

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

KERRY MCCANDLESS, Appellant,)	
)	
and)	CASE NO. 102483
)	
STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Appellee.)	
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TAMARA EID, Appellant,)	
)	
and)	CASE NO. 102484
)	
STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Appellee.)	
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ASHLEY CRUTCHFIELD, Appellant,)	
)	
and)	CASE NO. 102485
)	
STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Appellee.)	
)	

DECISION AND ORDER

Appellants Kerry McCandless, Tamara Eid, and Ashley Crutchfield filed state employee grievance appeals with the Public Employment Relations Board (PERB) pursuant to Iowa Code section 8A.415(1)(b) and PERB rule 621—11.2. Grievants claim the State failed to substantially comply with Iowa Code section 8A, subchapter IV, or the Department of Administrative Services’ (DAS)

administrative rules when the State required Grievants to use sick leave rather than placing Grievants on administrative leave following their known exposure to COVID-19. As these cases involve common issues of fact or law, PERB consolidated the cases by order dated January 29, 2021.

The parties executed and electronically filed a joint motion stipulating to undisputed material facts and requested to present the case via briefs and oral arguments in lieu of holding an evidentiary hearing. Both parties filed briefs on September 3, 2021.

FINDINGS OF FACT

The parties stipulated to the following undisputed facts. Kerry McCandless, Ashley Crutchfield, and Tamara Eid are employed as Registered Nurses (RN) by the State of Iowa Department of Corrections – Iowa State Penitentiary (DOC-ISP). Grievants are merit-covered employees covered by the Collective Bargaining Agreement (CBA) existing between American Federation of State, County, and Municipal Employees, Iowa Council 61 (AFSCME) and the State of Iowa.

On or about July 28, 2020, DOC-ISP Nursing Services Director Tasha Whalen received a call from ISP RN Kim Boeker reporting she (Boeker) had been exposed to multiple individuals at her other place of employment, a healthcare facility, who were confirmed positive cases of COVID-19. Some of the individuals to which Boeker was exposed were symptomatic when Boeker worked with, or near, said individuals. Boeker reported that she last worked at her other place of employment on Friday, July 24 and Tuesday, July 28, 2020. Boeker reported

she had not always worn her personal protective equipment (PPE) and that social distancing was not well practiced at her other place of employment. Boeker informed Whalen that she was asymptomatic as of the time of their call.

Boeker told Whalen that while at ISP she wore her PPE, including her required facemask and face shield, at all times including during her entrance and exit of the ISP facility. However, Boeker stated that she removed her PPE during her twenty-minute meal period, which occurred at approximately 4:30 PM each evening on her three previous shifts spanning from July 25-27, 2020. The meal periods took place in the ISP computer charting area, which is a confined workspace where nursing staff can use several computer stations for completing their charting duties.

During the subject meal periods, Boeker and the respective Grievants shared meal periods in the charting area on at least one occasion without wearing PPE, resulting in an articulable potential exposure to COVID-19. Due to the risk of spread of COVID-19 from the known potential exposures, Grievants, Boeker, and anyone else involved were required to self-quarantine for fourteen days and test negative for COVID-19 before returning to duty. After completing their quarantine, none of the Grievants tested positive for COVID-19 and ISP determined the appropriate application of DOC policy in effect at the time was to require Grievants to use sick leave to cover their absences for the quarantine period.

The parties do not dispute that based on the Grievants' potential exposure to COVID-19, the need to self-quarantine was prudent and appropriate. Rather,

Grievants contend the State failed to substantially comply with Iowa Code section 8A, subchapter IV or DAS rules when ISP required Grievants to use sick leave for their quarantine period rather than placing them on paid administrative leave.

On August 25, 2020, McCandless, Crutchfield, and Eid filed non-contract grievances asserting ISP's actions violated Iowa Code chapter 8A and DAS's administrative rules. The grievances were ultimately denied at the third step of the State's non-contract grievance procedure on October 2, 2020, and Grievants subsequently filed the instant appeals with PERB.

CONCLUSIONS OF LAW

Grievants filed these consolidated appeals pursuant to Iowa Code section 8A.415(1), which provides:

8A.415 Grievances and discipline resolution procedures.

