



**THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE TWELFTH JUDICIAL DISTRICT**

Norman R. Hill
Presiding Judge

Polk County Courthouse, Room 301 PHONE - (503) 623-5235
850 Main Street, Dallas, OR 97338-3178

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VIA EMAIL

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Re: *Lanee Danforth, Lincoln County District Attorney vs. Lincoln County Board of Commissioners*
Lincoln County Case No. 23CV19787

Dear Counsel,

This matter came before the court on Plaintiff's motion for a preliminary injunction pursuant to ORCP 79A(1)(b). Plaintiff seeks a declaration that, as the elected District Attorney for Lincoln County, she has the sole authority to reclassify JW from a DDAlII to a Chief Deputy District Attorney. Lincoln County disagrees. It contends the county commissioners have the sole authority to determine wages of all deputy district attorneys and therefore has the right to deny the reclassification. The court agrees with Defendant.

Factual Background

The facts in this case are largely undisputed. After considering the pleadings and affidavits supplied, the court makes the following findings of fact:

1. Plaintiff is the District Attorney of Lincoln County Oregon.
2. Defendant, Lincoln County Board of Commissioners constitutes the governing body for Lincoln County, Oregon
3. JW is a deputy district attorney with the Lincoln County District Attorney's office. JW was hired as a DDA 3 position which is a non-management position. JW is a member of the Lincoln County Employees Association (LCEA) and is subject to a collective

bargaining agreement between LCEA and Lincoln County. The Lincoln County District Attorney is a party to the collective bargaining agreement.

4. Lincoln County adopted personnel rules governing the manner it classifies positions including positions based on appointments by elected officials such as the District Attorney. The collective bargaining agreement recognizes that Lincoln County retains the right to establish operating procedures and policies for the county.
5. Lincoln County adopted a budget for fiscal year 2022-2023 authorizing one chief deputy and nine deputy district attorney positions. The budget does not distinguish between levels of deputy district attorney positions, other than the chief deputy.
6. In May 2023, Plaintiff purported to create a new Chief Deputy District Attorney position and promoted JW to that new position.
7. Defendant objected to the appointment and refused to acknowledge the promotion. Defendant's counsel advised JW she would be violating the Lincoln County Personnel Rules, the Collective Bargaining Agreement between LCEA and Lincoln County and the ethical rules governing the practice law if she acted as Chief Deputy District Attorney.

Conclusions of Law

In order to grant Plaintiff's motion for a preliminary injunction, the court must determine that Plaintiff is likely to prevail on the merits at trial. After carefully reviewing the parties' arguments, I conclude that Plaintiff is not likely to prevail on the merits.

Plaintiff argues that as the elected District Attorney she has the sole authority under ORS 8.780 to appoint deputies and direct their functions. That statute provides:

“A district attorney shall appoint deputies. A deputy district attorney shall have the same qualifications as the district attorney, and subject to the direction of the district attorney has the same functions as the district attorney.”

According to Plaintiff, this statutory language makes all deputy district attorneys her employees, subject to her direction. Thus, it implicitly empowers her to elevate one or more deputies to management level positions as Chief Deputy District Attorneys, so long as the total compensation for the office remains unchanged.

Defendant disagrees. It claims ORS 8.760 gives it the authority to determine how many deputies Plaintiff can appoint and the amount of their salaries. That statute provides as follows:

The county court or board of county commissioners may empower the district attorney to appoint one or more deputy district attorneys whose compensation

shall be fixed by the county court or board of county commissioners and paid out of county funds in the same manner as county officers are paid.

Defendant argues that, because it has the right to set salaries for individual deputies, it also has the right to determine how many of those deputies will be at varying levels based on the county's budget authority and collective bargaining agreement with LCEA.

