronlund testified at hearing that there is a maximum of 18 steps, if for any reason an employee does not received a step in a particular year, that does not decrease the total number of step increases that they are eligible to receive over a career.

“When determining the meaning of a contract, effect will be given to the plain meaning of its words. We must give effect to the language of the entire contract and particular words and phrases are not interpreted in isolation.” *Lillibridge v. Meade School District #46-1*, 2008 SD 17, 746 NW2d 428 ¶13. (citations omitted)

“A contract is ambiguous only when it is capable of more than one meaning when viewed objectively by a reasonably intelligent person who has examined the context of the entire integrated agreement.” *Id.* (citations omitted)

The language used in the Agreement was clear and unambiguous. The disputed term in this case is “reduction in pay”. The plain meaning of the term reduction would be to diminish or lessen¹ and not merely a failure to increase. The Agreement specifically addresses reduction of pay under Article 6 and allows the Chief to “reduce salary of an employee.” Officer Pelle’s discipline was not a reduction in salary. The discipline was for no step increase for the year 2009. At no time was Officer Pelle informed that his discipline was a reduction of pay under Article 6 or that it would only last for any determined period.

Grievant’s argument that Officer Pelle’s evaluation rating of 56 entitled him to receive a 1% step increase is rejected. The rating of 56 made him eligible for a step increase, but not automatically entitled to a step increase. The Addendum to the Agreement clearly states that eligible employees would get a step increase if they were performing satisfactorily. As a employee of the Pierre Police Department, Officer Pelle was held to a higher standard. Officer Pelle’s 2008 DUI was a serious offense and the Department felt was deserving of serious consequences. Officer Pelle’s superiors determined that due to his DUI, his performance as a police officer was not satisfactory for the year 2008 and a step increase was not given.

Grievant has failed to show that there was a violation, misinterpretation, or inequitable application of the Agreement when Officer Pelle was not given a 1% step increase for the year 2009. Grievant is not entitled to relief. Petition for hearing on grievance is hereby denied.

¹ Definition found at Merriam Webster Online Dictionary, located at www.m-w.com (last accessed on December 23, 2009).

Respondent shall submit proposed Findings of Fact, Conclusions of Law, and an Order consistent with this Decision within ten (15) days from the date of receipt of this Decision. Grievant shall have ten (10) days from the date of receipt of Respondent's proposed Findings of Fact and Conclusions to submit objections thereto or to submit proposed Findings and Conclusions. The parties may stipulate to a waiver of Findings of Fact and Conclusions of Law and if they do so, Respondent shall submit such Stipulation along with an Order in accordance with this Decision.

Dated this 23rd day of December, 2009.

SOUTH DAKOTA DEPARTMENT OF LABOR

Taya M. Dockter
Administrative Law Judge