

In the
Supreme Court of the State of South Dakota

MAXIMUS TAYLOR

Petitioner and Appellant,

v.

CITY OF RAPID CITY

Respondent and Appellee

Appeal from the Circuit Court
Seventh Judicial Circuit
Pennington County, South Dakota

The Honorable Eric Kelderman

APPELLANT'S BRIEF

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PRELIMINARY STATEMENT

Citations to the record will appear as “(CR ___)” with the page number from the Clerk’s Appeal Index. Citations to Appellant Maximus Taylor’s appendix will be designated as “(APP___)” followed by the appropriate page number. Citations to the May 19, 2025, hearing transcript will be designated as “(HT___)”. The Fraternal Order of Police Union contract will be designated as “Union Contract”.

Appellant Maximus Taylor will be referred to as “Taylor” and Appellee City of Rapid City will be referred to as the “City.” The South Dakota Department of Labor and Regulations will be referred to as “the Department.” The Rapid City Police Department will be referred to as the “RCPD.”

JURISDICTIONAL STATEMENT

This appeal stems from a grievance filed by Taylor pursuant to SDCL § 3-18-15.2 relating to Taylor’s termination from the RCPD. The Department entered its Findings of Fact and Conclusions of Law on November 14, 2024, dismissing Taylor’s grievance with prejudice. (APP 005). On November 25, 2024, Taylor appealed the Department’s findings to the circuit court pursuant to SDCL § 1-26-31.1. (CR 1).

On appeal, the circuit court filed its Memorandum Decision and Order Affirming the Administrative Decision dated October 14, 2025. (APP 001). Notice of Entry of the circuit court’s Order was filed on October 15, 2025. (CR 2118). Taylor timely filed his notice of appeal to this Court on November 7, 2025. (CR 2122).

The Order is one that may be appealed pursuant to SDCL §§ 1-26-37 and 15-26A-4. Notice of Appeal was filed within the time limits of SDCL § 15-26A-6. Therefore, this Court has jurisdiction to consider the issues raised on appeal.

STATEMENT OF THE ISSUES

- I. Whether the circuit court erred in finding the City did not violate Taylor's constitutional right to due process by failing to provide him a hearing prior to terminating him in accordance with the "for cause" provision in the union contract.
 - *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546, 105 S. Ct. 1487, 1495, 84 L. Ed. 2d 494 (1985).
 - *Hollander v. Douglas Cnty.*, 2000 S.D. 159, ¶ 15, 620 N.W.2d 181, 185
 - *Sutton v. Bailey*, 702 F.3d 444, 448 (8th Cir. 2012)
- II. Whether the circuit court erred by failing to follow SDCL §20-10-1 and 2 to determine whether the City established "severe misconduct" for a "for cause" termination of Taylor and whether it erred in affirming that Taylor's unintentional inaccuracy constitutes "severe misconduct."
 - SDCL § 20-10-1
 - SDCL § 20-10-2
 - *Palmer v. South Dakota Department of Labor and Regulation/Reemployment Assistance Division*, 2024 S.D. 31, 8 N.W.3d 338.
- III. Whether the circuit court erred in adopting the Department's findings that the City had other grounds to fire Taylor without addressing whether Taylor had established a prima facie case of "inference of age discrimination."
 - *Hollander v. American Cyamamid Co.*, 895 F.2d 80 83 (1990)

STATEMENT OF THE CASE

Maximus "Max" Taylor, a Rapid City Police Officer, was terminated "for cause" by the Rapid City Police Department on December 23, 2021 for allegedly lying on a routine police report. Subsequent to the termination Captain Johns, who fired Taylor, held an informal hearing and then by letter upheld his own decision. Taylor filed a timely grievance to the Police Chief and then to the Mayor pursuant to the terms of the Fraternal Order of Police Union contract with the City. Taylor argued that while the report may

have been inaccurate, he did not intentionally lie. He further argued that the City failed to provide him a pre-termination hearing, a guaranteed due process right afforded him under the Union contract and case law.

Both the Chief and the Mayor denied Taylor's grievance, and Taylor appealed to the South Dakota Department of Labor and Regulation pursuant to SDCL § 3-18-15.2. Taylor and the City filed cross-motions for summary judgment on the issue of failure to provide a pre-termination hearing. The City further moved for summary judgment on whether it established "cause" to terminate and whether it discriminated against Taylor based on his age. At 64 years of age, Taylor was the oldest officer in the police department. The Administrative Law Judge denied Taylor's motion for summary judgment on the issue of sufficiency of the pre-termination hearing, and granted the City's cross-motion. The Judge denied the City's motion for summary judgment on cause to terminate and discrimination. (APP 022)

The Department conducted a hearing on March 13-15, 2024. On September 23, 2024, Administrative Law Judge Michelle Faw entered a decision dismissing Taylor's appeal. (APP 012) Findings of Fact and Conclusions of Law were entered on November 14, 2024. (APP 005). On November 25, 2024, Taylor appealed the Department's findings to the circuit court pursuant to SDCL § 1-26-31.1. (CR 1). Following Taylor's appeal, the circuit court filed its Memorandum Decision and Order Affirming the Administrative Decision dated October 14, 2025. (APP 001).

STATEMENT OF FACTS

Maximus Taylor was in law enforcement for 39 years before his termination from the City on December 23, 2021. (CR 1390-1392). In Taylor's career, including his

eleven years with the City, his integrity had not been questioned. (CR 0999). Taylor's worst disciplinary infraction with RCPD in the eleven years he was employed with it was a one day suspension for leaving a piece of chewing gum on the dash of his patrol unit. (CR 0986). Chief Hedrick admitted this suspension was "silly." (CR 0987).

During his time with RCPD, Taylor was a member of Lodge 2A of the Fraternal Order of Police and was given protection under the Union Contract to only be terminated "for cause." (APP 072-073). Further, under RCPD policy 343-01(I), immediate termination could only take place for "severe misconduct." (APP 080). The performance reviews that directly preceded Taylor's termination in March and September of 2021 were positive and did not mention performance issues. (CR 1705, 1711). Captain Olson, as Taylor's Patrol Command Officer in 2021, signed off on these evaluations without comment. He agreed he had the opportunity to address any existing issues when he approved them, but did not. (CR 1312-1320). Furthermore, Captain Olson, Lieutenant Sigel and Chief Hedrick all agreed that any performance concerns should have been mentioned in Taylor's evaluations. (CR 1312-1320; 1067; 0972, 0974).

Captain Olson and Lieutenant Sigel put together a Remedial Performance Plan for early December of 2021 based on alleged performance issues during an annual training exercise. (CR 1741). Taylor satisfactorily completed the Remedial Performance Plan before he was terminated.(CR 1741, 1333-1334). Based on Lieutenant Sigel's e-mail placing Taylor "under the microscope" while completing the Remedial Performance Plan, Sergeant Walker dug up an old case on his own that he had been suspicious about how quickly Taylor had responded to a "kicked back" report. (CR 1259-1260). Kicked

back reports from Sergeants are common. The Department average is around 3,600 per year.

Despite Taylor's resubmitted report being previously approved, Sergeant Walker went back and watched the bodycam of the incident in question without being asked to. (CR 1262). Based on Taylor not asking, but concluding the victim did not lose her breath or pass out, Sergeant Walker jumped to the conclusion Taylor lied. (CR 1691). Walker provided a report to Sigel, who also concluded Taylor lied based on the bodycam footage alone. (CR 1691; CR 1253-1258). Walker speculated Taylor lied in order to get the report approved. (CR 1280). Neither Walker nor Sigel interviewed Officers O'Brien (second officer at scene) or Taylor before concluding Taylor lied. (CR 1253). The Sergeant who approved the amended report was also not consulted. (CR 1253).

Sigel instigated an Internal Investigation after concluding Taylor lied, and then was appointed to conduct the internal affairs investigation. (CR 1103). Taylor and Sigel had previously had a prior conflict and finger pointing issue. (CR 1376). Internal investigations under the Department's policy are supposed to be "fair and impartial." (CR 0964-0965; 1339, 1341; 1089). Internal investigations are also meant to be thorough and gather relevant facts. *Id.* When finally confronted during the internal investigation, Taylor requested to see his bodycam. (CR 1677; 1093). Taylor, upon reviewing his body cam stated, "it may be an inaccuracy but it is not a lie." (CR 1679; 1207).

Sigel and Captain Johns never did any other investigation except interview Taylor and watch the bodycam. (CR 1677). Johns provided Taylor with a letter of termination on December 23, 2021, before ever providing Taylor a hearing as required under the Union Contract. (APP 074). A post-termination hearing was held on December 30, 2021.

Neither Sigel nor Johns provided the internal investigation report or a report of Deputy Amanda Swanson to Taylor either before the December 23 termination letter or before the post-termination hearing. (CR 0905; 1211-1212). In her report, Deputy Swanson had interviewed the alleged victim and concluded the same thing as Taylor—that the victim did not lose her breath or pass out. (APP 081-082; CR 1027-1028; 1674).

Lieutenant Sigel (now Captain) admitted he believes Taylor stated what Taylor thought to be a fact. Further, concerning the deceit statute he agreed that “he (Taylor) believed it to be true and it was true. Yes; that’s correct.” (CR1215). Furthermore, numerous witnesses testified that officers are trained to use quotation marks when directly quoting a witness. (CR 1237). While Taylor used quotation marks in other areas of the report in question, he specifically did not for the phrases for which he was fired. Taylor was terminated *solely* based on this one report for allegedly lying. He was not terminated for any other reason or matter. (CR 1200; 1594).

Taylor filed a grievance regarding his termination to then-Mayor Allender, pursuant to the FOP Contract. Mayor Allender did not overturn the termination. Instead, Mayor Allender admitted that, regarding the grievance appeal, he considered other past performance issues in not overturning the termination. (CR 1727; 1159). Furthermore, Captain Johns admitted to doing post-termination investigations of Taylor unrelated to the termination reason. (CR 0883-0884). Taylor did not have any documented performance issues before the Police Department examined Taylor about an anonymous letter sent to the City Council critical of the Rapid City Police Department, which Taylor denied, under oath, to have written. (CR 1397).

Taylor was a non-traditional hire, being 53 years of age when hired. (CR 1321). Despite submitting a number of applications for promotion, Taylor was never promoted to detective or sergeant. No one over the age of 55 has ever been promoted to detective or sergeant in the Rapid City Police Department. (CR 1163, 1179). Taylor was 64 years old at the time of his termination and was the oldest officer in the Rapid City Police Department. All of the applicants for the 2021 Class for Sergeant Promotion had either been promoted or had declined an offer for the position at the time of Taylor's termination. (CR 1357, 1719). Taylor was the oldest applicant by several years. (CR 1719). Taylor had held the rank of Sergeant in previous police departments for which he worked. (CR 1390). Taylor's last formal evaluation stated Taylor helps younger officers, was a hard worker, and was a good negotiator. Further, he was deemed eligible for promotion. (CR 1705). It is common that police officers' reports are kicked back by sergeants to correct or follow up. However, tellingly, no officer other than Taylor was ever terminated for writing a misstated, inaccurate report. (CR 1103).

STANDARD OF REVIEW

The Supreme Court reviews agency findings of fact in the same manner as the circuit court to decide whether they are clearly erroneous in light of all the evidence. *Reidburn v. S. Dakota Dep't of Lab. & Regul., Reemployment Assistance Div.*, 2024 S.D. 19, ¶ 21, 5 N.W.3d 834, 839. However, "[w]hen the issue is a question of law, the decisions of the administrative agency and the circuit court are fully reviewable under the de novo standard of review." *Id.* (cleaned up) (quoting *Pirmantgen v. Roberts Cnty.*, 2021 S.D. 5, ¶ 20, 954 N.W.2d 718, 724 (citation omitted)). On appeal to the Supreme Court, when a circuit court has reviewed an agency's decision, the Supreme Court affords no

presumption that the circuit court's decision was correct. *Sauder v. Parkview Care Center*, 740 N.W.2d 878, 2007 S.D. 103.

ARGUMENT AND AUTHORITIES

I. The circuit court erred in affirming the Department's grant of summary judgment finding that the City did not violate Taylor's constitutional right to due process.

In order to make a claim for violation of constitutional due process rights, an employee must show he or she has a protected property right in continued employment. *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546, 105 S. Ct. 1487, 1495, 84 L. Ed. 2d 494 (1985). Property interests are not created by the Constitution, but instead "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law...." *Id.* (quoting *Board of Regents v. Roth*, 408 U.S. 564, 577, 92 S.Ct. 2701, 2709, (1972)). Per South Dakota law, such a property right arises when an employee shows that he or she "could have been fired only for good cause." *Hollander v. Douglas Cnty.*, 2000 S.D. 159, ¶ 15, 620 N.W.2d 181, 185.

It is undisputed the Union Contract governed Taylor's employment with the City. Per the terms of the Union Contract, as a member of Lodge 2A of the Fraternal Order of Police, Taylor could only be terminated for cause:

The City has the right to impose discipline upon employees for violations of the City's work, rules, or for conduct that is detrimental to the Department or the City. *The City shall only impose discipline for cause.* Discipline may include discharge of an employee.

(APP 72-73 at Article 39.01) (emphasis added). Because Taylor could only be terminated "for cause," it follows then that Taylor had a constitutionally-protected property interest in his continued employment.

