



July 14, 2010

Detention Officer Jessie Lunderby
Washington County Sheriff's Office
1155 Clydesdale Drive
Fayetteville, AR 72701

RE: NOTICE OF EMPLOYMENT TERMINATION

Reason for Notice: This notice is given to inform you of my decision to terminate your employment with the County, to state the basis for the decision, and to advise you of your opportunity to a hearing.

Effective Date: Today, subject to your right to request a hearing before the County Grievance Committee.

The Reasons: You were hired to be a jailer. Along the way, you took up the hobby (as you call it) of modeling during your off-duty hours. That modeling hobby apparently included some degree of nude modeling, as around April 5, 2010, you reported to us a complaint of what you perceived as sexual harassment by a male employee who told you he had seen photos of you on Google. We investigated your complaint and took action on your complaint, to make sure that you were not subjected to what you perceived as sexual harassment. During the investigation of your complaint, we learned of your nude modeling hobby. You were not disciplined for pursuing your hobby. You continued both your employment as a jailer and your hobby as a model. What has happened is that your avocation (hobby) has now become your occupation (and new career).

The off-duty conduct of a public employee is not normally a matter of public employer concern. (This would include off-duty hobbies.) When, however, a public employee's off-duty conduct spills over into the public workplace and causes workplace disruption or distraction, it becomes a matter of public employer concern. This is what has happened in your situation.

The citizens of Washington County elected me to get the job of the Sheriff's Office done. That job includes the jail detention function. As the Sheriff, I have to make choices as to how we should get our important work done. As explained below, I am choosing to hire a different person to perform the jailer function you previously performed -- in an effort to get our important work done in a more efficient and effective manner. Just as you have chosen to dedicate yourself to the pursuit of a modeling hobby/career, I have chosen to dedicate myself to the pursuit of a law enforcement management career. Your choice has created substantial disruption in my ability to give the citizens of Washington County

what they asked me to do when they elected me -- efficient and effective performance of the law enforcement, detention and service of process duties of the office of county sheriff. You have chosen the path you think best for pursuing the work (whether as an avocation or an occupation) of modeling. Now, I am choosing the path that I think best for pursuing the work of the Washington County Sheriff's Office. I am moving ahead without the distraction/disruption that your now-public nude modeling hobby/career brings into our workplace, if you were to continue as our county detention employee.

As you know, we have rules in place that govern employee conduct (e.g., employees are not to engage in distracting activities while on duty, employees are to seek pre-approval of off-duty employment, and employees are not to engage in conduct that could adversely affect the department). My decision to move on without you is not a decision to impose discipline. I have decided, instead, to accept your explanation -- that what you intended to pursue as a private hobby (to use your characterization) was not intended as off-duty employment and that you did not anticipate being selected as a Playboy Cyber Girl and becoming the center of the distraction/disruption caused by your appearance as a Playboy Cyber Girl presented, specifically, as a detention officer for a county sheriff's office in Fayetteville, Arkansas. If I were to choose to keep you as an employee, I would go down the road of deciding whether to impose discipline. Since I have decided to take a different path -- choosing another employee -- there is no reason to decide whether to impose discipline. So, ... you may truthfully tell others that your employment termination was not a disciplinary termination. It is a business decision -- my decision to move forward without the distraction/disruption that follows the employment of a person who is both a Playboy Cyber Girl and a jail employee -- as explained below.

The Facts:

Your hobby (as you call it) resulted in you being chosen to be the Playboy Cyber Girl for the week of June 7. Consequently, you were featured in the nude on the Internet. Narrative information identified you as county jailer in Fayetteville, AR. It stated:

Jessie weighs in at just under 100 pounds, but if you think she's a pushover, think again. She's a detention officer for a county sheriff's department which has her well on... her way to realizing her ambition to be an undercover cop or work for the drug task force. But in one important area, she's very easy to please. "There is no particular song or CD that puts me in "the mood," she says. "I'm usually in the mood all the time!"

The Cyber Girl stats tab for you provided the following information:

Jessie Lunderby
Hometown: Fayetteville, AR
Birthday: December 23, 1988
Height: 5'1"
Weight: 99 lbs

Measurements: 32D-24-33

The web page goes on to say "Jessie is naked and waiting for you in the Cyber Club!"

Needless to say, your hobby was no longer a private pursuit; nor is it any longer a mere hobby. You are now a major presence on the Internet as a Google search for Jessie Lunderby quickly reveals. (Over 2.8 million hits on Google web / over 29,000 hits on Google images in the "SafeSearch" position / over 60,000 hits on Google images in the "SafeSearch Off" position.) Your private hobby has spilled over into the public arena. Due to your choice to present yourself as a county detention officer from Fayetteville, Arkansas, we have been confronted with resulting workplace issues.

The disruption was such that we decided the best way to deal with the initial tumult was to put you on leave with pay. We did this in an effort to restore order to our public workplace. In the meantime, we sought legal counsel and were advised that the courts have given guidance as to how we should proceed to evaluate a situation like this. We were told that we needed to treat your modeling choices as a form of free speech/expression.

