

FINDINGS OF FACT

Eddie Jones is a correctional officer employed at the Newton Correctional facility. Correctional officers are part of the security bargaining unit represented by AFSCME Iowa Council 61.

When inmates from Newton Correctional Facility are transported to the University of Iowa Hospital and Clinics, correctional officers provide security. Additionally, when an inmate is admitted, officers observe and supervise the inmate. These trips, known as SUI watches, normally include overtime.

Over the years, questions have arisen as to how overtime for these watches was distributed. One of the items discussed at the July 19, 2017, staff communication meeting was overtime distribution for the SUI watches. The document memorializing the meeting provided:

2. There's confusion on how OT is being offered. Some are not getting the option. Will do an "all call" and notice put out as text to cell phones used by staff on off-ground trips, and also a notice sent via new Gov Delivery software. Years of service will determine who get it from the list of responses. It will be tracked on who gets it. Want to avoid fatigue issues when the same staff are continuously getting it. Will continue to monitor the process and adjust as needed. Continue to communicate if there are issues. Appellant's Exhibit 4, page 1.

According to Jones, historically SUI watches were awarded to the most senior correctional officer who volunteered for the watch. Additionally, Jones claims the July 19 minutes, referenced above, reflected the understanding that assignment of the watch trip would be determined by seniority.

There is very little evidence regarding the grievance which is the subject of this proceeding. On December 5, Jones filed a grievance at step one based upon his belief that the practice of awarding trips to the most senior correctional officer was not being followed. This grievance provided:

On 21NOV19 there was an SUI watch and CRC staff did not know about the watch as CRC staff were not informed. Issues have occurred multiply (sic) times where staff at CRC have requested to on the SUI watches and have been told someone else has it or never even knew about them. There is a two-fold problem with this. As it had happen in the past it is before 0600 and asked to be “put on the list”, second the person who got the SUI watch was less senior (years of service) to them. The issue was brought up about CRC at the Staff Communication Meeting (see 28OCT17) and is still not resolved. Per the Staff Community meeting on 19JUL17 addressing overtime “Years of service will determine who gets it from the list of responses.” This is not being followed. No one from CRC can respond if it is unknown. Appellant’s Exhibit 1, page 1.

DOC denied the grievance on December 6. Jones appealed the grievance to the second step later that day. After the DOC denied the grievance on December 12, Jones submitted it to the Department of Administrative Services (DAS) later that day. DAS’ third step answer, denying the grievance, was issued on January 13, 2020. Jones filed a timely appeal to PERB on January 30.

It is uncontested that SUI watches are not being awarded by seniority. According to DOC, the captain in charge of the facility assigns the SUI watch. Since each captain has a preferred method of assigning an SUI watch, the assignment of overtime is not consistently being awarded to the most senior correctional officer.

Jones contends that the Newton Correctional Facility's failure to assign SUI watches by seniority violates DAS rule 53.11 which governs overtime for state employees and DOC policy AD-PR-08, particularly section IV(E) of this policy, which governs overtime procedures for correctional employees.

Iowa Code section 8A, subchapter IV is silent with regards to overtime assigned by seniority. Although there are two DAS rules with regards to overtime, there is no DAS rule which pertains to seniority. DAS rule 50.1 defines overtime as the hours that exceed 40 hours in a workweek. DAS rule 53.11 pertains to overtime, but this rule is silent as to the assignment of overtime.¹

CONCLUSIONS OF LAW

Jones 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 calendar 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

¹ The subsections are: (1) administration, (2) eligible job classes, (3) exempt job classes, (4) method of payment, (5) compensatory time and (6) holiday hours.

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.

Particularly significant in the above section is that PERB's decisions in grievance appeal proceedings "shall be based upon a standard of substantial compliance with [subchapter IV of chapter 8A] and the rules of the department [of Administrative Services.]"]. *McCandless, Eid and Crutchfield and State of Iowa (Dep't of Corrs.)*, 21 PERB 102483, 102484, 102485 at 5.