Despite the protections afforded to Taylor's employment, as addressed in separate subparts below, the City violated Taylor's constitutional right to due process in three discrete ways. First, as an employee with a constitutionally-protected property interest in his employment, Taylor was not afforded the required pre-termination hearing. Second, the City withheld information crucial to Taylor's defense and failed to inform Taylor of the full reasons leading to his termination. Finally, even if the Court finds the hearing afforded to Taylor constitutes a valid pretermination hearing, Taylor was not afforded an impartial adjudicator at any level of investigation into the allegations against him.

A. Taylor was not afforded a pre-termination hearing.

Due process requires that *prior* to a deprivation of any protected property right, the aggrieved party be provided "notice and opportunity for hearing appropriate to the nature of the case." *Loudermill*, 470 US at 542 (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 656 (1950)). The United States Supreme Court has described "the root requirement" of the Due Process Clause as "being that an individual be given an opportunity for a hearing *before* he is deprived of any significant property interest." *Id.* (quoting *Boddie v. Connecticut*, 401 U.S. 371, 379, 91 S.Ct. 780, 786 (1971) (emphasis in original) (citations omitted)). "These basic guarantees must be granted at a meaningful time and in a meaningful manner." *Hollander*, 2000 S.D. 159 at ¶ 18.

Here, the City admitted multiple times in sworn testimony that Taylor did not receive a hearing prior to the termination letter of December 23, 2021. First, in the deposition testimony submitted in support of Taylor's Motion for Summary Judgment,

both Chief Hedrick and Captain Johns acknowledged that the December 23, 2021, letter to Taylor was a termination letter and was not a recommendation of termination:

Q (Mr. Hagg): And as you read B can you read the first sentence of that letter of Exhibit 25? [APP 074]

A (Chief Hedrick): Yes. The purpose of this letter is to notify you that your employment with the Rapid City Police Department is terminated effective December 30, 2021.

Q Okay. Does that indicate to you that this is intended to be a letter of termination?

A Yes.

Q And why don't you take your time and scan it and look at it. But I want you to tell me if there is provided in there an explanation of the reason for the termination.

A I do not see the reason in this letter.

Q Okay. And the letter is a termination letter, it's not a recommendation, correct?

A Correct.

(APP 031 at ¶ 9; CR 642:21-643:12). Hedrick reiterated the same during his testimony before the Department, after Taylor's Motion for Summary Judgment on the issue had been denied. (CR 0996 at 3-5).

Furthermore, there should be no question that the December 23, 2021, letter was in fact a termination letter as Captain Johns admitted that the decision to terminate Taylor "was already made" when the letter was delivered to Taylor, and that no pretermination hearing occurred before the delivery of the letter. (APP 031 at ¶ 9; CR 903:13-905:3). The requirements of RCPD's own Disciplinary Policy further evidence the RCPD's

intent to terminate Taylor via the December 23, 2021, letter, because its contents correspond directly with the requirements of RCPD Disciplinary Policy 343-01:

Severe misconduct may result in the dismissal of the employee. When dismissed, the employee shall receive, in writing: (26.1.7A)

- a) A statement citing the reason for dismissal; (26.1.7A)
- b) The effective date of the dismissal; (26.1. 7B)
- c) A statement of the status of fringe and retirement benefits after dismissal; (26.1.7C), and
- d) A statement indicating a copy of the dismissal will be placed in the employee's personnel file.

(APP 080 at (I)(1)). The December 23, 2021, letter explicitly states that it terminates Taylor's employment as of December 30, 2021, but tellingly, it fails to provide information notifying Taylor of his right to a hearing on the matter or to provide him with the reason for his discharge, as required by 343-01.

Even Rapid City Mayor Steve Allender, who handled Taylor's appeal of the step one grievance, agreed due process should be applied to for cause terminations and that the Union Contract required a pretermination hearing. (APP 031 at ¶¶ 3-4). He further agreed that regarding Article 39.03 of the contract, "within" means "before termination" for purposes of the pretermination hearing and that "it wouldn't make much sense to have it (hearing) following the termination." *Id.*

Here, any hearing allegedly provided to Taylor failed to satisfy the requirements of due process for multiple reasons. There is no dispute that no hearing was held in advance of the City's December 23, 2021, correspondence terminating Taylor, as the first time any hearing occurred was December 30, 2021. There should also be no dispute that any such hearing was not held "at a meaningful time and in a meaningful manner,"

because by the time the December 30, 2021, hearing occurred, the City admitted it had *already decided* to terminate Taylor. *See Hollander*, 2000 S.D. 159 at ¶ 18; *see also* (CR 903:13-905:3). This constitutes a clear admission that Taylor was not afforded notice nor a meaningful opportunity to be heard on his case or to present evidence before the City made the decision to deprive him of his right to continued employment—a direct violation of his due process rights. Despite these facts as to the timing of the hearing and the City’s decisions being undisputed, the circuit court still erroneously affirmed the Department’s finding that Taylor’s due process rights were not violated by the lack of a pretermination hearing. For this reason, this Court should overturn the findings of the circuit court and hold that the City violated Taylor’s due process rights.

B. The City withheld evidence relating to the allegations against Taylor and also failed to provide Taylor notice of the full extent of the charges against him.

In addition to the failure to provide a pretermination hearing, Taylor’s due process rights were also violated as a result of the City’s failure to provide adequate information to Taylor and its failure to follow its own internal policy.

As the *Loudermill* Court noted, “opportunity for the employee to present his side of the case is recurringly of obvious value in reaching an accurate decision,” as “dismissals for cause will often involve factual disputes.” *Loudermill*, 470 US at 543. Because of this, “the opportunity to present reasons, either in person or in writing, why proposed action should not be taken is a fundamental due process requirement.” *Id.* (citing Friendly, “Some Kind of Hearing,” 123 U.Pa.L.Rev. 1267, 1281 (1975)). As a part of this opportunity, the employee is “entitled to oral or written notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his

side of the story.” *Id.* at 546 (citing *Arnett v. Kennedy*, 416 U.S., at 170–171, 94 S.Ct., at 1652–1653 (opinion of POWELL, J.); *Id.*, at 195–196, 94 S.Ct., at 1664–1665 (opinion of WHITE, J.); *Goss v. Lopez*, 419 U.S., at 581, 95 S.Ct., at 740). Here, Taylor received neither the notice of the charges against him nor an explanation of the City’s evidence, hindering his ability to defend against the charges against him and present his side of the story.

First, as articulated *supra*, RCPD’s own policy requires that an employee being terminated for cause be provided a statement—in writing—citing the reason for dismissal. (APP 080 (I)(1)). Despite this, the December 23 letter included no such statement and in fact was completely devoid of any of the allegations relating to Taylor’s dismissal, leaving him to no way to meaningfully prepare for his defense or know exactly the reasons for his termination or which policies he allegedly violated. This, coupled with the fact the City admitted it had already made its decision to terminate Taylor before ever sending the December 23 letter significantly deprived Taylor of due process.

To further complicate the lack of notice to Taylor, although the City maintains that Taylor’s allegedly false report was the sole reason for his termination, upon appeal of the grievance to the Mayor, Mayor Allender added additional grounds for termination not previously made known to Taylor. (CR 1727; CR 1159). The Mayor’s grievance response cited eight other bullet points he considered to support the termination. (CR 1733). Clearly, the Mayor considered other matters—again without notification to Taylor—and Taylor was not allowed an opportunity to meet the other allegations before he was terminated, in stark violation of both the Fourteenth Amendment, *Loudermill*, and *Hollander*.

To compound the City's constitutionally-improper handling of the matter, at no point prior to either the December 23 letter or to the December 30th hearing did the City ever provide Taylor a copy of its internal investigation, nor the report written by Deputy Sheriff Amanda Swanson. (CR 0905; CR 1211-1212). This is despite the fact that Chief Hedrick agreed that the reports should have been provided to Taylor. (CR 0998).

The internal investigation report, authored by Lieutenant Sigel, was based upon only Sigel's interview of Taylor and his review of the body camera footage, and despite the fact Sigel had received Swanson's report, he failed to disclose it to Taylor, *even though it actually corroborated the contents of Taylor's report*. (CR 1211-1212; APP 083) (APP 081-2) ("Casandra stated she could still breathe and stated she did not have any pain"). Confoundingly, Sigel specifically chose not to give any weight to Swanson's report or version of events in completing the internal investigation report even though it corroborated Taylor's report. (CR 1098:1-12).

Had this information been provided, at the time of the December 30th hearing, Sigel could have been cross-examined on why he did not talk with the other officer at the scene, did not talk with the sergeant that approved the report, or why he did not disclose Deputy Swanson's interview and its findings. (CR 1674-1676). Both of these reports were directly related to Taylor's termination, with the Swanson report actually supporting and substantiating Taylor's version of events and reasons for including his observations in his report, and neither was provided to him prior to his termination or the hearing.

It is nonsensical for the Department or circuit court to have found Taylor was afforded due process when he was not told the nature of the claims against him, was not given the opportunity to respond to the City's evidence (because the City withheld it),

was not able to appropriately cross-examine the investigating officers, and was not given the opportunity to utilize Swanson's corroborating report in his defense. For this reasons, the circuit court erred in affirming the Department's findings.

C. The adjudicators involved in the investigation of the charges against Taylor were not impartial.

The Department relied on *Sutton v. Bailey* to find that RCPD adequately satisfied due process in the totality of its actions in terminating Taylor. 702 F.3d 444, 448 (8th Cir. 2012) (APP 022-028). However, even if the holding in *Sutton* may allow a *post* termination hearing where employee benefits have not yet been terminated, it still requires that the hearing adjudicator be impartial: "An impartial decision maker is not required at the pretermination stage so long as the employee had access to post termination proceedings before an *impartial* adjudicator." *Sutton*, at 449 (emphasis added). In order to afford due process, the hearing adjudicator should have some modicum of objectivity and fairness. *See City of Pierre v. Henry Blackwell Sr.*, 635 N.W.2d 581, 2001 S.D. 127 (citing *Hollander*, 2000 S.D. 159). The Department and circuit court both erred by inappropriately applying *Sutton* because their analysis did not address its full holding, which requires an impartial adjudicator at a post termination hearing as a condition of not holding a pretermination hearing.

Here, Captain Johns was neither fair nor impartial. He directly participated by sitting in on Taylor's internal investigation interview. (CR 0877). He failed to disclose the independent investigation by Swanson that came to the same conclusions as Taylor and would have aided in Taylor's defense. (CR 0905). He authored the letter terminating Taylor and then conducted the post termination hearing. His post hearing letter to Taylor

dated January 3, 2023 reflects his bias by stating he was not changing his own prior decision to terminate. (CR 1686).

None of these actions are those of a fair adjudicator. This is supported by an analogous case from the Nebraska Court of Appeals, *Shear v. City of Wayne Civ. Serv. Comm'n*, 21 Neb. App. 644, 842 N.W.2d 603 (2014). stated, “[i]n the present case, there is no question that Johnson (firing person) was not an impartial decision maker at the pretermination stage. Johnson not only investigated Shear (terminated employee) and brought charges against him, but he also conducted the pretermination hearing.” Therefore, in addition to being deprived of a pretermination hearing, Taylor also was deprived of an impartial adjudicator in his post termination hearing.

Nor can the City attempt to cure the taint by relying upon the fact that Taylor availed himself of the post termination grievance process under the Union Contract with the City by appealing to the Chief and then to the Mayor. First, Chief Hedrick was likewise not impartial as he had discussed the termination with Captain Johns before Johns issued the termination letter, testifying that he approved the termination. (CR 0962). He simply rubber-stamped his own decision at the first level of the internal grievance.

The second level of the grievance process is an appeal to the Mayor. Similarly, the Mayor was already tainted based on his history with Taylor. Mayor Allender was previously the Chief of Police and actually hired Taylor as an officer for the City. Less than a year prior to termination, Mayor Allender requested Taylor be questioned by the RCPD (specifically by Captain Johns) regarding an anonymous letter sent to the City Council which was critical of RCPD. When questioned, Taylor denied authoring the

letter, and Captain Johns then asked Taylor when he planned on retiring. (CR 0865). Taylor was the only officer of 110-130 sworn officers to be questioned about the anonymous letter to the City Council. (CR 1149-1150).

It cannot be said that Taylor ever received a meaningful and impartial pre- or post-termination hearing before being terminated by the Rapid City Police Department (City). As a matter of law this Court should find that Taylor never received meaningful due process and reverse the decision of the circuit court.

II. The circuit court erred by failing to follow SDCL §20-10-1 and 2 to determine whether the City established “severe misconduct” for a “for cause” termination of Taylor and whether it erred in affirming that Taylor’s unintentional inaccuracy constitutes “severe misconduct.”

The issue and meaning of what constitutes an actionable lie is at the core of this case. Under RCPD’s own disciplinary policy, it needs to establish “severe misconduct” to justify immediate termination for cause. (APP 080). While the Department agreed “severe misconduct” is required under RCPD Policy No. 343-01(I), it failed to articulate a legal standard to support its determination that cause existed for Taylor’s termination and failed to make any findings regarding Taylor’s intent or whether he knowingly falsified a report. Although not defined in the policy, severe misconduct, by its nature, logically excludes an honest misstatement, mistake or inaccuracy. Surely, without a finding as to Taylor’s intent to deceive, the City cannot support its claim that Taylor “lied” to show severe misconduct to establish cause to terminate.

Mayor Allender acknowledged at the hearing that everyone has lied in some fashion and it depends on the significance and intent of the lie. (CR 1164). He further acknowledged his definition from his deposition, that “a more serious lie is a purposeful and deceitful statement to mislead somebody.” (CR 1164). In judging the seriousness of

Taylor’s statements in his report, this Court must look to whether Taylor was being intentionally deceitful.