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 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-excerpted section is that PERB's decisions in grievance appeals "shall be based upon a standard of substantial compliance with [subchapter IV of chapter 8A] and the rules of the department [of Administrative Services]." Iowa Code § 8A.415(1)(b). 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, and DAS rules. Although chapter 8A does not define "substantial compliance," the Board has endorsed the following definition used by the Iowa Supreme Court in other contexts:

"Substantial compliance" with a statute means actual 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.

Frost & State, 2007-MA-04 at 5 (PERB) (quoting *Brown v. John Deere Waterloo Tractor Works*, 423 N.W.2d 193, 194 (Iowa 1988)).

Pursuant to this standard, literal compliance with a rule or statute is not necessary. See *Fulton & State of Iowa*, 2010-MA-03 at 9 (PERB). Moreover, PERB does not evaluate the effectiveness or fairness of an applicable rule. *Id.* Rather, substantial compliance means compliance in respect to essential matters necessary to assure the reasonable objectives of the statute. See *Residential and Agric. Advisory Comm., LLC v. Dyersville City Council*, 888 N.W.2d 24, 48 (Iowa

2016). Accordingly, in the instant cases, Grievants bear the burden of establishing the State failed to substantially comply with some provision of Iowa Code chapter 8A, subchapter IV, or DAS rules. See *Fulton*, 2010-MA-03 at 8-9 (PERB).

In their brief, Grievants contend the State's action requiring them to use sick leave for their quarantine period instead of placing them on paid-administrative leave failed to substantially comply with Iowa Code section 70A.1 and DAS rules 11—60.2(8A) and 11—63.3(8A).¹ Additionally, Grievants argue the Department of Corrections has applied its Covid-19 policy inconsistently and unfairly. Grievants' contentions will be addressed independently and in succession.

Alleged failure to substantially comply with DAS rules

Although not explicitly cited in their brief, Grievants appear to contend the State's requirement they use sick leave for their quarantine period failed to substantially comply with two DAS administrative rules. First, Grievants argue their quarantine period was, in effect, an investigation that required the State to place them on paid-administrative leave pursuant to DAS rule 11—60.2(8A). Second, Grievants contend the State's actions failed to substantially comply with

¹ Concerning Grievants' allegation that the State failed to substantially comply with Iowa Code section 70A.1, PERB's jurisdiction is limited to determining whether the State failed to substantially comply with a provision of Iowa Code chapter 8A, subchapter IV, or DAS rule. While section 70A.1 is not part of Iowa Code chapter 8A, subchapter IV, and is thus outside the scope of PERB's review, as will be discussed below, section 70A.1 applies indirectly in these cases through Iowa Code subsection 8A.413(21)(b).

DAS rule 11—63.3(8A) because rule 63.3 does not allow for “precautionary leave” or “preventative quarantines.” For the reasons discussed below, we disagree.

In their first allegation, Grievants assert the State failed to substantially comply with DAS rule 11—60.2(8A) when Grievants were not placed on paid-administrative leave akin to employees under investigation. DAS rule 60.2 is titled “Disciplinary actions” and subrule 60.2(1) provides, in relevant part:

60.2(1) Suspension.

- a. *Suspension pending investigation.* An appointing authority may suspend an employee for up to 21 calendar days with pay pending an investigation. A suspension pending investigation may be extended with approval from the director...

As is clear from its title, DAS rule 60.2 pertains to disciplinary actions and subrule 60.2(1) permits employers to suspend employees with pay pending an investigation into the employees’ possible misconduct. In the instant cases, Grievants did not receive any disciplinary action nor were they investigated for potential misconduct. As the record is absent of any evidence concerning potential disciplinary action, the State was not acting pursuant to DAS rule 60.2 when it required Grievants to quarantine.

Moreover, even assuming *arguendo* Grievants’ situation is similar to an investigation, subrule 60.2(1) is discretionary; there is no requirement of paid-administrative leave in this rule. Consequently, DAS rule 60.2 has no applicability to these cases and Grievants have failed to demonstrate the State’s lack of substantial compliance with DAS rule 11—60.2(8A).