Further, PERB has held that it does not have the statutory authority to adjudicate a grievance based upon a violation of an alleged non-DAS work rule. *See e.g. Pierce and State of Iowa (Dep't of Human Services)*, 2016 ALJ 100728 at 5 (PERB is without jurisdiction to hear and adjudicate the State's Violence-Free Workplace Policy for executive branch employees); *Schaa and State of Iowa (Dep't of Human Servs.)*, 01-MA-05 at 4 (ALJ) (PERB is without jurisdiction to hear and adjudicate Department of Human Services work rule); *Mower, Sandy and Klooster and State of Iowa (Dep't of Pub. Safety)*, 99-MA-12, 99-MA-13 and 99-MA-14 at 5 (ALJ) (PERB is without jurisdiction to hear and adjudicate Department of Public Safety work rule); *Durham and Knight and State of Iowa (Dep't of Trans. and Iowa Dep't of Pers.)*, 99-MA-03 at 4 (ALJ) (PERB is without jurisdiction to hear and adjudicate Department of Transportation work rules).

As such, PERB's role in section 8A.415(1) cases is limited to

determining whether the State's actions were in substantial compliance with Iowa Code chapter 8A, subchapter IV, or DAS rules. *McCandless, Eid and Crutchfield*, 21 PERB 102483, 102484, 102485 at 5; *Fulton, et al and State of Iowa (Dep't of Corrs.)*, and *AFSCME/Iowa Council 61*, 2010-MA-03 at 8 (PERB). Thus, in order for Jones to prevail in this grievance proceeding, he must establish the DOC's lack of compliance with a provision of Iowa Code chapter 8A, subchapter IV or DAS rules. *McCandless, Eid and Crutchfield*, 21 PERB 102483, 102484, 102485 at 6; *Fulton, et al*, 2010-MA-03 at 9 (PERB); *Uhlenhopp and State of Iowa (Dep't of Trans.)*, 19 ALJ 102329 at 6.

Jones does not claim that the DOC failed to comply with a provision of Iowa Code chapter 8A, subchapter IV. Jones alleges the DOC failed to substantially comply with DAS rule 53.11. However, there is no evidence in the record that establishes the DOC failed to comply with DAS rule 53.11 since this rule is silent as to the assignment of overtime, and thus does not address the subject matter of Jones' complaint; DOC failure to assign SUI watches by seniority. Jones also alleges the DOC violated DOC's policy AD-PR-08. However, there is no evidence that this DOC policy refers to or implicates either a provision of subchapter IV or a DAS rule. Even if DOC violated the DOC policy or the agreement memorialized in the July 19, 2017, staff communication meeting minutes, that years of service would determine which correctional officer received the SUI watch trip, both are wrongs which PERB is without authority to remedy pursuant to Iowa Code section 8A.415(1).

Since there is no evidence of DOC's lack of substantial compliance with a provision of Chapter 8A, subchapter IV or a DAS rule, and PERB does not possess jurisdiction to adjudicate claimed violations of DOC policies or agreements made at staff communication meetings, I conclude that the Appellant did not demonstrate the State failure to substantially comply with chapter 8A, subchapter IV or DAS rule. Accordingly, I propose the following:

ORDER

The state employee grievance appeal of Eddie Jones is DISMISSED.

The costs of reporting and of the agency-requested transcript in the amount of \$288.55 are assessed against the Appellant, Eddie Jones, pursuant to Iowa Code section 20.6(6) and PERB rule 621—11.9. A bill of costs will be issued to Jones in accordance with PERB subrule 11.9(3).

This proposed decision will become PERB's final agency action pursuant to PERB rule 621—9.1 unless, within 20 days of the date below, a party aggrieved by the proposed decision files an appeal to the Board or the Board determines to review the proposed decision on its own motion.

DATED at Des Moines, Iowa, this 23rd day of February 2022.

/s/Susan M. Bolte

Susan M. Bolte
Administrative Law Judge

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