We have been told that free speech claims of public employees involve a three-step analysis, as follows: First, a public employee must demonstrate that his or her speech was protected. Second, a public employee must show that the exercise of protected speech was a substantial or motivating factor in any adverse employment decision. Third, a public employer may show that the termination would have occurred even in the absence of the protected speech conduct.

We have been told that identification of protected speech is a two step process in itself. First, the speech must have addressed a matter of public concern. Second, the employee's right to freely speak must be balanced against the interest of the state (county), as an employer, in promoting the efficiency of the public service it performs through its employees.

First of all, it is our conclusion that your decision to allow yourself to be displayed nude on the worldwide web, identified as a county detention officer in Fayetteville, Arkansas, was not expression about a matter of public concern. Thus, it is our view that we do not have any affirmative duty to continue your county employment.

Secondly, despite our conclusion that your speech is not protected speech, we balanced your liberty to express yourself as a nude model on the worldwide web, identified as a county detention officer in Fayetteville, Arkansas, against our governmental interest in choosing to create/provide/maintain a harmonious workplace where there is order and security and peace between co-employees and between detention officers and jail detainees and where we can all do our work both efficiently and effectively.

In applying the balancing test, we have considered the following workplace factors: 1) the need for harmony in the workplace; 2) whether the government's responsibilities

require a close working relationship to exist between the Plaintiff and co-workers when the speech in question has caused or could cause the relationship to deteriorate; 3) the time, manner, and place of the speech; 4) the context in which the matter arose; 5) the degree of public interest in the speech; and 6) whether the speech impeded the employee's ability to perform his or her duties.

As the attached investigative report explains, our work has been interrupted by the controversy/interest surrounding your appearance on the worldwide web. It has caused disruption and distraction for the command staff. It has caused complaints by other employees. It has affected public perception of the Sheriff's Office. It is causing considerable distraction from our mission.

The time that has elapsed convinces us that your presence in the workplace will continue to interfere with workplace harmony. Not only does your job as a jailer require a close working relationship to exist between you and your co-workers, it requires you to be in close proximity with both male and female prisoners. You are now a celebrity, of sorts. Your chosen manner of expressing yourself is such that it creates concerns for your safety and, consequently, the safety of others. The time, manner and place of your speech is such that even some of the prisoners will likely have seen you nude. If they haven't seen it personally, there will be other prisoners who will have seen you nude or will have been told about what others have seen. The context of a Playboy Cyber Girl is such that it sends a message to members of the public (including those members of the public who end up in our county jail) that is problematic for the Playboy Cyber Girl to also be acting as a jailer. Your expression (or that made on your behalf) -- "But in one important area, she's very easy to please." -- "There is no particular song or CD that puts me in "the mood," she says. I'm usually in the mood all the time!" -- "Jessie is naked and waiting for you in the Cyber Club!" -- is such that it places you, and us, in a vulnerable position from an order, security and peace point of view. Although it is our view that your speech is not about a matter of public concern (either the pictures or the words) it is our view that there will likely be much interest (in both the pictures and the words) among the detainees in our public jail. That interest will, in our judgment, interfere with your ability to function as a jailer. We do not have the money or the inclination to add additional staff or other oversight to protect you or to help you maintain order, security and peace in the jail workplace. Consequently, it is our view that your speech has impeded your ability to perform your jailer duties.

One way to eliminate a workplace disruption/distraction problem is to replace the person or persons who have caused the problem. One way to improve the efficiency and effectiveness of an organization is to hire people who will be able to do a better job or will be able to do the same job with less work/time being required of others. These are business decisions. Public employers can make business decisions. We have other choices for the jailer position. We have decided to replace you with an employee who does not have a hobby (avocation) or another career (occupation) that brings into our workplace the disruption/distraction that you have brought to our workplace. We are choosing to employ a person who we believe will better our ability to get our governmental work done -- in a manner that is both effective and efficient. In choosing

to move forward without you as an employee my goal is, simply, to get back to normal in order for us to be able to accomplish our normal law enforcement, detention and civil process mission.

Please immediately turn in all Sheriff's Office equipment and Sheriff's Office ID/badge and building access card(s). You are not permitted to use the Sheriff's Office uniform or insignia for any purpose.

Hearing Opportunity: County personnel policy provides that employees may request a "Predeprivation Hearing" within 3 (three) full business days of any separation. (We will extend this 3 day window of opportunity to 3 days after you receive this Notice.)

Hearing Request: The hearing request should be delivered to the County Grievance Committee in care of the Human Resources Director, in conformance with the employee handbook, no later than 4:30 p.m. on the third full business day (weekends and holidays excluded) after any claimed deprivation for which a grievance hearing is requested. You are an at-will employee. At-will employment can be terminated at the will of the employer for a good reason or for no reason, but not for a bad reason. A bad reason is a reason that violates the law or the constitution or public policy. If you think the decision to terminate your employment is illegal or unconstitutional or in violation of public policy, you may ask the County Grievance Committee to enforce the county employment policy that prohibits an elected official from violating the law or the constitution.

If you have questions concerning County Employment Policy, you may contact the office of the Human Resources Director or the County Civil Attorney.

Sincerely,



Tim Helder
Sheriff

cc: George Butler, Washington County Attorney
Lindi Huffaker, Human Resources Director

Received by: REFUSED TO SIGN

Date: 7/14/10