

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

KIP PATRICK SIEMS, Appellant,)	CASE NO. 102175
and)	PROPOSED DECISION AND ORDER
STATE OF IOWA (DEPARTMENT OF TRANSPORTATION), Appellee.)	

Appellant, Kip Siems, filed this state employee grievance appeal with the Public Employment Relations Board (PERB) pursuant to Iowa Code section 8A.415(1)(b) following a third-step response by the director of the Iowa Department of Administrative Services (DAS) denying his grievance. Siems works as a Garage Operations Assistant with the Department of Transportation. Siems contends the State failed to substantially comply with Iowa Code chapter 8A, subchapter IV or applicable DAS rules when it failed to properly compensate him for jury duty leave when his jury duty service coincided with his regularly scheduled work hours.

An evidentiary hearing was held on February 19, 2019. Siems represented himself. Henry Widen represented the State. The parties submitted post-hearing briefs on April 1, 2019.

Based upon the entirety of the record, and having reviewed and considered the parties' briefs, I conclude Siems has established the State failed to substantially comply with DAS rule 11—63.12.

FINDINGS OF FACT

Kip Siems works for the State of Iowa, Department of Transportation (DOT) at the Waterloo maintenance garage. He has worked for the DOT for seventeen years, and has worked for the last nine years as the garage operations assistant (GOA). As the GOA he inputs time sheets and assists in the supervision of twenty-eight employees at the Waterloo maintenance garage. Siems' regularly scheduled work hours, or normal shift hours, are 7:00 a.m. to 3:30 p.m. His direct supervisor is Barry Thede, the highway maintenance supervisor. According to Siems' position description questionnaire (PDQ), the GOA is a full-time, 40-hour per week employee, but is subject to call. An employee in this position, along with the other employees in Siems' unit at the Waterloo maintenance garage, must be able to respond to emergency conditions outside of their normal shift hours. The employees in the maintenance garage work call-in hours during weather-related events. In his position as GOA, Siems is eligible for overtime.

At the end of the shift on February 19, 2018, Thede asked everyone in Siems' unit to report to work early the next day, February 20, due to an impending ice storm that was set to begin at midnight. Thede asked the employees to begin the shift at 1:00 a.m. rather than the standard 7:00 a.m. Siems' regularly scheduled shift for February 20 was still 7:00 a.m. to 3:30 p.m., but this call-in now required him to work from 1:00 a.m. to 3:30 p.m. The unit, including Siems, began work at 1:00 a.m. on February 20. Siems left at 7:00 a.m., with Thede's knowledge and consent, to report to jury duty in Black

Hawk County. Siems did not ask about flex time or otherwise express concern about working that morning prior to leaving for jury duty. Siems was not concerned with the long day as that is required in his position. His supervisor and DOT management describe Siems as reliable and dedicated.

On February 20, Siems reported to jury duty from 8:30 a.m. until 2:20 p.m. and received compensation for a full day of jury duty from the judicial branch for this service. When released from jury duty at 2:20 p.m., Siems called his supervisor and asked whether he should return to work. His supervisor told him that under the DOT policy he did not need to return to work since there was less than two hours left of his shift, which was scheduled to end at 3:30 p.m. The other employees in the unit worked from 1:00 a.m. to 3:30 p.m. that day.

On February 20, Siems worked six hours outside of his normally scheduled shift. He then reported for jury duty, which overlapped with his normally scheduled hours of work.

When entering his time sheet for February 20, Siems attempted to enter six hours of "Regular Time" to account for the six hours of time he worked during the emergency call in. Siems also attempted to enter eight hours of "Other Leave" on his timesheet to account for his eight hours of jury duty. The program would not let him submit time above forty hours in a week if it included any hours outside of "Regular Time." Siems was also unable to submit another time sheet for the same pay week for employee, W.F., that had time coded as "Vacation" and "Work Comp," for February 16, but had fourteen

hours of “Regular Time” for February 20. Because of the hours outside of “Regular Time,” W.F. also would have accrued over forty hours for the pay week. However, after Siems submitted the timesheets, the DOT Office of Employee Services (OES) added time back in for W.F. so he received compensation for forty-six hours for that pay week. Siems received compensation for forty hours for that pay week—thirty-eight hours of “Regular Leave” and two hours of “Other Leave” for his jury duty service. For February 20, Siems received compensation for six hours of “Regular Leave” and two hours of “Other Leave.”