Turning to Grievants’ second allegation, they assert the State failed to substantially comply with DAS rule 11—63.3(8A). DAS rule 63.3 is titled “Sick

leave with pay” and sets forth the circumstances under which employees may use their sick leave benefits, stating, in relevant part:

11—63.3(8A) Sick leave with pay.

- (1) Accrued sick leave may be used during a period when an employee is unable to work because of medically related disabilities; for physical or mental illness; medical, dental or optical examination, surgery or treatment; or when performance of assigned duties would jeopardize the employee's health or recovery. Medically related disabilities caused by pregnancy or recovery from childbirth shall be covered by sick leave.

Notably, DAS rule 63.3 derives its authority from Iowa Code section 8A.413, which we consulted for clarification. Iowa Code subsection 8A.413(21)(b) states, “[DAS] rules shall provide...Annual sick leave and vacation time [] be granted in accordance with section 70A.1.” Accordingly, to substantially comply with subsection 8A.413(21)(b), the State must adhere to the provisions of section 70A.1. Iowa Code section 70A.1 provides, in relevant part:

70A.1 Salaries—payment—vacations—sick leave—educational leave.

5. Sick leave shall not accrue during any period of absence without pay. Employees may use accrued sick leave for physical or mental personal illness, bodily injury, medically related disabilities, including disabilities resulting from pregnancy and childbirth, *or contagious disease, which result in any of the following:*
 - a. *The employee's confinement is required.*
 - b. The employee is rendered unable to perform assigned duties.
 - c. The performance of assigned duties would jeopardize the employee's health or recovery.

(Emphasis added).

Iowa Code subsection 70A.1(5) sets forth four circumstances under which employees may use accrued sick leave; included in that list is the use of sick leave for a contagious disease that requires confinement. In the instant cases,

Grievants' potential exposure to COVID-19, a highly contagious and transmissible virus, required them to quarantine for fourteen-days to prevent potential spread. As Grievants' potential exposure to a highly contagious disease resulted in their required confinement, the State's requirement that Grievants use their accrued sick leave to cover their quarantine period complies with Iowa Code section 70A.1. Accordingly, as subsection 8A.413(21)(b) requires the State grant sick leave in accordance with section 70A.1, we conclude the State substantially complied with Iowa Code subsection 8A.413(21)(b) and DAS rule 11—63.3(8A).

Alleged inconsistency and unfairness of State's actions

Grievants' final contentions are that the State applied its COVID-19 policy inconsistently and that the policy itself is unfair. In the instant actions, Grievants' claims are not grounds upon which the Board can grant relief.

As discussed above, PERB's authority in grievance appeals is limited to determining whether the State failed to substantially comply with Iowa Code section 8A, subchapter IV, or DAS rules. As such, PERB has no authority to grant a remedy when a department changes a practice, absent a rule prohibiting such change. *See Kleis & State of Iowa (Iowa Dep't of Personnel, Dep't of Corr., & Anamosa State Penitentiary)*, 2002-MA-03 at 6-7 (ALJ). Similarly, it is beyond PERB's authority in grievance appeals to evaluate the fairness of the State's decisions absent a statutory provision or administrative rule requiring the State to be fair in taking such action. *See, e.g., Brooks & State of Iowa (Dep't of Educ.)*, 2015-MA-01 at 8-11 (PERB); *see also Jacobs & State of Iowa (Dep't of Nat. Res.)*,

2016 ALJ 100086 at 8. In the instant cases, Grievants have cited no such statutory authority or administrative rules. Consequently, Grievants have failed to demonstrate the State's lack of substantial compliance with Iowa Code chapter 8A, subchapter IV, or DAS rules.

Accordingly, we issue the following:

ORDER

The consolidated grievance appeals of Kerry McCandless, Tamara Eid, and Ashley Crutchfield are DISMISSED.


This constitutes final agency action.

DATED at Des Moines, Iowa, this 21st day of December, 2021.

PUBLIC EMPLOYMENT RELATIONS BOARD



Erik M. Helland, Chair



Jane M. Dufoe, Board Member

Electronically filed.
Parties served via eFlex.