This Court has dealt with the issue of determining what constitutes the willful or fraudulent misrepresentation of a fact in the context of reemployment benefits. *Palmer v. South Dakota Department of Labor and Regulation/Reemployment Assistance Division*, 2024 S.D. 31, 8 N.W.3d 338. In doing so, this Court relied heavily on *Auto-Owners Ins. Co. v. Hansen Housing, Inc.*, stating:

In examining this question, the Court noted that “to find fraud or false swearing...there must be ‘[a]n intent...and the general rule seems to be that the statement must be a willfully false one concerning some material matter, and made with the *intent to deceive*.’”

Id. at ¶ 22 (emphasis added) (quoting *Auto-Owners Ins. Co. v. Hansen Hous., Inc.*, 2000 S.D. 13, ¶ 36, 604 N.W.2d 504, 514). The *Palmer* Court went on to note that while the *Auto-Owners* Court did not specifically define what constitutes a “willfully false statement,” it did clarify “what is not willful.” *Id.* at ¶ 22. In doing so, the Court noted “that there could be an honest misstatement of some fact, and while, as a general rule, fraud and false swearing will avoid the policy, mere mistakes in stating facts which do not in themselves annul its conditions and do not appear to be willful misrepresentations will not defeat the action.” *Id.* (internal marks omitted).

Additional authority provides further guidance. For example, Webster’s American Dictionary defines a “lie” as “to make a statement that one *knows is false*, especially with *intent to deceive*.” See Webster’s American Dictionary, College Edition, 2nd Edition (emphasis added). Furthermore, statute articulates a claim for “deceit” as “[o]ne who *willfully deceives* another, *with intent* to induce him to alter his position to his

injury or risk, is liable for any damages he thereby suffers.” *See* SDCL § 20-10-1. Acts constituting “deceit” are listed in SDCL § 20-10-2 as:

- (1) The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- (2) The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
- (3) The suppression of a fact by one who is bound to disclose it, or who gives information of other facts which are likely to mislead for want of communication of that fact; or
- (4) A promise made without any intention of performing.

See SDCL § 20-10-2.

In context of that statute, Taylor did not lie with intent to deceive anyone; he had no reason to do so. The information about the victim, however stated on the incident report, was true: she did not lose her breath or pass out. (CR 1674). This was independently verified by the testimony and report of Pennington County Sheriff’s Deputy Amanda Swanson after re-interviewing the alleged victim:

Q (Mr. Hagg): But is the part where “She did not have trouble breathing and did not pass out,” is that consistent with your finding from her interview?

A (Swanson): Yes.

Q And that’s what she told you, right?

A Yes.

(CR 1027-1028). Deputy Amanda Swanson was an independent witness without interest in the outcome who found Taylor’s conclusions to be reasonable. (CR 1027). It is irrelevant that Taylor mistakenly used language suggesting an affirmative statement by the victim in his report, simply through either misreading his field notes, incorrectly

recalling the forty minute conversation, or using bad sentence structure because he simply lacked the requisite intent to mislead.

Applying the statute, Taylor, in checking his field notes and recalling the interview of the victim to amend his report, reasonably believed the information to be true and it was true. (CR 1428; CR 1214-1216). It is normal and frequent that officers use their field notes to do their reports. (CR 1085, 1262, 1029, 1178). Sigel admitted it would be reasonable and customary to check field notes to amend a kickback report, but failed to interview Taylor about the conclusions in his report before concluding Taylor lied based on reviewing the bodycam alone. (CR 1085).

Captain Johns admitted the information in Taylor's supplemental report was true, but he simply did not like the way Taylor stated it:

Q (Mr. Hagg) Okay. Let me ask you. Do you remember me taking your deposition?

A (Johns) Yes.

Q Okay. And I asked this following question and you gave the following answer on page 29, line 19. "The information ended up not being a big deal because it was true, but your concern was the way he stated it?" You answered, "Correct." Do you remember that?

A Yes

Q Is that your testimony today?

A *If it's in that deposition, I would say yes.*

(CR 0952-0953) (emphasis added). Additionally, Lieutenant Sigel admitted he believed Taylor meant to be truthful

Q Well, he -- in the course of his interview, he referred to his report, and he thought that to be the truth, did he not?

A I believe so, yes.

Q And part -- during the course of your investigation --did he also tell you that he had looked at his field notes?

A I would have to refer to my report, sir.

Q Okay. And did he also say that he also made a conclusion because he -- she claimed she wasn't injured and she did not request medical treatment?

A That's correct.

Q Isn't that true?

A Yes.

Q And so he made a conclusion that she hadn't, based on that, that she hadn't stopped breathing?

A Yes.

Q *So he drew a conclusion based on what he thought was truthful?*

A *Yes.*

Q *And then we find out by Amanda's report that that was the truth?*

A *Yes.*

Q So if he believed it to be true, and it was true, I want you to refer to the deceit statute that we just gave in front of you. Do you see it?

A Uh-huh.

Q Section 1. Do you see that?

A Yes, sir.

Q "The suggestion, as a fact, of that which is not true, by one who does not believe it to be true." That doesn't fit this situation; right? He believed it to be true and it was true.

A So

Q He believed it to be true and it was true. Is that it?

A *He believed it to be true and it was true. Yes; that's correct.*

Q Second is “The assertion, as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true.” Do you see that?

A I do see it, yes.

Q Okay. So he thought -- he concluded he had reasonable grounds to believe it to be true based on his 40-minute interview with her, his field notes, and that she had not claimed she was injured?

A *That appears to be his belief, yes.*

Q So he wasn't trying to misrepresent the situation that happened to the person; right?

A I don't know what his overall intent is to answer those questions that Sergeant Walker asked.

Q And you agreed, after all of your -- the investigation that you did, the one thing you did agree with Max about was that, based on everything, you didn't believe there was any probable cause to arrest?

A That's correct.

Q And you stated that in your report; right?

A Yep.

Q And that he made the right decision?

A *Based on the investigation that he did, he made the right decision.*

(CR 1214-1216) (emphasis added).

The City cannot rise above its own testimony. *Beals v. Autotrak, Inc.*, 904 N.W.2d 765 (S.D. 2017). There simply is no proof that Taylor intentionally lied. Therefore, the truthful statements in Taylor's report and Taylor's belief in those statements do not fall under any of the acts constituting deceit under SDCL § 20-10-2. Under subsection (1), the facts were true and Taylor believed them to be true. Under (2), the same: the facts were true and Taylor had reasonable grounds for believing it to be true from his interview

of the alleged victim and reviewing his field notes. Subsection (3) is not applicable as there was no suppression. Subsection (4) is obviously inapplicable to this situation. Taylor's repeated response that, while the report "may be inaccurate, it is not a lie," supports his belief and lack of any willful intent. (CR 1679).

Furthermore, Taylor was also extensively cross examined about lying. (CR 1433-1443). Taylor steadfastly maintained while there was an inaccuracy and that he had intent to deceive. Instead, he was relying on his notes and memory, which was in line with what Sigel's impression was as to how Taylor came to his conclusions. (CR 1443; CR 1206 (stating that Taylor made his conclusions based on his conversation with the victim and his interactions with her)).

It should also be noted that when Taylor got the call to respond, the dispatcher reported that the reporting party stated there was no assault and no injury at the scene. (CR 1684). At the scene, Taylor had interviewed the victim for over a half an hour and she declined any need for medical assistance, denied injury, and she had no marks on her neck. Taylor also took pictures of her neck showing no marks or injuries—all of which was standard protocol. (CR 1682, 1421-1422). Once the Sheriff's Office interviewed the victim, either as a routine matter on domestic violence cases or at the request of Captain Johns, any further consideration of a charge against the alleged perpetrator was completely dropped independent of Taylor's report. (CR 1027, 1216, 1674).

Had the assertions Taylor made regarding the victim losing her breath or passing out been refuted by the witness when she was interviewed by Deputy Swanson, then some type of intent to deceive could reasonably be inferred to conclude Taylor lied. However, here the opposite was true. Taylor's statement in his report was more than a

guess or being deceptive—Taylor had a reasonable belief to support his conclusions based on the entirety of the circumstances. Finally, Captain Olson, who was actually Taylor’s division commander, conceded that if the City had determined the report to be inaccurate versus it being a lie, it would have been a simple disciplinary issue and would not have resulted in termination. (CR 1388).

The Department and circuit court erred in determining Taylor had lied and erred in reaching the conclusion Taylor intentionally falsified his report without setting forth any legal standard upon which to base its decision. This is clear error, necessitating reversal of the circuit court’s decision.

III. The circuit court erred in adopting the Department’s findings that the City had other grounds to fire Taylor without addressing whether Taylor had established a prima facie case of “inference of age discrimination.”

It is undisputed that Taylor, at 64 years of age, was the oldest member of the police force from the Chief down to patrol officers. Taylor was a Senior Patrol Officer. He had been a police officer for over 39 years, with the last eleven years in Rapid City. His fitness and health were not in question. (CR 1036, 0882, 1705). Prior to his termination, the worst disciplinary action Taylor had received in ten years was a one-day suspension from Captain Johns for leaving a piece of chewing gum on the dash of his patrol car at the end of his shift. (CR 0868). Chief Hedrick admitted this infraction and suspension was “silly.” (CR 0986-0987). Taylor accepted the suspension and wrote a letter of apology.

All of Taylor’s annual reviews were good and stated he was eligible for a promotion, including the last two reviews prior to termination. (CR 1705, 1711). He was on the sergeants’ promotion list at the time of his termination. (CR 1718). Everyone on

the list, all younger than Taylor, was promoted or offered a promotion and declined. (CR 1357).

Although South Dakota does not recognize age as a statutorily protected class, the Union Contract does:

2.04 Non-discrimination. There shall be no discrimination against employees or applicants for employment or advancement on account of age, race, creed, color, national origin, sex, disabilities, or any political or union affiliation. Wherever in this Agreement, the terms “he,” “him,” or “his” is used, it shall be deemed to be equal to “she,” “hers,” or “her.”

(CR 1631 at 2.04). Mayor Allender agreed that the City policy prohibits age discrimination. (CR 1138). Assuming the Federal Age Discrimination Act (“ADEA”) applies, Taylor is protected from discrimination by the City. At age 64 at the time of firing, Taylor falls within the class of individuals protected (forty years or older).

In *Hollander v. American Cyanamid Co.*, the Court summarized the requirements of age discrimination claim:

“...Under the ADEA it is unlawful for an employer to discharge an employee because of that employee’s age. *See* 29 U.S.C. § 623 (a)(1). Drawing from the Supreme Court’s observation that the substantive prohibitions under the ADEA mirror those under Title VII of the Civil Rights Act of 1964..., we have held that the evidentiary framework measuring discrimination under the ADEA borrows from Title VII case law... In considering a disparate treatment claim, as presented in this case, we thus follow the three-step burden-shifting analysis set forth in *McDonnell Douglas Corp. v. Green* 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973), and *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). Under *McDonnell Douglas* and *Burdine*, the plaintiff first must establish a prima facie case of discrimination. The burden then shifts to the employer to counter the prima facie case by advancing a legitimate, non-discriminatory reason for its actions. The plaintiff in turn may attack the employers explanation by showing evidence that the purported non-discriminatory reason was not true and in fact was a pretext for discrimination.

895 F.2d 80, 83 (1990).

The City had ulterior motives for firing Taylor for such a minor infraction by exaggerating a negligent misstatement and spinning it into an alleged “lie” to accomplish what it could not do directly, i.e. terminate Taylor because of his age. The elements to prove age discrimination are as follows:

In an ADEA action, the plaintiff establishes a prima facie case by showing that (1) he was within the protected age group; (2) he was qualified for the job; (3) he was discharged; and (4) the discharge occurred under circumstances giving rise to an inference of age discrimination.

Hollander, at 83 (emphasis added). Here, the Department and the circuit court erred by failing to particularly determine whether Taylor established a prima facie case, thus shifting the burden to the City to establish a “legitimate non-discriminatory reason for its actions.” *Id.*

In reviewing the four elements of a prima facie case, the only issue is whether “the discharge occurred under circumstances giving rise to an inference of age discrimination.” *Id.* The following facts easily meet the inference test. First, Taylor was age 64 at the time of termination and was the oldest active police officer in the RCPD. No police officer over the age of fifty-five has ever been promoted to detective or sergeant. (CR 1163). Taylor was the only officer on the qualified list for promotion to sergeant in 2021 who was not promoted or who declined the promotion. (CR 1357). Taylor was fired just before the promotion list expired. (CR 1373). No one from the promotion list that was promoted was over fifty years of age. (CR 1285).

Taylor had previously held the position of Sergeant in a prior job. (CR 1390). He was the only officer of 110-130 sworn officers to be questioned about the anonymous letter to the City Council. (CR 1149-1150). No other officer was terminated in anyone’s recent memory for filing a false or misleading report. (CR 1103, 1362). Captain Johns,

who fired Taylor, could not remember anyone who was continually investigated AFTER termination. (CR 0909-0911). Taylor's worst infraction with the RCPD before termination was leaving a piece of chewing gum on the dash of his patrol car for which Johns gave Taylor a one day suspension without pay. (CR 0868).

Despite very positive evaluations in 2021 just prior to his termination, Sigel placed Taylor on a Remedial Performance Plan and issued a Memorandum citing poor performance in the last two plus previous years. Tellingly, Sigel did not review the evaluations before preparing the Memorandum and issued a Memorandum singling out Taylor as being "under a microscope." (CR 1067, 1075, 1690). Taylor successfully completed the Remedial Performance Plan and despite all of this, was still fired over his alleged "lying" in his report. (CR1741, 0868).