Siems submitted his grievance at Step 1 on February 27, 2018. He claimed the State did not follow DOT Policy No. 220.05 regarding court/jury, election and voting leaves. The policy declares that employees shall be granted leave for jury duty in accordance with DAS rule 11—63.12. DAS rule 11—63.12 provides, in pertinent part:

When in obedience to a subpoena, summons, or direction by proper authority, an employee appears as a witness or a jury member in any public or private litigation in which the employee is not a party to the proceedings, **the employee shall be entitled to time off during regularly scheduled work hours with regular compensation**, provided the employee gives to the appointing authority any payments received for court appearance or jury service, other than reimbursement for necessary travel or personal expenses.

....

63.12(1) Hours spent on court or jury leave by an employee outside the employee’s scheduled work hours are not subject to this rule, nor shall any payments received for court appearance or jury service be remitted to the appointing authority.

. . . .

63.12(3) An employee may be required to report to work if there will be at least two hours in the workday, following necessary travel time, during which the employee is not needed for jury service or as a witness.

(emphasis added).

The DOT policy implementing this rule provides:

An employee may elect to charge the time off for the jury service or court appearance to *Other Leave* on the time sheet. If this is the case, the employee shall receive regular pay for the leave. However, the employee must remit to the Department of Transportation the compensation received for the jury service or court appearance, other than reimbursements received for travel, food, parking and lodging.

. . . .

In lieu of charging the time off to Other Leave, an employee may elect to charge the time off to accrued vacation and compensatory leave. If this is the case, the employee is not required to remit said compensation to the Department.

The bureau chief for organizational performance at DAS-HRE and the director of the DOT-OES both testified as to the way the DOT policy and the DAS rule are administered. The bureau chief at DAS-HRE said an employee can receive regular pay for jury duty if the jury duty occurs at the time the employee is scheduled to work and the employee remits the jury duty compensation.

The OES representative stated that

Substantial compliance is . . . getting them to their 40 hours. If they had a normal scheduled hours of eight hours and no other time off, we would get them to the eight hours with the jury leave. If their schedule changed to a 1:00 to 7:00, then we would have to

make up that jury leave from 7:00 to whatever hours that they would have missed during their normal scheduled day.

The OES director stated that an employee using jury duty leave could not accumulate more than forty hours a week, but an employee using workers' compensation leave could accumulate more than forty hours a week.

In his grievance, Siems requested to receive regular compensation for his eight hours of jury duty and receive straight pay for the six emergency call-in hours he worked that morning prior to his jury duty service. Siems' grievance was denied at Step 1 on March 13. Siems' grievance was again denied at Step 2 of the grievance process. He then filed a Step 3 grievance appeal with DAS on March 23, 2018. DAS denied the grievance on April 20, 2018.

During the grievance period, Siems was also communicating with the DOT Finance office. He received an email from the DOT Finance office on April 12, 2018, stating that his time sheet showed he had received compensation for jury duty. The email further added that Siems was "responsible for reimbursing the DOT for hours you have been paid." The email stated that Siems was to submit the payment promptly and if the payment was not received in three pay periods from the time of the jury duty, the hours would be deducted from his vacation.

Siems responded to this email on April 26 and stated he would put the check in the mail that day. However, he expressed that he wanted to wait until his grievance was finalized. Although Siems' timesheet only reflected two hours of jury duty leave instead of the eight hours of leave he originally requested, Siems remitted to the DOT the entirety of the \$30 he received from the judicial

branch for his jury duty service. As his timesheet only showed two hours, the DOT should have only received a quarter of that payment, or \$7.50. As of the date of the hearing, DOT had not reimbursed Siems the remaining jury duty money.

