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**STATE OF MINNESOTA
IN COURT OF APPEALS
A12-0960**

Angela Dodge,
Appellant,

vs.

City of Minneapolis,
Respondent.

**Filed February 19, 2013
Affirmed
Cleary, Judge**

Hennepin County District Court
File No. 27-CV-12-3739

Marshall H. Tanick, Teresa J. Ayling, Mansfield, Tanick & Cohen, P.A., Minneapolis, Minnesota (for appellant)

Susan L. Segal, Minneapolis City Attorney, James A. Moore, Kristin R. Sarff, Assistant City Attorneys, Minneapolis, Minnesota (for respondent)

Considered and decided by Cleary, Presiding Judge; Hooten, Judge; and Collins, Judge.*

UNPUBLISHED OPINION

CLEARY, Judge

Following notification that she had failed to pass promotional probation and was being demoted, appellant commenced a declaratory-judgment action and filed a motion

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

for summary judgment, arguing that civil service rules provide that she had automatically passed probation. The district court granted summary judgment for respondent. The court held that appellant's promotional probation was governed by a labor agreement, rather than the civil service rules. Because the district court did not err by granting summary judgment for respondent, we affirm.

FACTS

The Minneapolis Police Department (MPD) operates under a policy manual that contains a chapter entitled "General Work Rules." Section 3-307 of that chapter addresses promotions and states, "All positions other than Deputy Chief and Inspector are promoted using Civil Service Rules and Regulations. The definitions, rules of notice, and eligibility requirements are included in the Civil Service Rules." The section goes on to state, "Upon promotion, an employee shall serve a probationary period as determined by Civil Service Rules. All probationary periods are monitored by MPD Human Resources."

Rule 1.03 of the City of Minneapolis Civil Service Commission Rules states, "Agreements reached under [the Minnesota Public Employee Labor Relations Act] . . . between the City of Minneapolis and exclusive employee representatives will supersede Civil Service Commission Rules whenever overlap exists. Employees in the classified service and not covered by labor agreements are subject to these rules." Rule 8.13 addresses probation following promotion and begins by stating, "Permanent employees who obtain a promotion or a voluntary transfer of title to a different job class within the City must serve a new probationary period. Unless otherwise specified in a current

collective bargaining agreement the following probation guidelines will be observed” The rule then specifies that the probationary period is six months and explains the evaluation of promoted employees, disciplinary actions for employees on probation, and permissibility of appeals for disciplinary actions. Rule 8.13(C) provides that a veteran who is “discharged or demoted during probation is entitled to a hearing upon written request.” Rule 8.13(D) states, “Probation reports recommending either continuation of employment or release must be submitted to the Human Resources Department prior to expiration of the probationary period or the employee(s) will automatically pass probation.”

The Police Officers’ Federation of Minneapolis (union) and the City of Minneapolis have negotiated a 95-page labor agreement. The preamble to the agreement states, in part, “It is the purpose and intent of this Agreement . . . to set forth herein the complete and full agreement between the parties regarding terms and conditions of employment.” Section 30.4(g) of the agreement addresses probation following promotion. The section specifies that the probationary period is six months and explains the evaluation of promoted employees, disciplinary actions for employees on probation, and the permissibility of grievances for disciplinary actions, using language that is nearly identical to that used in rule 8.13. But the labor agreement does not include a provision regarding a veteran’s right to a hearing, a requirement of a probation report, or a clause discussing whether an employee automatically passes probation if a report is not submitted prior to expiration of the probationary period.

Appellant Angela Dodge was a sergeant with the MPD and a member of the union. Effective May 22, 2011, appellant was promoted to the position of lieutenant, subject to a six-month probationary period. On November 16, 2011, appellant's supervisor verbally informed her that she had not passed probation. On December 13, 2011, the MPD submitted to the Minneapolis Human Resources Department a document indicating that appellant had failed to pass promotional probation and was being demoted to the position of sergeant.

Appellant filed a complaint seeking an order declaring that she had satisfactorily completed her probationary period and directing respondent City of Minneapolis to appoint her to the position of lieutenant. Appellant also filed a motion for summary judgment. Appellant argued that, because no report indicating that she had failed to pass probation was submitted to the human resources department during her probationary period, she had automatically passed probation in accordance with civil service rule 8.13(D). Respondent opposed summary judgment, arguing that appellant's probationary status was governed by the labor agreement, which does not include a requirement of a report.

Following a hearing, the district court issued an order denying appellant's motion for summary judgment and granting summary judgment for respondent. The court held that civil service rule 8.13 and labor agreement section 30.4(g) overlap because they contain nearly identical language regarding probation following promotion and that the labor agreement therefore supersedes the rules on the subject, in accordance with civil service rule 1.03. The court determined that, by repeating much of the language from

rule 8.13 in the labor agreement, but not the language from rule 8.13(D), the parties who negotiated and drafted the labor agreement must have intended that the provisions in rule 8.13(D) not be included. This appeal follows.