That no one admitted to discrimination is inconsequential:

Because employers rarely leave a paper trail—or "smoking gun"—attesting to a discriminatory intent, disparate treatment plaintiffs often must build their cases from pieces of circumstantial evidence which cumulatively undercut the credibility of the various explanations offered by the employer. Such determinations are, generally speaking, most competently and appropriately made by the trier of fact.

Hollander, 895 F.2d 80, 83 (citing *Ramseur v. Chase Manhattan Bank*, 865 F.2d 460, 464–65 (2d Cir.1989) (citing cases); *Dister v. Continental Group, Inc.*, 859 F.2d 1108, 1112 (2d Cir.1988)). Clearly, the facts set forth above give rise to the inference that Taylor suffered age discrimination. Because of this, the burden then shifts to the City to articulate and prove a legitimate non-discriminatory reasons for its actions. *Id.* at 83.

As previously set forth above, the City cannot meet its burden in establishing a nondiscriminatory reason to establish severe misconduct for cause. The Department and circuit court erred by not finding that Taylor met his initial burden which would have

then switched the burden to the City to articulate “a legitimate, nondiscriminatory reason for its actions.” *Hollander*, at 83. Simply put, if Taylor did not lie, there is no legitimate reason for his termination other than discrimination as to his age.

CONCLUSION

Max Taylor was a law enforcement officer for 39 years before being terminated by the Rapid City Police Department. His integrity has never been questioned. He was accused of lying on a routine report before he was even allowed to explain his position or view his bodycam from the call. Although a requirement of the Union Contract, he was not given a hearing before receiving the letter of termination. The City failed to describe the charges against Taylor, failed to provide its evidence against Taylor, and failed to provide Taylor potentially exculpatory evidence to aid in his defense. Taylor was also deprived of a fair and impartial post termination hearing due to Captain Johns’ participation. Taylor’s constitutional right to due process for loss of this property right was plainly violated.

The failure of the Department and circuit court to apply a legal standard for lying in order to judge Taylor’s intent, or lack thereof, deprived Taylor of an explanation for the wording used in his report. The information regarding the victim was the truth and the corroborating report containing proof of that truth was withheld from Taylor. Perhaps most importantly, Lieutenant Sigel who had previously concluded that Taylor lied, testified under oath that he believed that Taylor thought he was being truthful, and that the information provided by Taylor was truthful. Because of this, under no reasonable circumstances can Taylor’s conduct be deemed “severe” for purposes of an immediate

termination when no one that testified could ever remember an officer being terminated for an inaccurate or false report.

Finally, it is clear the City was looking for a reason to terminate Taylor. The City clearly discriminated against Taylor based on age and the Department and circuit court erred in failing to shift the burden of proof back to the City.

For all of these reasons, Taylor respectfully requests this Court reverse the circuit court and Department of Labor and Regulation's decision to dismiss his grievance, and remand back to the circuit court for reinstatement with back pay per Article 39.05 of the Union Contract.

REQUEST FOR ORAL ARGUMENT

Respectfully submitted this 23rd day of February, 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), I hereby certify that this *Appellant's Brief* complies with the type volume limitation provided for in SDCL 15-26A-66. This *Appellant's Brief* was prepared using Times New Roman typeface in 12-point font and contains 7,811 words. I relied on the word count of our word processing system used to prepare this *Appellant's Brief* and the original and all copies are in compliance with this rule.

CERTIFICATE OF SERVICE

I hereby certify on February 23, 2026, the foregoing **APPELLANT’S BRIEF** was filed through South Dakota Odyssey File and Serve which will send notification to:

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IN THE SUPREME COURT
STATE OF SOUTH DAKOTA

No. 31316

MAXIMUS TAYLOR

Petitioner and Appellant
v.

CITY OF RAPID CITY

Respondent and Appellee.

APPEAL FROM THE CIRCUIT COURT
SEVENTH JUDICIAL CIRCUIT
PENNINGTON COUNTY, SOUTH DAKOTA

THE HONORABLE ERIC KELDERMAN
SEVENTH CIRCUIT JUDGE

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Notice of Appeal Filed November 7, 2025

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PRELIMINARY STATEMENT

Throughout this brief, Rapid City will be referred to as “City.” Max Taylor will be referred to as “Taylor.” The South Dakota Department of Labor and Regulations will be referred to as “Department.” The Rapid City Police will be referred to as “RCPD”.

Citations to the record will appear as “(CR ____)” with the page number from the Clerk’s Appeal Index. Citations to Appellant Taylor’s Appendix will be designated as “(Taylor APP ____)”. Citations to the Appellee City’s Appendix will be designated as “(City APP ____)” followed by the appropriate page number. Citations to Taylor’s Appellate Brief will be designated as “(Taylor Brief ____)” followed by the appropriate page number. Citations to the oral argument in front of the Seventh Circuit Court on May 19, 2025 will be designated as (TR ____) followed by the appropriate citation to the transcript.

JURISDICTIONAL STATEMENT

This case involves an employment grievance by Taylor after he was terminated from the RCPD on December 30, 2021. Pursuant to SDCL 3-18-15.2, 3-18-1.1, and 3-18-1 Taylor filed a Petition for Grievance to the Department challenging that termination on February 25, 2022. (CR 1-5). The Department issued a written Decision and Order on the parties’ Motions for Summary Judgment on August 10, 2023, denying Taylor’s Motion and granting City’s Motion in part. (Taylor APP 22-28). On November 14, 2024 the Department entered

Findings of Fact and Conclusions of Law, dismissing Taylor's remaining grievance with prejudice. (Taylor APP 5-11).

Taylor appealed the Department's findings to the Seventh Judicial Circuit pursuant to SDCL 1-26-31.1. (CR 1953). The circuit court affirmed the decision of the Department on October 14, 2025. (Taylor APP 1-4). Notice of Entry of the circuit court's order was filed on October 15, 2025. (CR 2118). Taylor filed his notice of appeal on November 7, 2025. (CR 2122). This Court has jurisdiction to hear this appeal pursuant to SDCL 1-26-37, 15-26A-4, and 15-26A-6.

STATEMENT OF LEGAL ISSUES AND AUTHORITIES

I

WHETHER TAYLOR WAS PROVIDED PRE-TERMINATION PROCEDURAL DUE PROCESS.

The circuit court did not err when it affirmed the Department's decision on the issue of pre-termination procedural due process. Taylor was provided notice, evidence, an opportunity to be heard, and post-termination appeal procedures in compliance with *Loudermill* standards.

Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985)

Sutton v. Bailey, 702 F.3d 444 (8th Cir. 2012)

II

WHETHER THERE WAS CAUSE FOR TERMINATION OF TAYLOR'S EMPLOYMENT.

The circuit court did not err when it affirmed the Department's decision on the issue of cause for termination. The City's cause for termination originated due to Taylor providing inaccurate and false information as a law enforcement officer in a law

enforcement report. The Department's determination that Taylor lied was not clearly erroneous.

Farmer v. City of Rapid City, 2011 S.D. 41, 801 N.W.2d 291

Giglio v. United States, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972)

SDCL 1-26-25

III

WHETHER TAYLOR MET HIS BURDEN OF PROVING AGE AS THE CAUSE FOR HIS TERMINATION.

The circuit court did not err when it affirmed the Department's decision on the issue of an alternative permissible reason for termination. Taylor did not meet his burden of proving that age was the but-for cause of his termination.

Gross v. FBL Fin. Servs., Inc., 557 U.S. 167, 176, 129 S. Ct. 2343, 2350, 174 L. Ed. 2d 119 (2009)

Heisler v. Nationwide Mut. Ins. Co., 931 F.3d 786, 794 (8th Cir. 2019)

STATEMENT OF THE CASE AND FACTS

Maximus Taylor was hired by the RCPD on December 6, 2010 at the age of 53. (Taylor APP 5; 31). He was employed by RCPD until his termination on December 30, 2021 due to providing information in a law enforcement report that was not consistent with footage from his body-worn camera. (Taylor APP 83-87).

During Taylor's time at the RCPD, and prior to his termination, he had received minimal discipline, with his worst disciplinary infraction being a one-day suspension for leaving a piece of chewing gum on the dash of his patrol unit. (CR 111). However, around

September 20, 2021, Taylor was required to attend an annual training regarding shooting skills. (CR 119; 405). Taylor did not meet the performance standards of that training and was required to participate in a remedial training program to refresh his skills. (CR 1827-1828). As part of that remedial training program, Taylor was temporarily removed from patrol until he passed his shooting skills test. (CR 1828).

In addition to the shooting skills retest, Lieutenant Christian Sigel (“Lt. Sigel”) began creating a performance improvement plan “PIP” to address any potential employment shortfalls Taylor was having. (CR 1830). As part of that process, Lt. Sigel reached out to Taylor to participate in developing a PIP. (CR 1829). However, Taylor declined participation in that process as he did not believe a PIP was necessary. (CR 330-331). Lt. Sigel sent an email on December 7, 2021 to RCPD sergeants, informing them of the remedial training Taylor was required to complete, and directing sergeants to report any of Taylor’s good and bad performance so a PIP could be developed. (CR 1690).

Taylor was placed back on patrol on November 1, 2021 after successfully completing his shooting skills test. (Taylor App 6). That day, Taylor was dispatched to a domestic violence incident and interviewed an alleged victim about what had occurred. (CR 1682; Taylor APP 84). This conversation was recorded on Taylor’s body-worn camera. (Taylor APP 84). After leaving the scene, Taylor drafted a report

detailing the events that took place and the actions that he took in investigating the alleged crime. (CR 1682).¹

As part of standard RCPD practices, Taylor's report was reviewed by a sergeant prior to its approval. (CR 1826). The initial reviewing sergeant, Sergeant Seth Walker ("Sgt. Walker"), sent the report back to Taylor for additional follow-up and clarification at 8:21 P.M on November 1, 2021. (CR 1826). Sgt. Walker asked Taylor to answer several questions, one of which was: "[d]id you ask if she was still able to breathe or any other criteria that would change the offense to Agg[ravated assault]". (CR 1826). Taylor quickly responded to the request and resubmitted his report on November 2, 2021 at 1:21 P.M., indicating that the victim claimed "she did not have trouble breathing and did not pass out" and "claimed her breathing was not stopped." (CR 1682; 1826). Another sergeant reviewed and approved the resubmitted report. (CR 1245).

Upon receiving the email from Lt. Sigel in December of 2021, Sgt. Walker recalled the domestic violence report from a month ago that he had sent back to Taylor for additional follow-up and revisions. (CR 1258-1260). As part of his report to Lt. Sigel on Taylor's performance, Sgt. Walker reviewed that matter, including its call logs, written reports, and Taylor's body-worn camera footage. (CR 1691-1696). His review

¹ CR1682 is Taylor's amended report. Taylor's original report is not available because the system RCPD uses overwrites a report when it is changed or updated. (CR 1244-1245; 1306-1307).

found that Taylor did not ask the alleged victim questions about whether aggravated assault had been committed under the strangulation subsection. (CR 1691-1696). Instead, Taylor's body-worn camera footage showed that the alleged victim did not state on scene that she did not have trouble breathing, did not pass out, or that her breathing was not stopped. (CR 1691-1696). Sgt. Walker looked for additional call logs to determine if Taylor had followed-up with the victim and did not locate any such record. (CR 1696).

Given that Sgt. Walker could not locate any follow-up with the alleged victim and the inconsistencies between the report and the footage, he interpreted the revised statements in Taylor's report as a lie. (CR 1696). Sgt. Walker then sent a memorandum to Lt. Sigel detailing his concerns and findings regarding Taylor's report. (CR 1691-1696). Lt. Sigel reported the matter to his superior Captain John Olson. (CR 454). Lt. Sigel was thereafter assigned to investigate the matter (CR 454) and a Pennington County Sheriff's Office Investigator, Amanda Swanson ("Inv. Swanson") was assigned to the domestic violence case for follow-up questioning with the alleged victim. (Taylor APP 81-82).

As part of that investigative follow-up, Inv. Swanson spoke to the alleged victim on December 17, 2021. (Taylor APP 81-82). The alleged victim indicated during the domestic violence incident a hand was placed on her neck, but she was still able to breathe. (Taylor APP 82).

The alleged victim also stated that she did not have any redness or bruising from the incident. (Taylor APP 82).

In investigating the discrepancy between Taylor's report and his body-worn camera, Lt. Sigel met with Taylor on December 20, 2021 to inform him that he was being placed on administrative leave with pay while an investigation took place into any misconduct that occurred. (CR 76; Taylor APP 083). Taylor was provided written documentation of his administrative leave, noting that Lt. Sigel was investigating the "truthfulness" of Taylor's report in the domestic violence call, with notice that an interview was scheduled the following day to further discuss the matter. (CR 76).

On December 21, 2021, Lt. Sigel and Captain James Johns ("Capt. Johns") met with Taylor and his union representative to interview him regarding Taylor's work on November 1, 2021. (Taylor APP 84). At the beginning of the meeting, Taylor had indicated he had a chance to review the report in question prior to the meeting and that he recalled the investigation he had done. (Taylor APP 84). Taylor also recalled that the report had been sent back to him for revisions. (Taylor APP 85). When asked about how Taylor had answered those follow-up questions, Taylor indicated he had not done any additional investigation, but instead, had relied on his notes and recollection of the events to answer Sgt. Walker's questions. (Taylor APP 85). Taylor was asked about the updates to his report that the alleged victim

“claim[ed] she did not have trouble breathing and did not pass out”; and “claimed her breathing was not stopped.” (Taylor APP 85). Lt. Sigel confirmed those additions were answers to Sgt. Walker’s question regarding strangulation. (Taylor APP 85). Taylor confirmed and stated: “I asked the questions. I asked, uh, when I was speaking with her, and she said she didn’t have any trouble breathing.” (Taylor APP 85).