Siems filed the instant appeal with PERB on April 24, 2018.

CONCLUSIONS OF LAW

Siems filed this appeal pursuant to Iowa Code section 8A.415(1), which states, in part:

1. *Grievances*

a. An employee except an employee covered by a collective bargaining agreement which provides otherwise, who has exhausted the available agency steps in the uniform grievance procedure provided for in the department rules may, within seven calendar days following the date a decision was received or should have been received at the second step of the grievance procedure, file the grievance at the third step with the director. The director shall respond within thirty days following receipt of the third step grievance.

b. If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. Decisions rendered shall be based upon a standard of substantial compliance with this subchapter and the rules of the department. Decisions by the public employment relations board constitute final agency action.

Pursuant to Iowa Code section 8A.415(1), PERB's decision "shall be based upon a standard of substantial compliance with this subchapter [subchapter IV of chapter 8A] and the rules of the department [of administrative services]." For an employee to prevail in a grievance appeal

before PERB under this statutory standard, the employee must establish the State failed to substantially comply with Iowa Code chapter 8A subchapter IV or DAS rules. *Stratton and State (Dep't of Human Servs.)*, 93-MA-13 at 8 (citing a previous version of the statute). Under this statutory framework, the grievant, in this case Siems, bears the burden to establish the State failed to substantially comply with the cited statute or rule. *Studer and State (Dep't of Human Servs.)*, 98-MA-12 at 9.

Substantial compliance is undefined by Iowa Code chapter 8A. However, PERB has generally accepted the Iowa Supreme Court standard for substantial compliance. The Iowa Supreme Court has stated that substantial compliance means:

[A]ctual compliance in respect to the substance essential to every reasonable objective of the statute. It means that a court should determine whether the statute has been followed sufficiently so as to carry out the intent for which it was adopted. Substantial compliance with a statute is not shown unless it is made to appear that the purpose of the statute is shown to have been served. What constitutes substantial compliance with a statute is a matter depending on the facts of each particular case.

Brooks and State of Iowa (Dep't of Educ.), 15-MA-01 at 7 (citing *Frost and State*, 07-MA-04 at App. 5 (quoting *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193, 194 (Iowa 1988))). Failure to comply with every word of a statute or rule is not fatal in every situation under a substantial compliance standard. The Iowa Supreme Court has reiterated that substantial compliance means compliance in respect to essential matters necessary to assure the reasonable objectives of the statute. *Residential and Agric. Advisory Comm., LLC v.*

Dyersville City Council, 888 N.W.2d 24, 48 (Iowa 2016). Literal compliance with a rule or statute is not necessary under this standard. *Fulton and State of Iowa*, 10-MA-03 at 9 (Aug. 29, 2011). However, substantial compliance has mostly been applied to circumstances involving procedural anomalies. See generally *Ortiz and Loyd Roling Construction*, No. 18-0047, 2019 WL 2236111, at *2 (Iowa May 24, 2019). In determining substantial compliance, PERB does not evaluate the effectiveness or fairness of the DAS rule. *Fulton*, 10-MA-03 at 8–9.

The rule at issue in this case is DAS rule 11—63.12. That rule states in relevant part that when serving jury duty an “employee shall be entitled to time off during regularly scheduled work hours with regular compensation.”

The parties agree the State complied with the portion of DAS rule 11—63.12 entitling an employee to time off during regularly scheduled work hours. Siems told his supervisor, Thede, that he needed to go to jury duty on February 20 and he left work at 7:00 a.m. to report to jury duty. Upon completing jury duty at 2:20 p.m., Siems called Thede. Thede told him that under the DOT policy Siems did not need to return to work as there was less than two hours left of his regularly scheduled shift, which was scheduled to end at 3:30 p.m.