Plaintiff argues that Defendant's reliance on ORS 8.760 is misplaced. She claims that the statute only gives the county the authority to determine whether the District Attorney may have any deputies, not the precise number of deputies at each level. She also contends that the statute does not permit the Board of Commissioners to set individual salaries. Rather, Plaintiff argues the Board of Commissioners can determine the aggregate pay for the deputies. It is up to the Plaintiff to determine the actual number of deputies, their individual duties and, therefore, how much each will be paid. Plaintiff asserts she is only limited by the total amount of budget authority granted by the county for deputies generally.

Plaintiff further argues that Defendant's interpretation of ORS 8.760 negates her statutory responsibility to act as District Attorney and direct her employees. She notes that if the county controls the salary level for individual employees, it can implicitly control the duties they perform based on the job descriptions for the individual positions. In other words, the county can stop Plaintiff from assigning JW management work as a DDA3 without first giving JW a promotion because doing so violates the collective bargaining agreement. By stopping Plaintiff from promoting JW to a chief deputy, the county is intruding on the District Attorney's statutory obligation to run her office as elected by the people of Lincoln County. Indeed, Plaintiff points to the fact the county counsel threatened JW with potential ethical claims as substantial interference with that obligation.

Plaintiff's position is undermined, however, by the express language of ORS 8.760, ORS 204.116 and 204.601. First, ORS 8.760 expressly states that the county has the authority to authorize the District Attorney to have "one or more deputies." It further expressly states that the deputies' compensation shall be fixed by the county commissioners to be paid out of county funds "...in the same manner as other county officers are paid."

Second, ORS 204.116, makes clear that Defendant has authority to set individual salaries, not just aggregate budget amounts. That statute governs the manner in which county officers are paid. It states that ... "the governing body for the county shall fix the compensation of its own members and of every other county officer, deputy and employee" See ORS 204.116 (1)(emphasis added). It does not state that the county will provide county officers with an aggregate budget to fund individual hiring and salary decisions. Rather, it states that the board shall fix the compensation for every deputy. Thus, this statute makes clear that it is the county, not the Plaintiff, that sets individual salaries.

Third, ORS 204.601 expressly gives Defendant the authority to determine the number of deputy district attorneys appointed. That statute states:

(1) The county court or board of county commissioners of each county shall fix the number of deputies and employees of county officers whose compensation is to be paid from county funds.

Read together, these statutes make clear that the county commissioners can determine whether the District Attorney has deputies, the number of deputies and their individual salaries. Plaintiff's argument to the contrary is not well taken.

Plaintiff also argues Defendant should be judicially estopped from denying she has the right to promote JW because the county took the position, in other cases, that the District Attorney is the only supervisory official over deputy district attorneys. But that fact, even if true, does not aid Plaintiff's cause in this case because Defendant is not taking a contrary position.

In the present case, Defendant is not claiming a statutory right to direct any deputy district attorney to do anything. It is not asserting any supervisory authority over JW. Instead, Defendant is merely arguing that, based on the county's approved budget, there is only one position designated and paid as Chief Deputy. It is merely objecting to the District Attorney encroaching on the county's right to determine the compensation for each deputy.

Plaintiff points to comments made by county counsel to J.W. as evidence that the county is trying to control her employees. However, those comments, while perhaps ill advised, do not change the statutory law at issue in this case. The county has the authority to set the salary for each deputy. The fact that the collective bargaining agreement and the personnel rules differentiate salaries based on job duties does not mean the county is encroaching on the District Attorney's right to run her office or constitute an assertion of supervisory authority over JW. They merely establish the mechanism by which the county exercises its authority to fix the pay for individual employees. ¹

For the reasons set forth above, Plaintiff's motion for a preliminary injunction is denied. Mr Franz should prepare an order consistent with this opinion.

Very truly yours,



Norman R. Hill
Presiding Judge
Polk County Circuit Court

¹ It is also worth noting that nothing on this record informs the court of the difference between the job duties of a Deputy District Attorney III and a Chief Deputy District Attorney. The court assumes that assigning management duties to a union member violates the collective bargaining agreement, but neither party has pointed to any provision of the collective bargaining agreement that dictates such a conclusion.