June 6th, 2017

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LETTER DECISION AND ORDER

Justin J. Goetz
City of Watertown, SD
P.O. Box 910
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Dear Counselors:

This letter addresses the following submissions by the parties:

April 18th	Grievant's motion for summary judgement
	Grievant's brief in support of motion for summary judgment
	Affidavit of Robert Jennen
	Affidavit of Tim Hoss
	Negotiated Agreement for 1974-76
	Negotiated Agreement effective 2007
	Negotiated Agreement effective 2013
	Statement of undisputed material facts
May 19th, 2017	Employer's counter-motion for summary judgment
	Employer's brief in support of motion for summary judgement
	Affidavit of Rochelle Ebbers
	Employer's separate statement of undisputed material facts
June 2nd, 2017	Grievant's response to Employer's motion for summary judgement.

Issues presented:

Is Grievant entitled to summary judgment as a matter of law?

Is Employer entitled to summary judgment as a matter of law?

Relevant Facts:

1. Robert Jennen (Grievant) is employed by the City of Watertown (City) at the waste water treatment plant.

2. Grievant is a member of the American Federation of State, County, and Municipal Employees Local 2488 (Union).

3. The Union represents city employees during negotiations with the City.

4. On Sunday, March 2nd, 2014, Grievant reported at 8:00 AM for his regularly scheduled shift at the water treatment plant.

5. Upon arriving to work, Grievant learned that a previous employer had neglected to open the valves, leading to disruption of operations at the plant.

6. Grievant contacted his immediate supervisor, Bruce Magee, and requested that he come to the plant immediately.

7. Grievant also learned that the trickling filters froze and were consequently not working.

8. Grievant began corrective action, including chipping away the ice on the filters.

9. Magee arrived at the plant and instructed Grievant to continue his rounds.

10. At 4:30 PM, Grievant advised Magee that the sodium hydroxide pump was malfunctioning and needed to be fixed. Magee instructed Grievant to stay and work on the pump.

11. Grievant finished his scheduled shift at 5:30 PM. He recorded one half hour of overtime for Sunday.

12. After Grievant handed in his time card for the week, he was instructed to change it to reflect that he had worked 40 hours and one half hour of overtime on Thursday, March 6th.

13. Grievant attempted to discuss the matter with various members of the city but was advised that under the terms of the 2013 agreement, he had not worked overtime on a Sunday and not eligible for double pay for the one half hour worked beyond his scheduled shift.

Analysis

Grievant argues that any overtime worked on a Sunday is to be paid at double the rate of a worker's normal hourly pay according to Section 8.02 of the agreement. This section reads "Two (2) times the regular hourly rate of pay shall be paid for any overtime work performed on Sunday." While clear in its intent, this section does not actually define the term "overtime". For this, the Department must look to other sections of the agreement. "A contract should be considered as a whole and all of its parts and provisions will be examined to determine the meaning of any part. The intention of the parties is to be ascertained from the entire instrument and not from detached portions." *Eberle v. McKeown*, 83 S.D. 345, 349, 159 N.W.2d 391, 393 (1968)(Citations omitted).

Under what circumstances work is considered overtime is found in Section 8.01. Section 8.01(a) defines overtime as: "All work performed in excess of forty (40) hours in one week; sick leave, vacation and/or compensatory time taken cannot be used in calculating overtime." Grievant focuses on the phrase "performed" in section 8.02 to argue he is entitled to double pay for the half hour worked on March 2nd because it fell outside of his regular schedule. However, Section 8.01(a) makes it clear that overtime is considered any work which exceeds forty hours in one week. In order for Grievant to find relief under Section 8.01(a), Grievant would be required to have exceeded 40 hours

on a Sunday. Grievant acknowledges that his work week began on a Sunday and ended on a Thursday. Since he had not yet worked 40 hours by Sunday, March 2nd, Section 8.01(a) does not provide Grievant a remedy.

Grievant attempts to introduce older versions of the agreement to support his argument that he worked a half an hour of Sunday overtime and thereby is eligible for double pay. However, these older versions of the agreement are inapplicable here. It is undisputed that the 2013 agreement alone governed the parties on March 2nd, 2014. Since the language of the 2013 agreement as it applies to this situation is unambiguous, the Department will not consider the older versions. "When contract language is unambiguous, extrinsic evidence is not considered because the intent of the parties can be derived from within the four corners of the contract." *Vander Heide v. Boke Ranch, Inc.,* 2007 S.D. 69, ¶ 37, 736 N.W.2d 824, 835 (quoting *Spring Brook Acres Water Users Ass'n, Inc. v. George,* 505 N.W.2d 778, 780 n. 2 (SD 1993)).

The Department notes that Section 8.01(c) provides for situations in which an employee may be entitled to overtime pay without first working 40 hours in a week. The first, governed by Article 12 of the agreement, deals with situations in which an employee is subject to a call-back. The Second, found in Article 13, contemplates situations in which an employee is subject to a stand-by. However, Grievant does not raise these arguments in his motion and therefore, the Department will not address them here.

ORDER

The language of Section 8.01(a) makes it clear that overtime does not accrue until an employee has worked 40 hours in one week. Since Grievant had not yet met this threshold on March 2nd, there is no genuine issue of material fact. Grievant's motion for Summary Judgement is hereby DENIED. City's motion for Summary Judgement is hereby GRANTED. This letter shall constitute the Department's Order in this matter.

Sincerely,

/s/ Joe Thronson
Joe Thronson
Administrative Law Judge