Taylor was then confronted with the discrepancies between his report and his body-worn camera. (Taylor APP 85). Taylor responded to this by stating he asked the victim if she needed an ambulance for injuries and she had stated she had no injuries. (Taylor APP 85). Thus, he concluded, without asking the alleged victim, that her airway was never blocked because the alleged victim said there were no injuries, did not request medical attention, and Taylor did not see any marks or redness. (Taylor APP 85).

Taylor was informed that Lt. Sigel and Capt. Johns were concerned that he was not truthful in his report given the inconsistencies between his body-worn camera and his report. (Taylor APP 85). At that point, Taylor requested to view his body-worn camera with his union representative. (Taylor APP 85). Taylor was informed that he would be allowed to review his body-camera upon the completion of the interview. (Taylor APP 85). The parties resumed the interview and Taylor indicated that he believed that he had not lied in his report. (Taylor APP 85). He stated: “No, that’s not a lie. It may be an

inaccuracy, but not a lie.” (Taylor APP 85). After this response, Lt. Sigel and Capt. Johns clarified to Taylor that they were concerned he had fabricated information to have his report approved. (Taylor APP 86). They explained that the circumstances were suspicious given how quickly Taylor was able to answer Sgt. Walkers’ questions and return the report with no additional investigation done. (Taylor APP 86). Taylor was informed that his suspension would continue until he was informed otherwise. (Taylor APP 86). After the meeting he was allowed to review his body-camera footage of the incident. (Taylor APP 86).

Due to Taylor reviewing his body-camera footage, he was re-interviewed on December 22, 2021 to give him an opportunity to further explain his version of the events. (Taylor APP 86). Taylor reiterated that he believed he had made a reasonable conclusion in his report due to the information that was available to him. (Taylor APP 86). Taylor was asked if he had any understanding about why RCPD command staff may be concerned about his conduct. Taylor responded, “no”. (Taylor APP 86).

Lt. Sigel summarized his findings in a memorandum to Capt. Johns on that same day, concluding:

After conducting my investigation outlined above, and interview with Officer Taylor, it is my belief that Officer Taylor fabricated the information in the report to get it approved. His conclusion that the information he wrote was accumulative with all facts presented, however, what he wrote was very specific and although not in quotes, eluded [sic] to the act that the victim provided the information, either voluntary or provoked through questioning. My investigation proved that is not what occurred and that the

information was solely created by Officer Taylor. Officer Taylor lied in his report.

(Taylor APP 83-87).

Prior to Taylor's termination, the RCPD also disclosed to the Pennington County State's Attorney Office ("SAO") that Taylor had engaged in conduct which could result in impeachment information which must be disclosed to criminal defendants in accordance with *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972). (City APP 12-13). Lara Roetzel, at the time Chief Deputy State's Attorney, but now acting State's Attorney, provided a letter to Capt. Johns on December 22, 2021 indicating that failure to disclose evidence affecting the credibility of a witness could result in constitutional violations of defendant's rights, specifically stating:

In a situation, such as this, where a law enforcement officer has been dishonest in the course of his employment... the [SAO] is required to disclose that to the defendant and defense counsel in each and every case that officer is called in as a witness. When the officer is crucial or the only witness to the case, the case will no longer be viable for prosecution. Once a law enforcement officer's credibility is called into question in such an egregious way, it threatens the integrity of every case the officer has touched. If a law enforcement officer cannot testify in court, I question what value he can bring to your force.

(City APP 12-13). Later, on March 9, 2022, the SAO informed Taylor in writing that he was going to be placed on the office's 'DO NOT CALL' list due to the circumstances of his termination as well as other information that came to light about Taylor's conduct as an officer after he was terminated. (City APP 15). Being placed on the SAO's 'DO NOT CALL'

list means that Taylor would not be called as a witness by Pennington County prosecutors due to the credibility issues the SAO found. (City APP 15). Taylor was notified that he could receive a hearing on this issue and did receive a reconsideration hearing from the SAO. (TR 21:14-22:18). As of the date of this brief, the City confirmed with the SAO that Taylor remains on the SAO's 'DO NOT CALL' list.

Taylor was a Fraternal Order of Police ("FOP") union employee subject to the terms and conditions of a 2021 agreement between the City and the FOP (that agreement will hereinafter be referred to as "Union Contract").² (Taylor APP 50). Consistent with the Union Contract, Taylor was entitled to certain procedures in any discipline the City took against him. Namely, Section 39.03 of the Union Contract provides:

In all cases of discharge or disciplinary suspension, an informal hearing shall be held within seven (7) calendar days of the discharge or suspension. During the informal hearing, an employee or their representative may offer evidence and arguments on their behalf. The results of the hearing will be reduced to writing and furnished to the employee and his representative within seven (7) calendar days of the hearing.

(City APP 1). Additionally, under Section 39.01 of the Union Contract a union member can only be terminated for cause (City APP 1) and pursuant to Article 6, a union employee is entitled to certain post-discipline grievance appeal procedures. (City APP 2-3).

² The full Union Contract can be found at CR 18-58.

Ultimately, Capt. Johns, in collaboration with the RCPD Chief of Police, Don Hedrick (“Chief Hedrick”) determined Taylor’s conduct was egregious enough to warrant termination. (CR 717). As such, on December 23, 2021, Captain James Johns (Capt. Johns) provided a letter to Taylor informing him that he would be terminated effective December 30, 2021 with paid administrative leave or holiday pay until that date. (Taylor APP 74). The letter did not indicate the reasons for termination or that Taylor would receive a pre-termination hearing. (Taylor APP 74). However, on that same day, Capt. Johns verbally informed Taylor and his union representative that Taylor was being terminated due to inconsistencies in one of Taylor’s reports. (City APP 14; CR 719). Taylor was also verbally informed that he would be given a pre-termination hearing within seven days of his effective termination. (City APP 14). Taylor requested that the hearing be rescheduled to December 30, 2021, so his attorney could be present during the hearing. (City APP 14). Taylor’s request was granted and the hearing was rescheduled to December 30, 2021. (City APP 14). As these events occurred verbally, Capt. Johns later memorialized these interactions in his written documentation upholding Taylor’s termination on January 3, 2022. (City APP 14).

On December 30, 2021 a hearing was held by Capt. Johns where both Taylor and his attorney were present. (Taylor APP 37-43). Taylor’s attorney asked Capt. Johns questions about the procedures leading to

the termination and also made argument as to why a lesser penalty than termination was warranted. (Taylor APP 37-43). As stated previously, Taylor was provided with a letter following the hearing where his termination was upheld by Capt. Johns. (City APP 14). Taylor grieved his termination to Chief Hedrick and then the Mayor, Steve Allender, in accordance with Sections 6.03 and 6.04 of the Union Contract. (CR 90-91; City APP 2). Taylor was given hearings in front of both parties on January 13, 2022 and January 27, 2022, respectively, who similarly upheld his termination with written communications pursuant to Sections 6.03 and 6.04 of the Union Contract. (CR 90-91; City APP 2).

Following Taylor's termination, Taylor filed a Petition for Grievance to the Department on February 25, 2022 where Administrative Law Judge, Michelle M. Faw, presided. (CR 1-5). On March 30, 2023, Taylor filed for Summary Judgment (CR 141-180) and the City cross-motined for Summary Judgment on May 1, 2023 (CR 214-227). The Department issued a written Decision and Order on the Motions for Summary Judgment on August 10, 2023, denying Taylor's Motion and granting City's Motion in part. (Taylor APP 22-28). A hearing was held on the remaining issues between March 13-15, 2024. (CR 847-1626). On November 14, 2024 the Department entered Findings of Fact and Conclusions of Law, dismissing the remainder of Taylor's grievance with prejudice. (Taylor APP 5-11).

Taylor appealed the Department’s findings to the Seventh Judicial Circuit court pursuant to SDCL 1-26-31.1 (CR 1953). A hearing for oral argument was held on May 19, 2025 in front of Judge Eric Kelderman. (See TR). Judge Kelderman affirmed the decision of the Department on October 14, 2025. (Taylor APP 1-4). Notice of Entry of the circuit court’s order was filed on October 15, 2025. (CR 2118). Taylor filed his notice of appeal to this Court on November 7, 2025. (CR 2122).

STANDARD OF REVIEW

Administrative appeals are “governed by SDCL chapter 1-26.” *Pirmantgen v. Roberts Cnty.*, 2021 S.D. 5, ¶ 20, 954 N.W.2d 718, 724. The text of “SDCL 1-26-36 delineates the standard for a circuit court’s review of an administrative agency’s decision, and [t]he same rules apply on appeal to [the South Dakota Supreme Court].” *Schupp v. S. Dakota Dep’t of Labor & Regulation*, 2023 S.D. 4, ¶ 7, 984 N.W.2d 722, 725 (quoting *Lagler v. Menard, Inc.*, 2018 S.D. 53, ¶ 22, 915 N.W.2d 707, 715). SDCL 1-26-36 states:

The court shall give great weight to the findings made and inferences drawn by an agency on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in light of the entire evidence in the record; or

- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

A court shall enter its own findings of fact and conclusions of law or may affirm the findings and conclusions entered by the agency as part of its judgment.

SDCL 1-26-36. Consistent with this statute, the Supreme Court applies the following standards to agency decisions:

Questions of law are reviewed de novo. *Dakota Trailer Mfg., Inc. v. United Fire & Cas. Co.*, 2015 S.D. 55, ¶ 11, 866 N.W.2d 545, 548. Matters of reviewable discretion are reviewed for abuse. SDCL 1-26-36(6). The agency's factual findings are reviewed under the clearly erroneous standard. SDCL 1-26-36(5). The agency's decision may be affirmed or remanded but cannot be reversed or modified absent a showing of prejudice. SDCL 1-26-36.

Anderson v. S.D. Ret. Sys., 2019 S.D. 11, ¶ 10, 924 N.W.2d 146, 148–49 (quoting *Lagler*, 2018 S.D. 53, ¶ 22, 915 N.W.2d at 715). Particularly relevant to this case, the clearly erroneous standard sets forth that, a court should only reverse “[i]f after careful review of the entire record [it is] definitely and firmly convinced a mistake has been committed[.]” *Kirwan v. City of Deadwood*, 2023 S.D. 20, ¶ 30, 990 N.W.2d 108, 116.

ARGUMENTS

I. WHETHER TAYLOR WAS PROVIDED PRE-TERMINATION PROCEDURAL DUE PROCESS.

A public employee may be entitled to due process prior to termination if they have a property interest in their employment.

Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 105 S.Ct. 1487, 84 L.Ed.2d 494 (1985). The City does not dispute that Taylor had a property interest in his employment. As previously stated, he was a

union employee subject to the provisions of the Union Contract where he could be terminated only for cause. See *Hollander v. Douglas Cnty.*, 2000 S.D. 159, ¶ 14, 620 N.W.2d 181, 185 (recognizing a narrow exception to South Dakota’s at-will employment where employer policies or agreements establish a public employee can only be terminated for cause). However, even when an employee has a property interest, “as long as [an] employer follow[s] the requirements of [procedural] due process, that property interest [can] be terminated.” *Wuest v. Winner Sch. Dist. 59-2*, 2000 S.D. 42, ¶ 27, 607 N.W.2d 912, 918.

Ultimately, procedural “due process requires notice and an opportunity to be heard. These basic guarantees must be granted at a meaningful time and in a meaningful manner.” *Hollander* at ¶ 17 (internal citations omitted). However, it “is a flexible standard that ‘requires only such procedural protections as the particular situation demands.’” *State v. Longchase*, 2025 S.D. 61, ¶ 34, 27 N.W.3d 735, 744 (citing *Tri Cnty. Landfill Ass’n v. Brule County*, 2000 S.D. 148, ¶ 13, 619 N.W.2d 663, 668).

In the employment context, the United States Supreme Court held in *Loudermill* that “‘some type of hearing’ is ordinarily a constitutional requirement before a public employee may be discharged from a job.” *Lee v. S. Dakota Dep’t of Health*, 411 N.W.2d 108, 112 (S.D. 1987) (citing *Loudermill* at 542). “[T]he pretermination ‘hearing,’ though necessary, need not be elaborate. *Loudermill* at 545 (quotations in

original). The hearing serves “as an initial check against mistaken decisions -- essentially, a determination of whether there are reasonable grounds to believe that the charges against the employee are true and support the proposed action.” *Id.* at 545-46. Thus, a hearing is sufficient where an employee receives “oral or written notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his side of the story.” *Id.* at 546.

Taylor received each of those protections before his pay and benefits were terminated by the City. As indicated in the record, Taylor was afforded several meetings to discuss his administrative leave, the issues leading to that administrative leave, to discuss and review the evidence against him, and provide his version of the events with either a union representative or lawyer present to represent him. (Taylor APP 37-43; 84-85). He was orally told on several occasions that there were concerns he had lied in a law enforcement report. (Taylor APP 84-85; CR 719). He was also provided, in writing, that he was being suspended for an investigation into the truthfulness of a report. (CR 76). This led to Taylor being allowed to review his report and his body camera from that incident in preparation for meetings with the City. (Taylor APP 84-85).