D E C I S I O N

A district court's summary-judgment decision is reviewed de novo. *Riverview Muir Doran, LLC v. JADT Dev. Grp., LLC*, 790 N.W.2d 167, 170 (Minn. 2010). The role of an appellate court when reviewing a grant of summary judgment "is to determine whether there are any genuine issues of material fact and whether the [district] court erred in its application of the law." *Wartnick v. Moss & Barnett*, 490 N.W.2d 108, 112 (Minn. 1992). The appellate court may not weigh the evidence or make factual determinations, but must consider the evidence in the light most favorable to the party against whom judgment was granted. *McIntosh Cnty. Bank v. Dorsey & Whitney, LLP*, 745 N.W.2d 538, 545 (Minn. 2008).

At issue in this case is the interpretation of the civil service rules and the labor agreement. The meaning of words in a rule or regulation is a question of law that is reviewed de novo. *In re Rate Appeal of Benedictine Health Ctr.*, 728 N.W.2d 497, 503 (Minn. 2007). "As with statutes, when interpreting a regulation, the court first determines whether the regulation is clear or ambiguous on its face." *Indep. Sch. Dist. No. 12 v. Minn. Dep't of Educ.*, 788 N.W.2d 907, 912 (Minn. 2010) (quotation omitted). "If the regulation is unambiguous, the court construes the regulation according to the common and approved usage of its words and phrases and does not disregard the regulation's plain meaning to pursue its spirit." *Id.* The construction and effect of an

unambiguous contract is also a question of law that is reviewed de novo. *Brookfield Trade Ctr., Inc. v. Cnty. of Ramsey*, 584 N.W.2d 390, 394 (Minn. 1998). “The cardinal purpose of construing a contract is to give effect to the intention of the parties as expressed in the language they used in drafting the whole contract.” *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997).

Civil service rule 1.03 states that labor agreements “will supersede Civil Service Commission Rules whenever overlap exists.” This language is not ambiguous on its face, and thus the plain meaning and common and approved usage of the word “overlap” must be applied. “Overlap” is defined as “[t]o lie or extend over and cover part of” or “[t]o have an area or a range in common with.” *The American Heritage Dictionary* 1291 (3d ed. 1999).

The civil service rules and the labor agreement “have an area or a range in common” because they both address guidelines of probation following promotion. In fact, the rules and the agreement use nearly identical language to explain the length of probation, evaluation of promoted employees, disciplinary actions for employees on probation, and availability of appeal from disciplinary actions. Appellant argues that there is no overlap on the specific issue of submission of a probation report, which the labor agreement does not address, and that the labor agreement therefore does not supersede the rules on that specific issue. However, if appellant’s position was accepted, the labor agreement’s provisions on promotional probation would need to be a mirror image of or explicitly negate the rules’ provisions on promotional probation in order for

the labor agreement to supersede the rules on the subject. Civil service rule 1.03 merely requires “overlap” for the rules to be superseded by a labor agreement.

Additionally because the labor agreement’s language on promotional probation in section 30.4(g) is so similar to the language on promotional probation contained in civil service rule 8.13, it is apparent that the rules were referenced when the labor agreement was drafted. In fact, the labor agreement refers to the rules in other portions of section 30.4. The requirement of a probation report was left out of the labor agreement, indicating that no such requirement was intended by the drafters of the labor agreement.¹ Appellant contends that the union could not have intended for its members to have fewer rights than nonunion employees. However, the labor agreement is a comprehensive, negotiated instrument that specifically addresses the subject of promotional probation. If the drafters had intended the requirement of a probation report to apply to union employees, they would have included such a requirement in the language of the labor agreement.

Appellant argues that the General Work Rules in the MPD’s policy manual “recognize[] the primacy of the Civil Service Rule[s].” The General Work Rules state that positions in the MPD other than deputy chief and inspector “are promoted using

¹ Appellant points out that, in addition to the requirement of a probation report, the labor agreement also leaves out the provision in the rules stating that a veteran who is discharged or demoted during probation is entitled to a hearing upon written request. Appellant argues that the labor agreement’s drafters could not have intended that union employees who are veterans would not have this right. But a veteran’s right to a hearing upon discharge from a position or employment is statutorily provided. *See* Minn. Stat. § 197.46 (2012). Thus, the drafters of the labor agreement would not have needed to negotiate for such a right for veteran union employees or include the right in the labor agreement.

Civil Service Rules and Regulations” and that, “[u]pon promotion, an employee shall serve a probationary period as determined by Civil Service Rules.” However, the civil service rules state that they are superseded by a labor agreement if overlap exists. Appellant’s argument that the civil service rules must be given superiority is not supported by the language of the rules themselves. The district court did not err by granting summary judgment for respondent.

Affirmed.