The crux of the dispute is whether the State substantially complied with the rule when it compensated Siems for eight hours that day—six hours of regular time for the time he worked that morning during the emergency call-in hours and two hours of other leave for the time he was at jury duty. Siems contends he is entitled to compensation for fourteen hours that day—six hours

of regular time for the time he worked that morning during the emergency call-in hours and eight hours of other leave for the time he was at jury duty that coincided with his regularly scheduled shift. Siems does not believe the compensation for the emergency call-in hours alleviates the State's responsibility under the rule to provide him regular compensation for the hours he served at jury duty since his jury duty occurred during his regularly scheduled work hours.

The State argues that Siems is regularly scheduled for forty hours a week and in the pay week that included February 20, he received compensation for forty hours. The State maintains that it acted in substantial compliance with the rule.

After examining the facts of the case, I find the State's argument unpersuasive. Siems received regular compensation for the hours he actually worked; however, he did not receive regular compensation for his "regularly scheduled work hours" as required by the language and intent of the rule.

Although the standard of substantial compliance does not require literal compliance with a rule, it does require the State to comply with the essential matters necessary to assure every reasonable objective of the rule is satisfied. A reasonable objective of DAS rule 11—63.12 is to provide an employee with regular compensation for time spent at jury duty when that time coincides with an employee's regularly scheduled work hours. An employee should not be required to forgo regular compensation during regularly scheduled work hours due to a person's service as a juror.

The State claims it satisfied the rule's objective since Siems was scheduled to work for eight hours on February 20 and he was compensated for eight hours for that workday. This argument fails to account for the actual facts of the case. The State did not compensate Siems for all eight hours of jury duty leave that occurred during his regularly scheduled work hours. Instead, he received regular compensation for the hours he worked prior to jury duty during his temporary work shift. He also received compensation for jury duty leave for two hours. The DOT did not provide Siems with compensation for the remaining six hours of jury duty leave that coincided with his regularly scheduled shift. Due to the language of the rule and the reasonable objective of the rule, Siems expected to receive compensation for the entirety of his regularly scheduled shift that day as well as compensation for any emergency call-in hours he may work. Had Siems not been required to report to jury duty that day, he would have been compensated for the six emergency call-in hours in addition to his eight regularly scheduled work hours.

The State's claim that substantial compliance merely requires it to compensate an employee for forty hours is not supported by the language of the rule. The rule states an employee serving jury duty that occurs at the same time as the employee's "regularly scheduled work hours" is entitled to time off "with regular compensation." DOT's policy further adds that an employee may either elect to charge the time off as "*Other Leave*" or as "*Vacation.*" Both options would provide the employee with regular compensation for hours served in jury duty as long as that jury duty coincided with the employee's

regularly scheduled work hours. Neither the rule nor the DOT policy list an exception for cases in which an employee has already received compensation for forty hours in that pay week due to the employee's actual hours worked.

Additionally, the State's position on what constitutes substantial compliance is not applicable for all employees. The State claims substantial compliance under this rule requires the State to compensate an employee for forty hours a week. This is only applicable if the employee is actually scheduled for forty hours a week and is not subject to call-in hours. The jury duty rule would not require the State to compensate an employee for forty hours when the employee was regularly scheduled for less than forty hours. The State would simply need to compensate the employee for jury duty leave for the hours of jury duty that coincided with the employee's regularly scheduled work hours. Likewise, if an employee is regularly scheduled for forty hours a week with emergency call in, but time at jury duty coincides with the regularly scheduled work hours, the State needs to provide regular compensation for the hours that coincide with jury duty regardless of those additional call-in hours.

Essentially the State argues the jury duty rule is no longer applicable once the employee works or is compensated for forty hours a week. I can find no support for this argument. A reasonable objective of the DAS jury duty rule is to allow an employee to perform one's civic duty in jury service while still receiving regular compensation for that time as long as it coincides with that employee's regularly scheduled work hours. The rule does not lose its purpose merely because an employee has otherwise worked forty hours that week.