Despite this, Taylor takes issue with the process that he believes he should have been given prior to his termination. First, he argues he was not given a pre-termination hearing because he believes he was terminated on December 23, 2021. (Taylor Brief 9-12). Second, he

argues he was not provided sufficient notice of the “full extent of the charges against him”. (Taylor Brief 12-15). Third, he alleges deficiency in the evidence provided to him. (Taylor Brief 12-15). Finally, he argues that he was not afforded an impartial arbiter at any stage of his City appeal process. (Taylor Brief 15-17). As more fully argued below, the City’s termination of Taylor was consistent with the requirements of *Loudermill*, and as such, this Court should affirm the decision of the Department and circuit court.

1. Termination Date.

Taylor argues he was not afforded a pre-termination hearing because the letter from Capt. Johns, dated December 23, 2021, stated that he was to be terminated effective December 30, 2021. (Taylor APP 74). Thus, he alleges the decision to terminate him had been made before he was provided a hearing. As cited by the Department, *Loudermill* “does not require predecision hearings. It only requires an opportunity to be heard prior to the *termination of benefits*.” *Sutton v. Bailey*, 702 F.3d 444, 448 (8th Cir. 2012) (emphasis added); see also *Jackson v. St. Joseph State Hosp.*, 840 F.2d 1387, 1391 (8th Cir. 1988).

Taylor continued to receive pay through December 30, 2021 and benefits from the City until December 31, 2021. (Taylor APP 74; CR 357-358). The fact that the City had made the initial determination it was going to terminate Taylor around December 23, 2021, does not negate that decision makers could have reconsidered their decision at

his hearing on December 30, 2021 if Taylor had provided persuasive evidence that he did not lie in his report. Taylor was not able to provide such evidence, or argument, and instead, his attorney focused on arguing procedural errors by the City, offering that the City, instead, had impermissible reasons for termination, and arguing Taylor's report was not a lie because it was only a mistake. (Taylor APP 37-43).

Nevertheless, even if a determination was made that the meeting on December 30, 2021 occurred after termination, a fact which the Department did not find pursuant to *Sutton v. Bailey*, Taylor was afforded several other meetings with command staff prior to his termination that satisfied the requirements of *Loudermill*. "*Loudermill* does not require the government specifically to tell the employee that the hearing is a 'pretermination hearing.'" *Post v. Harper*, 980 F.2d 491, 494 (8th Cir. 1992) (quotes in original). Instead, "[a] meaningful opportunity to respond may occur prior to the completion of an investigation into possible wrongdoing." *Nagel v. City of Jamestown, N. Dakota*, 952 F.3d 923, 934 (8th Cir. 2020). Under *Loudermill*, "[a]n investigative meeting can provide an employee constitutionally sufficient pretermination process." *Id.* As such, Taylor received the guarantees of due process in this case.

2. Notice.

Taylor alleges that he was "not told the nature of the claims against him" because he was not provided a "statement – in writing –

citing the reason for dismissal” as he alleges was required by City policy. (Taylor Brief 13-14). Federal or state law, not employer policy, “determines what constitutes adequate procedural due process.” *de Llano v. Berglund*, 282 F.3d 1031, 1035 (8th Cir. 2002) (citing *Loudermill*, 470 U.S. at 541). As such, “[m]inimum procedural requirements are a constitutional guarantee and they *cannot be enlarged* or reduced by the internal [employer] handbook outlining termination procedures.” *Id.* (emphasis added). Even if City policy did require what Taylor argues, that the City must have provided Taylor with written documentation of the reason for dismissal prior to his dismissal³, that does not expand what is minimally required under the Constitution and *Loudermill*. Taylor was informed on multiple occasions, both orally and in writing, that he was suspected of lying in a police report. This notice satisfies due process.

Taylor also alleges that notice was deficient because the former Mayor “added additional grounds for termination not previously made known to Taylor.” (Taylor Brief 13). However, the City has never relied on those additional reasons for termination in front of the Department or the circuit court. The City’s reason for terminating Taylor is because

³ The City, however, disputes this interpretation of the policy. RCPD Policy 343-01 (I) requires “*when dismissed*, the employee shall receive, in writing...A statement citing the reason for dismissal...” (City APP 9) (emphasis added). Nothing within that language requires the City to provide such a statement prior to dismissal, only once they are dismissed. That information was provided to Taylor in post termination documentation.

he documented information in a law enforcement report that never happened. This termination reason was the one that was relied upon by the Department and the circuit court. As neither body reviewing this action relied on the former Mayor's additional reasons supporting his decision, it can be difficult to say Taylor was prejudiced in any way by not being notified of those additional reasons before he was terminated. See SDCL 1-26-36 (requiring prejudice for reversal).

3. *Evidence.*

Taylor also alleges he did not receive due process because he was not given Lt. Sigel's internal report or Inv. Swanson's follow-up report prior to his pre-termination hearing. He argues this disadvantaged him because he could not cross-examine Lt. Sigel on these issues during his hearing. (Taylor Brief 14). This argument contravenes the requirements of *Loudermill*. Due process does not require that an employer provide an employee with every piece of information that it has prior to termination, it only requires the employer provide an *explanation* of the evidence the employer has. *Loudermill*, 470 U.S. 532, 546. As demonstrated by the record, that was provided to Taylor.

More specifically, the Department directly addressed Inv. Swanson's report and its relevance to this case. (Taylor APP 17). The Department reasoned the ultimate question raised is not whether Taylor ended up being correct, but rather, whether Taylor had lied about asking the alleged victim questions about strangulation when he

investigated the crime. (Taylor APP 17). Clearly, the facts of this case demonstrated Taylor did not ask the alleged victim questions about strangulation and instead made up information and included it in his report.

So even if Taylor was provided Lt. Siegel and Inv. Swanson's reports, it is unlikely it would have made any difference in his termination because: 1) He was aware the City was concerned he had lied in a report – which is the gist of Lt. Sigel's report; 2) Taylor's report still included information that was not true, despite Inv. Swanson's report, because he included information the alleged victim did not say when Taylor spoke to her; and 3) regardless, he would not have had any entitlement to use those documents to cross-examine witnesses during his pre-termination hearing. See *Sutton*, 702 F.3d 444, 447 (stating *Loudermill* pre-termination hearing standards can be satisfied with an informal meeting with a supervisor and does not require a formal hearing). As such, the City satisfied this requirement of due process.

4. Impartial Arbiter.

Finally, Taylor argues he was never given a “meaningful and impartial pre- or post- termination hearing.” (Taylor Brief 17). Clearly, as the appellate record shows, that is inaccurate. Taylor was definitively given two impartial adjudicators both with the Department and with the circuit court. *Loudermill* does not require an impartial decisionmaker at the “pre-termination stage so long as the employee has access to post-

termination proceedings before an impartial adjudicator.” *Sutton* at 449. Taylor has had access to robust post-termination proceedings, including the opportunity to conduct full formal discovery, have a full evidentiary hearing in front of an impartial administrative judge, and two appeals of right from that determination. (See generally CR). As such, his argument fails as a matter of fact and law.

Overall, Taylor received the due process *Loudermill* requires: notice, an explanation of the evidence, and an opportunity to be heard prior to the termination of his employment benefits. Similarly, consistent with the requirements of due process, Taylor received sufficient post-termination protections. Anything beyond what was afforded to Taylor would be an expansion outside of what is required for a public employer to terminate an employee and would “intrude to an unwarranted extent on the government’s interest in quickly removing an unsatisfactory employee.” *Loudermill*, 470 U.S. 532, 546. Particularly, in the context of a dishonest law enforcement officer, this ability is of utmost importance. Given this and the above argument, the City respectfully requests this Court affirm the decision of the Department and circuit court.

II. WHETHER THERE WAS CAUSE FOR TERMINATION OF TAYLOR’S EMPLOYMENT.

As identified by the Union Contract, a union employee may only be terminated for cause. (City APP 1). In the RCPD Rules and Procedures, Policy 343-01(I), this is further defined, indicating an

employee may be discharged for “severe misconduct”. (City APP 9). The Union Contract and RCPD policies do not define what severe misconduct is. (Taylor APP 6). However, the Department and the circuit court determined Taylor’s conduct was severe misconduct under the City’s own policies regarding falsification of reports, Policy 341-06 Section F, and regarding truthful statement of facts, Policy 341-02 Section A. (Taylor APP 10). Ultimately, the reviewing bodies made the factual determination that by “intentional deceit or carelessness, the information Ofc Taylor included in his report was false”. (Taylor APP 18). And this was sufficient factual predicate to terminate Taylor in accordance with the Union Contract.

This Court reviews the Department’s “findings of fact for clear error, and conclusions of law de novo.” *Farmer v. City of Rapid City*, 2011 S.D. 41, ¶ 18, 801 N.W.2d 291, 296 (citing *Green v. City of Sioux Falls*, 2000 S.D. 33, ¶ 11, 607 N.W.2d 43, 46). “Whether cause existed for termination is a legal question, and therefore, fully reviewable. *Id.* ¶ 18 (citing *City of Sioux Falls v. Miller*, 1996 S.D. 132, ¶ 12, 555 N.W.2d 368, 371).

Despite this clear applicable legal standard, Taylor asks this Court to impose a heightened standard where none is required. He argues the circuit court erred by failing to apply SDCL 20-10-1 and 2 to the determination of whether he lied. Alternatively, Taylor argues that the Department and circuit court were somehow required to apply a

standard or definition to what a lie is. (Taylor Brief 17-24). Specifically, Taylor relies on *Palmer v. S. Dakota Dep't of Lab. & Regul., Reemployment Assistance Div.*, 2024 S.D. 31, 8 N.W.3d 338 and SDCL chapter 20-10 as support for a heightened standard.

SDCL chapter 20-10 creates a legal cause of action in tort for deceit resulting in damages. That chapter has nothing to do with employer decisions regarding terminations, there is no statute or caselaw that applies the standards set forth in SDCL chapter 20-10 to employee termination for cause, nor has that standard been incorporated into the Union Contract or City policy. As such, the Department and circuit court rightfully did not apply those standards as they are inapplicable to this case.

Similarly inapplicable, the recent *Palmer* case analyzes the language from SDCL 61-6-39 which creates a standard for “willful” and “fraudulent” misrepresentations by applicants seeking reemployment benefits. *Palmer*, 2024 S.D. 31. This Court, specifically analyzing the statute in that context, found that “there must be evidence that the claimant intentionally misrepresented facts to obtain benefits and not simply that the claimant had knowledge or constructive knowledge of the falsity of the representation.” *Id.* at ¶ 26. Relying on this case, Taylor argues this Court should apply a similar standard to determining if there was cause for termination of Taylor. However, Taylor cites to no analogous language within the Union Contract or City policies to

establish that the terms “willful” and “fraudulent” apply in this context. Consistent with Taylor’s arguments regarding SDCL 20-10-1 and 2, this argument also fails due to its inapplicability.

The resolution to this issue is quite simple. The Department and circuit court were not required to apply a specific standard other than those made by Union Contract or City policy. As the fact finder, it was the Department’s obligation to determine the credibility of the witnesses in front of it in accordance with SDCL 1-26-25 and then apply those factual determinations to contract and policy. See, e.g., *Vetter v. Cam Wal Elec. Co-op., Inc.*, 2006 S.D. 21, ¶ 18, 711 N.W.2d 612, 617 (discussing that agreements between an employer and employee should be reviewed when determining cause for termination); See also, *Schneider v. S. Dakota Dep’t of Transp.*, 2001 S.D. 70, ¶ 11, 628 N.W.2d 725, 728 (stating “[d]ue regard shall be given to the opportunity of the agency to judge the credibility of the witness”).

RCPD Rules and Procedures Policy 341-02 Section A makes it clear employees must “truthfully state the facts in all reports” and RCPD Rules and Procedures Policy 341-06 Section F prohibits employees from “knowingly falsifying reports”. (City APP 10, 11). These policies are twofold. They required Taylor to provide truthful facts in his report and to not knowingly falsify his report. It is the City’s position that Taylor violated both of these policies by his conduct, and in so

doing, his misrepresentations were severe misconduct justifying termination for cause.

Taylor, nevertheless, continues to argue his lies were simply mistakes, or alternatively, that the clear inaccuracies in his report were not intentional, so therefore, he could not be terminated for them. However, that is not the standard that City policy sets. Minimally, City policy requires truthful and accurate information in police reports. It does not matter, under City policy, if it was a mere mistake, as Taylor argues, or an intentional lie, as the City argues. Taylor created information that he did not have and put it in his police report and that conduct violated City policy.

Taylor's actions are especially problematic in the context of law enforcement. This "mistake" resulted in the necessity to review all previous cases Taylor handled to ensure that criminal defendants received adequate constitutional protections in accordance with *Giglio v. United States*, 405 U.S. 150, 92 S. Ct. 763, 31 L. Ed. 2d 104 (1972). (CR 178-179).⁴ As a law enforcement officer, it was of paramount importance that Taylor created no situation which would have affected his credibility as a State's witness. See e.g. *Nagel*, 952 F.3d 923, 931

⁴ It should be noted, after Taylor's termination, RCPD hired three retired detectives to review all of the cases Taylor previously worked on during the time the RCPD had body-camera to identify cases which would require *Giglio* disclosures, necessary dismissals, or vacation of sentences. (CR 178-179; 739-740). Investigators identified thirty-seven instances of Taylor committing civil rights violations, policy violations, and misreporting facts in his reports. (CR 178-179).

(discussing *Giglio*-impaired officers). The fact that he did, essentially makes him useless as a law enforcement officer because the SAO will no longer call him as a witness to testify in criminal cases. (City APP 15).

A police officer creating facts that did not exist is more than a mistake, it is severe misconduct. It is behavior that undermines the institutions of justice, the trust in law enforcement, and necessarily requires Taylor's conduct be disclosed under *Giglio*. "Police officers are expected to uphold the highest standards of conduct." *Farmer*, 2011 S.D. 41, ¶ 22 (citation omitted). Here, Taylor did not uphold that standard by either laziness or intentional deceit – either of which could subject him to impeachment under *Giglio*. As best stated by the Department, it was not persuaded "that drawing information out of thin air can fairly be constituted a mere mistake." (Taylor APP 18). Nor should this Court be similarly persuaded or apply a rigid standard where the administrative body was entrusted with being the fact-finder.

The Department made factual findings that were not "clearly erroneous in light of the entire record." *Schneider*, 2001 S.D. 70, ¶ 10. Those facts were then correctly applied to the Union Contract and City policy, which was affirmed by the circuit court. Similarly, this Court should make the same determination and affirm the lower courts' decisions.

III. WHETHER TAYLOR MET HIS BURDEN OF PROVING AGE DISCRIMINATION AS THE CAUSE FOR HIS TERMINATION.

Taylor has previously argued two separate alternative reasons to explain his termination as identified by the Department. The Department, though finding there was an independent legitimate cause for termination, still addressed Taylor's alternative reasons for termination. (Taylor APP 19). Taylor's argument focuses on the issue of age discrimination. (See generally Taylor Brief). However, he also alleges retaliatory actions, which Taylor believes stem from the City's suspicion that he authored an anonymous letter to Council. (Taylor Brief 26). Since the alleged retaliation for the letter is utilized as evidence of improperly motivated age discrimination, the City will not address retaliation separately.⁵

South Dakota law has not recognized a state law claim for age discrimination. See SDCL 20-13-10. Nevertheless, age is a protected class under the federal Age Discrimination in Employment Act (ADEA), codified at 29 U.S.C.A. §§ 261 et seq. and the Union Contract reflects that protection in its language stating: "[t]here shall be no discrimination against employees...for employment or advancement on account of age...". (CR 1631). Grievances pursuant to SDCL 3-18-15.2 can include "an alleged violation, misinterpretation, or inequitable application of any existing agreement, contracts, ordinances, policies, or

⁵ It should also be noted Taylor did not include retaliation as a claim in his original grievance to the Department. (CR 2-5).

rules...of the State of South Dakota or...[its] political subdivisions...”

SDCL 3-18-1.1. Here, Taylor alleges the City violated the Union Contract by discriminating against Taylor based on his age. Since South Dakota state law does not provide for protections against age discrimination, this brief will mainly provide citations to federal precedent on this issue as the language of the Union Contract is most analogous to the ADEA.

The U.S. Supreme Court held in *Gross v. FBL Fin. Servs., Inc.*, 557 U.S. 167, 176, 129 S. Ct. 2343, 2350, 174 L. Ed. 2d 119 (2009) to establish a claim of age discrimination under the ADEA that “a plaintiff must prove that age was the ‘but-for’ cause of the employer’s adverse decision.” (quotes in original). Under this analysis, “the plaintiff retains the burden of persuasion” and the “plaintiff[] bear[s] the risk of failing to prove their claims.” *Id.* at 177. Without addressing *Gross*, Taylor cites to the *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973) burden shifting framework; arguing the Department and circuit court failed to “particularly determine whether Taylor established a prima facie case.” (Taylor Brief 26). However, after the U.S. Supreme Court’s decision in *Gross*, it is somewhat unclear whether the burden shifting framework continues to apply to federal ADEA claims. As addressed by the Eighth Circuit Court of Appeals:

While we have applied *McDonnell Douglas* to ADEA claims when addressing them along with other discrimination claims, it is unclear whether *McDonnell Douglas* technically applies to the

ADEA because the ADEA has a “but-for” causation standard rather than the mixed motives standard used in other statutes. It is clear, though, that a plaintiff who fails to meet the lower standard of Title VII ... necessarily fails to meet the ADEA’s standard as well.

Heisler v. Nationwide Mut. Ins. Co., 931 F.3d 786, 794 (8th Cir. 2019) (internal citations omitted). Accordingly, the Department applied the *Gross* “but-for” standard to the determination of whether Taylor was terminated “on account of” his age in violation of the Union Contract. (CR 1631).

Applying the “but-for” standard, the Department and circuit court determined Taylor failed to meet his burden of establishing age as the but-for reason for Taylor’s termination. (Taylor APP 1-4; 11). Necessarily, both reasoned that: Taylor was not passed over for promotions due to his age; the anonymous letter had no bearing on the decision to terminate him; and there was no connection between Taylor’s termination and a conversation with Capt. Johns about retirement. (Taylor APP 10; 20). Accordingly, the Department, as the fact finder, was not persuaded by Taylor’s arguments that his failure to be promoted or “being the oldest member of the RCPD” proves that age was even “a factor considered in his termination.” (Taylor APP 21). Once again, the Department made factual findings that were not clearly erroneous and their application to the law was correct. As such, Taylor’s grievance was appropriately dismissed under the *Gross* standard.

CONCLUSION

Based on the foregoing arguments and authorities, the City respectfully requests that this Court affirm the Circuit Court's Order in this matter.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

1. I certify that the Appellee's Brief is within the limitation provided for in SDCL 15-26A-66(b) using Bookman Old Style typeface in 12-point type. Appellee's Brief contains 7088 words.

2. I certify that the word processing software used to prepare this brief is Microsoft Office Standard 2019, Version 1808, Build 10417.20030.

Dated this 1st day of April 2026.

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The undersigned hereby certifies that on this April 1, 2026, a true and correct copy of Appellee's Brief and Appendices in this matter was filed through South Dakota Odyssey File and Serve which will send notification to:

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In the
Supreme Court of the State of South Dakota

MAXIMUS TAYLOR

Petitioner and Appellant,

v.

CITY OF RAPID CITY

Respondent and Appellee.

Appeal from the Circuit Court
Seventh Judicial Circuit
Pennington County, South Dakota

The Honorable Eric Kelderman

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ARGUMENT

I. The City violated Taylor's constitutional right to due process.

There is no dispute Taylor has a protected right to his continued employment and that the Union Contract governed his employment with the City. Because of this, prior to being terminated, Taylor had a right to “oral or written notice of the charges against him, an explanation of the employer’s evidence, and an opportunity to present his side of the story.” *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546, 105 S. Ct. 1487, 1495, 84 L. Ed. 2d 494 (1985) (citing *Arnett v. Kennedy*, 416 U.S., at 170–171, 94 S.Ct., at 1652–1653; *see also Goss v. Lopez*, 419 U.S., at 581, 95 S.Ct., at 740).

In its termination of Taylor, the City failed to provide him with notice of the extent of the charges against him or an explanation of its evidence against Taylor, thereby depriving him of his ability to adequately defend against the charges or to present his side of the story. And, while it is true that post-termination proceedings can cure deficiencies in pretermination hearings, Taylor’s post-termination hearings were similarly deficient because Taylor was deprived of his right to an impartial arbiter.

A. Taylor was not provided adequate notice nor a description of the evidence against him.

The City argues the various meetings that occurred between Taylor and others met the requirements for a pretermination hearing and that pretermination hearings need not be formal. However, regardless of the formality of the alleged pretermination hearings, Taylor is still entitled to notice and an explanation of the City’s evidence against him. *Loudermill*, 470 U.S. at 546.

The City maintains Taylor received adequate notice of the charges against him because he was made aware orally that the City had concerns he had “lied” in a report.

However, Taylor was not made aware of any of the other allegations against him raised by Mayor Allender in his report on appeal as additional grounds for Taylor's termination. (CR 1733). The City attempts to sidestep this issue by stating that none of those additional reasons were reviewed by the Department or the circuit court, but it does not change the fact that the *City itself* relied upon those additional reasons to affirm Chief Hedrick's determination to terminate Taylor when Taylor appealed his grievance to the Mayor. Therefore, it cannot be said that Taylor received full notice of the charges against him when the City, through Mayor Allender, articulated a plethora of charges instead of just the "lie" of which Taylor was made aware.

Furthermore, Taylor was not provided crucial information to aid him in his initial grievance process and defense of his case. By failing to provide the internal investigation report by Lieutenant Sigel, which appears to form the main basis of the City's decision to terminate Taylor, the City deprived Taylor of any ability to address Sigel's conclusions or attack the credibility of those conclusions. Moreover, the City failed to provide Taylor with Sheriff Swanson's report which corroborated the conclusions in Taylor's report. While the City maintains this is a "no harm no foul" situation because Taylor finally received the information to utilize during his appeal of the City's determination to the Department, he was deprived of his ability to utilize this information in his post-termination grievance proceedings before Chief Hedrick and the Mayor. Taylor's termination for "lying" was a completely factual determination. Had Taylor had access to this information, he could have incorporated it into his appeal to the Mayor to attempt to discredit Lieutenant Sigel's "findings" and to corroborate, through an independent third party's report, the conclusions in Taylor's own report.

By failing to fully advise Taylor of the charges against him and by failing to provide, or even describe relevant evidence held by the City against Taylor (including their main piece of evidence, Lieutenant Sigel's report), the City deprived Taylor of his ability to adequately and accurately present his side of the story in direct violation of the requirements of *Loudermill* and in violation of Taylor's due process rights. Because Taylor suffered significant prejudice thereby, this Court should reverse the circuit court and Department's findings, and hold that Taylor's rights to due process were violated.

B. Taylor did not have an impartial adjudicator.

To satisfy due process, a public employee is also entitled to post-termination administrative review before an impartial decision maker. *See Draper v. City of Festus, Mo.*, 782 F.3d 948, 953 (8th Cir. 2015) (citing *Young v. City of St. Charles, Mo.*, 244 F.3d 623, 627 (8th Cir.2001)); *see also Sutton v. Bailey*, 702 F.3d 444, 449 (8th Cir. 2012). Here, the Department and circuit court erred in applying *Sutton* to find that RCPD and the City satisfied the requirements of due process. In addition to being deprived of an impartial decision maker prior to his termination, Taylor was deprived of his right to due process because neither Chief Hedrick nor Mayor Allender were an impartial decision maker during the post termination proceedings.

The City fails to address either Hedrick or Allender in its response, and instead, attempts to cure the lack of impartiality in the post termination proceedings by arguing that any deficiency was cured simply because Taylor appealed to the Department and then to the circuit court. Per *Sutton*, Taylor was entitled to an impartial decision maker throughout the entirety of the process—not simply on appeal to the Department and circuit court.

Again, Chief Hedrick was not an impartial adjudicator as he had discussed the termination with Captain Johns before Johns issued the termination letter, testifying that he approved the termination. (CR 0962). Because of this, Hedrick simply upheld his own decision at the first level of the internal grievance—hardly an impartial appeal. Likewise, the Mayor’s lack of impartiality is clear, not only based on his history with Taylor, but also based on the fact that he added multiple additional grounds for terminating Taylor had nothing to do with the reporting incident for which Taylor was allegedly terminated.

This lack of an impartial adjudicator resulted in a completely illusory “appeal” process for Taylor’s post-termination grievance process. Simply because Taylor *eventually* went before an impartial adjudicator later on in the process does not cure the City’s defects in the underlying termination and grievance process. Because this resulted in significant prejudice to Taylor, this Court should reverse the circuit court and Department’s findings, and hold that Taylor’s rights to due process were violated.

II. The City did not establish “severe misconduct” as required for a “for cause” termination of Taylor as required by its own policies.

Under the Union Contract, Taylor could only be terminated for cause:

The City has the right to impose discipline upon employees for violations of the City’s work, rules, or for conduct that is detrimental to the Department or the City. *The City shall only impose discipline for cause.* Discipline may include discharge of an employee.

(APP 72-73 at Article 39.01) (emphasis added). In order for an employee to be discharged or dismissed, “severe misconduct” is required. *See* RCPD Policy 343-01(I) (“Severe misconduct may result in the dismissal of the employee”). However, at no point throughout these policies is “severe misconduct” defined. *Id.*

In the City's response, it alleges Taylor was terminated for violating the following two policies:

All employees shall truthfully state the facts in all reports as well as when they appear before any judicial, departmental, or other official investigation, hearing, trial, or proceeding. The employee shall cooperate fully in all phases of such investigations, hearings, trials, and proceedings.

(RCPD Policy 341-02(A); City APP 010); and

No employee shall knowingly falsify reports or cause inaccurate or improper information to be recorded on departmental records.

(RCPD Policy 341-06(F); City APP 011). Thus, the question before the Department and circuit court, as well as this Court, is whether Taylor's actions in concluding that the victim did not lose her breath or pass out in his report constitutes "severe misconduct" such that the City was justified in terminating him "for cause."

It is undisputed the Union Contract governed Taylor's employment with the City. Thus, general rules of contract interpretation govern the interpretation of this contract, as well as any undefined words that may be included within it. "Contract interpretation is a question of law reviewable de novo." *Ziegler Furniture & Funeral Home, Inc. v. Cicmanec*, 2006 S.D. 6, ¶ 16, 709 N.W.2d 350, 355 (citing *Schulte v. Progressive Northern Ins. Co.*, 2005 SD 75, ¶ 5, 699 N.W.2d 437, 438 (citation omitted)). Because this Court can review the contract in question "as easily as the trial court, there is no presumption in favor of the trial court's determination." *Id.* (quoting *Cowan v. Mervin Mewes, Inc.*, 1996 SD 40, ¶ 6, 546 N.W.2d 104, 107) (citations omitted). The RCPD policies in question are similarly subject to this Court's interpretation and construction.