The case at issue placed both the DOT and Siems in an unusual situation. Siems is a forty-hour a week employee, but also an employee that is required to work emergency hours. Under the facts presented, Siems was scheduled for his regular shift and was called in to work emergency hours on the same day he served jury duty. Only his regularly scheduled work hours coincided with jury duty. Thus, pursuant to the intent and reasonable objective of the jury duty rule, Siems is entitled to regular compensation for all eight hours for which he was regularly scheduled to work as those hours coincided with his jury duty service. The State has already compensated him for two of those hours. To fulfill the reasonable objective of the rule, the State needs to compensate Siems with his regular compensation for the remaining six hours.

Siems has demonstrated the State has failed to substantially comply with DAS rule 11—63.12 by failing to compensate him appropriately for jury duty leave when his service at jury duty coincided with his regularly scheduled work hours.

Siems has alternatively argued that even if he was not entitled to six hours of regular compensation for his jury duty service, the State should return at least part of the remitted jury duty payment. This argument is now moot due to the determination that Siems is entitled to regular compensation, and thus he needed to remit the entirety of the jury duty payment he received from the judicial branch pursuant to DAS rule 11—63.12.

REMEDY

When fashioning an appropriate remedy for grievance appeal cases, PERB attempts to make prevailing employees whole by placing them in the positions they would have been in had no violation of the DAS rule occurred. *Fulton*, 10-MA-03 at 21. An appropriate remedy makes an employee whole, but avoids an undue financial burden or penalty, or an economic windfall for either party. *Wise and State of Iowa (Dep't of Human Servs.)*, 2017 PERB 100005 at 4. In this case, Siems received regular compensation for two of the eight hours of jury duty leave. He is entitled to receive regular compensation for the remaining six hours.

Additionally, PERB has previously awarded interest in order to place employees in the same economic position they otherwise would have been in had no violation occurred. *See id.* at 3–4 (finding interest on back pay appropriate as a make-whole remedy when reinstating an employee after finding the State lacked just cause for the termination); *United Elec., Radio and Mach. Workers of America and Winneshiek County*, 15 ALJ 8782 at 10 (Proposed Remedial Order Sept. 30, 2015) (finding an appropriate remedy included interest payments in a prohibited practice case alleging unilateral changes to employee insurance costs). Siems is entitled to interest on the compensation received for the remaining six hours of jury duty leave for which he was not previously compensated.

Siems has alternatively argued that if he was not entitled to regular compensation for the remainder of the six hours of jury duty, then the payment

he received from the judicial branch for jury service that he remitted to the State should be at least partially returned. Due to the determination that he is entitled to regular compensation for all eight hours, this argument is moot. Siems has appropriately remitted payment received from the judicial branch to the State pursuant to DAS rule 11—63.12.

I consequently propose the following:

ORDER

The State of Iowa shall provide regular compensation with interest to Siems for the six hours of his regularly scheduled work hours that coincided with jury service for which he was not previously compensated.

The ALJ retains jurisdiction of this matter in order to address any remedy-related issues which might hereinafter arise and to specify the precise terms of the remedy. In order to prevent further delay in the resolution of this case, a hearing to receive evidence and arguments on the precise terms of the remedy, should the parties fail to reach agreement, will be scheduled and held within 45 days of the date this proposed decision becomes PERB's final action on the merits of Siems' appeal.

The costs of reporting and of the agency-requested transcript in the amount of \$561.05 are assessed against the State of Iowa pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to the Appellee in accordance with PERB subrule 621—11.9(3).

The proposed decision and order will become PERB's final agency action on the merits of Siems' appeal pursuant to PERB rule 621—11.7 unless, within

20 days of the date below, a party files a petition for review with the Public Employment Relations Board or the Board determines to review the proposed decision on its own merits.

DATED at Des Moines, Iowa this 28th day of June, 2019.

/s/ Amber DeSmet

Administrative Law Judge

Filed electronically.
Parties served via eFlex.