When the meaning of terms in a contract is "plain and unambiguous" there is no need to employ the rules of contract interpretation. *Id.* (citing *Pesicka v. Pesicka*, 2000

SD 137, ¶ 6, 618 N.W.2d 725, 726 (citations omitted). Whether a contract is ambiguous is a question of law. *Id.* “A contract is ambiguous when application of rules of interpretation leave a genuine uncertainty as to which of two or more meanings is correct.” *Ziegler*, 2006 S.D. 6, ¶ 16, (citing *Alverson v. Northwestern Nat’l Cas. Co.*, 1997 SD 9, ¶ 8, 559 N.W.2d 234, 235) (quoting *City of Watertown v. Dakota, Minnesota & E. R.R. Co.*, 1996 SD 82, ¶ 13, 551 N.W.2d 571, 574) (additional citations omitted)).

That said,

[a] contract is not rendered ambiguous simply because the parties do not agree on its proper construction or their intent upon executing the contract. Rather, 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. (quoting *Pesicka*, 2000 SD 137, ¶ 10, 618 N.W.2d at 727 (quoting *Singpiel v. Morris*, 1998 SD 86, ¶ 16, 582 N.W.2d 715, 719)).

To properly interpret a contract, a court’s goal must be to “give effect to the intention of the contracting parties.” *Id.* (citing *Singpiel*, 1998 SD 86, ¶ 10, 582 N.W.2d at 718). To do so, a court need “only look to the language that the parties used in the contract to determine their intention.” *Id.* If, after doing so, the intention is “clearly manifested by the language of the agreement, it is the duty of this Court to declare and enforce it.” *Id.* (quoting *In re Estate of Stevenson*, 2000 SD 24, ¶ 14, 605 N.W.2d 818, 821 (cleaned up)).

In interpreting contracts and policies such as those at issue here, a court is well within its bounds to rely upon other sources to assist in assigning definitions to terms. “We may use statutes and dictionary definitions to determine the plain and ordinary meaning of undefined words.” *Jackson v. Canyon Place Homeowner’s Ass’n, Inc.*, 2007

S.D. 37, ¶ 11, 731 N.W.2d 210, 213 (citing *Halls v. White*, 2006 SD 47, ¶ 4, 715 N.W.2d 577, 579; *Divich v. Divich*, 2002 SD 24, ¶ 12, 640 N.W.2d 758, 762 (consulting the American Heritage College Dictionary and South Dakota statutes to define the term “benefit”)).

Here, because multiple terms are undefined in the policy and in the Union Contract, including “severe misconduct,” “truthfulness”, and “knowingly”, in accordance with the aforementioned precedent, Taylor suggested various sources to help guide the Department and circuit court’s interpretation of RCPD’s policies and the Union Contract including statutes, Webster’s Dictionary definitions, and analogous case law. *See* Appellant Brief at 18-19 (citing SDCL §§20-10-1 and 2; Webster’s Dictionary; *Palmer v. South Dakota Department of Labor and Regulation/Reemployment Assistance Division*, (2024 SD 31)).

The City however, apparently takes great issue with Taylor’s attempt to provide a definition and set the applicable standard to determine whether “severe misconduct” occurred. The City argues that “the Department and circuit court were not required to apply a specific standard other than those made by Union Contract or City policy.” *See* Response, pg. 26. Instead of then going on to explain exactly what standard the “Union Contract or City policy” sets however, the City skips ahead to discuss the Department and circuit court’s right to judge the credibility of witnesses, but never actually provides any suggestion as to how “severe misconduct” should be defined as the applicable standard.

The City’s inability or refusal to address the applicable standard to be employed in making a determination as to what constitutes “severe misconduct” rising to the level

of “for cause” termination is telling. Contrary to the City’s assertion that it is not bound by a “specific standard,” the City (and the Department) *must* have a set standard to apply. If a decision is “not governed by any fixed rules or standard,” then by its very nature, the decision is arbitrary, necessitating reversal by this Court. *See Dep’t of Game, Fish & Parks v. Troy Twp.*, 2017 S.D. 50, ¶ 33, 900 N.W.2d 840, 853 (quoting *Kirby v. Hoven Sch. Dist. No. 53-2*, 2004 S.D. 100, ¶ 5, 686 N.W.2d 905, 906 (quoting *Johnson v. Lennox Sch. Dist. No. 41-4*, 2002 S.D. 89, ¶ 8, 649 N.W.2d 617, 621)); SDCL § 1-26-36 (“The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are . . . [a]rbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion”).

As the City has made clear in its response, Taylor was terminated because the City believed he “lied” in his report. Appellee’s Br. at 20 (“suspected of lying”); 21 (“whether Taylor had lied”); 22 (“in the context of a dishonest law enforcement officer”). However, because “severe misconduct” is not defined, it renders RCPD 343-01 ambiguous, necessitating construction by this Court to determine whether Taylor’s actions satisfied this requirement. While in its Findings of Fact, Conclusions of Law and Order, the Department concluded the City “established cause to terminate [Taylor’s] employment under the FOP Union Agreement due to severe misconduct,” the Department failed to articulate any standard or analysis as to the meaning of “severe misconduct.” (APP at 011 (COL ¶ C)). Instead, the Department merely recited facts and indicated that “false statements in a report affect an officer’s ability to be a future

credible witness, as well as reflect on the City's credibility as an organization." *Id.* at ¶ 18. Similarly, the circuit court provided no analysis of the issue. (APP at 004).

As articulated in Taylor's opening brief, under all of the analogous law provided to aid in defining "severe misconduct," Taylor's actions would not rise to the level of deceit, nor would they constitute willful, intentional, or knowing action or misrepresentations. In addition to the fact the law does not support the findings of the City or the Department and circuit court on appeal, the facts directly contradict the findings. Captain Johns admitted the information in Taylor's report was true, he just simply did not like the manner in which Taylor articulated it. (CR 0952-0953). Lieutenant Sigel admitted he believed Taylor meant to be truthful in his report. (CR 1214-1216). Taylor testified under oath during an extensive cross examination that he had no intent to deceive and instead relied upon his field notes and memory to draw his conclusions. (CR 1433-1443). Deputy Swanson's report confirmed the accuracy of Taylor's conclusions. (CR 1027-10278). When Taylor received the call to respond, the dispatcher reported that the victim stated there was no assault and no injury at the scene. (CR 1684).

Perhaps most importantly, Taylor never directly quoted the victim in his amended report, because as even Lieutenant Sigel indicated, the two lines of the report in question *were not in quotations*:

After conducting my investigation outlined above, and interview with Officer Taylor, it is my belief that Officer Taylor fabricated the information in the report to get it approved. His conclusion that the information he wrote was accumulative [sic] with all facts presented, however, what he wrote was very specific **and although not in quotes**, eluded [sic] to the act that the victim provided the information, either voluntary or provoked through questioning. My investigation proved that

is not what occurred and that the information was solely created by Officer Taylor. Officer Taylor lied in his report.

(APP 83-87) (emphasis added). Instead, as Taylor has steadfastly maintained throughout all of these proceedings, the statements in question were simply conclusions he drew, based on the totality of the circumstances, in response to Sergeant Walker's question based on Taylor's recollection of events and his review of his field notes. And, even Captain Olson admitted that had the City found the statements in question to be simply inaccurate versus an intentional "lie," it would have been simply a disciplinary issue and would not have resulted in Taylor's termination. (CR 1388).¹

Based on the foregoing, the City, Department, and circuit court all erred in failing (1) as a matter of law, to articulate a set standard for what constitutes "severe misconduct;" and (2) erroneously determining that Taylor's conduct rose to the level of "severe misconduct" versus a simple mistake. Chief Hedrick based the determination to terminate Taylor on Lieutenant Sigel's personal conclusion that Taylor fabricated facts in his report and then the Mayor upheld this decision, while also adding and relying upon multiple additional reasons for termination that were completely separate and apart from the investigation. Such ad hoc analysis by the City is directly contrary to the requirement that the City establish a set standard for evaluation of these issues, resulting in significant prejudice to Taylor and a loss of his right to continued employment. Therefore, reversal by this Court is appropriate.

¹ In its response, apparently as additional support for Taylor's termination, the City cites to other alleged incidents involving Taylor that were discovered after his determination. *See* Appellant's Br. at 27, FN 4. These alleged incidents are irrelevant for purposes of this Court's determination as to the propriety of terminating Taylor as they were not a part of the City's initial determination to terminate Taylor.

III. The Department and circuit court erred by failing to address whether Taylor had established a prima facie case of an inference of age discrimination.

The Union Contract prohibits the City from discriminating against an employee on the basis of age. Because South Dakota does not recognize age as a statutorily protected class, both the City and Taylor have relied upon federal age discrimination law stemming from both the ADEA and Title VII of the Civil Rights Act of 1964. In doing so, the City argues the “but for” analysis identified in the *Gross v. FBL Fin. Servis., Inc.*, case (as applicable to ADEA claims) is the appropriate standard. 557 U.S. 167, 176, 129 S. Ct. 2343, 2350, 174 L.Ed. 2d 119 (2009). However, Taylor believes the standard upon which he relies is more applicable as it applies to cases where no direct evidence of discrimination exists. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). Per the *McDonnell Douglas* burden-shifting framework for indirect evidence:

[T]he plaintiff has the burden of making a prima facie case of discrimination. Id. If she makes a prima facie case, the employer has the burden of articulating a legitimate, nondiscriminatory reason for the adverse employment action. Id. If the employer meets this burden, then the plaintiff has the burden to produce evidence that the proffered nondiscriminatory reason is a pretext for discrimination.

See Heisler v. Nationwide Mut. Ins. Co., 931 F.3d 786, 794 (8th Cir. 2019) (citing *McDonnell Douglas*, 411 U.S. 792). However, under either standard, the Department’s findings were erroneous because of the ample evidence in the record contradicting that the City had cause to terminate Taylor for any legitimate reason.

As set forth *supra*, the City has failed to satisfy the requirement that it had cause to terminate Taylor under the Union Contract or under RCPD policy. Even though the remedial training that was the precursor to this issue pertained only to concerns relating

to his shooting skills, inexplicably, the RCPD decided to use this as an excuse to “place [Taylor] under a microscope” and evaluate all aspects of his job performance—despite the fact all of his prior annual reviews were positive and stated he was eligible for a promotion. (CR 1705). This investigation essentially created a witch hunt wherein Lieutenant Sigel and others were tasked with going back through Taylor’s performance to try to identify issues showing that he did not have “what it takes to be a Police Officer,” even though he had been an officer for thirty-nine years, eleven of which were with the RCPD. (CR 1699). Upon identifying the alleged inaccuracies in the report in question, the RCPD then made the decision to qualify the statements in the report as a “lie” so as to justify Taylor’s termination, even though had they determined it was simply a mistake, it would have resulted in discipline to Taylor.

Clearly, at the time the RCPD sent the termination letter, it relied only upon this inaccuracy in the report as grounds for termination. If this Court determines, as the Department and circuit court erroneously failed to, that this inaccuracy in Taylor’s report does not rise to the level of being “severe misconduct” and does not constitute cause for termination, then even under the standard articulated by the City, there remains only one “but for” cause for Taylor’s termination—discrimination for his age. Again, up until this issue, his performance reviews were positive, he was on the sergeants’ promotion list at the time of his termination, his fitness and health were not in question, and he had only ever had one other disciplinary action. (CR 1705, 1711, 1036, 0882).

Because this inaccurate report does not constitute cause, regardless of whether the Court applies the inference standard, or the “but for” standard, the record shows only one other reason RCPD terminated Taylor in violation of the Union Contract—Taylor’s age.

CONCLUSION

The City violated Taylor's due process rights by failing to describe the charges against Taylor, failing to provide its evidence against Taylor, and failing to provide Taylor potentially exculpatory evidence to aid in his defense, ultimately depriving Taylor of the ability to present his side of the case. Taylor was also deprived of his right to an impartial arbiter at any point before his termination or during the post-termination proceedings. The City cannot cure these defects or "un-ring" the proverbial bell by arguing that even though Taylor might not have initially received due process, he *eventually* did on appeal.

The City, Department, and circuit court all erred in failing to identify a set legal standard for determining what constitutes "severe misconduct" that would give rise to cause for termination. This resulted in a completely arbitrary decision to terminate Taylor, significantly prejudicing him and depriving him of his right to continued employment.

Finally, under any standard, because it is clear the City lacked cause for termination, and the fact the record indicates Taylor's overall positive performance during his time with the RCPD, the only remaining reason for terminating Taylor was based on his age. All of this resulted in significant prejudice to Taylor.

For all of these reasons, Taylor respectfully requests this Court reverse the circuit court and Department of Labor and Regulation's decision to dismiss his grievance, and remand back for reinstatement with back pay per Article 39.05 of the Union Contract.

Respectfully submitted this 14th day of May, 2026.

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CERTIFICATE OF COMPLIANCE

Pursuant to SDCL 15-26A-66(b)(4), I hereby certify that this *Appellant's Reply Brief* complies with the type volume limitation provided for in SDCL 15-26A-66. This *Appellant's Brief* was prepared using Times New Roman typeface in 12-point font and contains 3,925 words. I relied on the word count of our word processing system used to prepare this *Appellant's Reply Brief* and the original and all copies are in compliance with this rule.

By: /s/ Katelyn A. Cook
Katelyn A. Cook

CERTIFICATE OF SERVICE

I hereby certify on May 14, 2026, the foregoing **APPELLANT’S REPLY BRIEF** was filed through South Dakota Odyssey File and Serve which will send notification to:

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