

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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ALLISON RITCHIE, Appellant,	)	CASE NO. 102602
and	)	
STATE OF IOWA (IOWA WORKFORCE DEVELOPMENT), Appellee.	)	PROPOSED DECISION AND ORDER

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Appellant, Allison Ritchie, filed her state employee grievance appeal on July 21, 2021, with the Public Employment Relations Board (PERB) pursuant to Iowa Code section 8A.415(1) and PERB rule 621—11.2(1). Ritchie alleges the State failed to substantially comply with Iowa Administrative Code 11-63.2(2)(8A), when the State instructed Ritchie that her vacation leave request for a mandated Saturday shift would only be granted on the condition that she take four additional hours on the adjacent Monday or Friday shift.

On May 20, 2022, the parties requested to stipulate to material facts as well as Appellant exhibits 1 through 8 and State exhibits A through F in lieu of an evidentiary hearing. The hearing officer granted that request on June 14, 2022. The parties submitted briefs on June 17, 2022. Earlene Anderson represented Ritchie and Andrew Hayes represented the State.

Based upon the entirety of the record, and having reviewed and considered the parties' briefs, I conclude Ritchie has not established the State failed to substantially comply with Iowa Administrative Code 11—63.2(2).

## **1. FINDINGS OF FACT**

### **1.1 Ritchie Background**

At the times relevant to this appeal, Allison Ritchie was employed by the State of Iowa—Iowa Workforce Development (“IWD”). Ritchie was a merit covered employee and covered by a collective bargaining agreement that exists between American Federation of State, County, and Municipal Employees, Iowa Council 61 and the State of Iowa. Ritchie worked as a workforce advisor at the Davenport office for IWD. Ritchie started her employment with the State in August 2002.

### **1.2 IWD Overview during 2020-2021**

On or about March 17, 2020, Iowa Governor Kim Reynolds signed a Proclamation of Disaster Emergency in response to the emergence of the COVID-19 pandemic. Iowa’s COVID-19 public health emergency proclamation remained ongoing through February 15, 2022, updated to reflect various changes required to address the evolving needs of Iowans through approximately the first two years of the pandemic. In light of the harmful impact the COVID-19 pandemic had on the world economy, including Iowa’s workforce, IWD experienced significant increases in unemployment insurance claims. The increase in IWD’s workload persisted at least through July 2021.

In response to the increase in claims, IWD implemented strategic measures to help serve the large number of Iowans in need of unemployment insurance benefits and other services. One measure was to require mandatory overtime (OT) to be worked by staff on weekends. Often times this meant vacation requests could not be granted for employees requesting weekends off. However,

whenever possible, IWD made attempts to grant vacation to employees based on workflow and agency needs. Mandatory OT on weekends began at least by April 2020, if not earlier. In May 2020, IWD instructed managers to be cautious about how many staff were allowed to be off on vacation due to the workload. Mandatory OT on weekends continued into 2021. In early January 2021, the Unemployment Insurance Division Administrator sent an email stating that vacation leave would not be approved for Saturdays. Ritchie worked OT on the weekends, as mandated, but also volunteered to continue to work when it was not mandatory.

### 1.3 Ritchie's Vacation Leave Request

At some point in mid-February of 2021, Ritchie inquired about taking vacation leave on March 13, 2021, which was a Saturday she was scheduled to work mandatory overtime. Ritchie was informed that she could be granted her request on the condition that she take an additional four hours of vacation on her adjacent Friday or Monday shift for the weekend in question. Ritchie contacted a union staff representative on February 19 to see if the union could discuss this policy with management. Ritchie emailed the IWD human resources department about this conditional vacation leave policy on March 5.

On March 5, 2021, IWD division administrator, Mike Witt emailed the IWD employees about mandatory OT requirements for the following weekend. In the email he said that for the weekend of March 6, the staff were only mandated to work four hours of OT instead of eight hours. However, he stated that any vacation request for that weekend would still necessitate taking four hours

vacation on Friday or Monday. In the email he asserted, “That requirement didn’t change since there are still mandatory hours for tomorrow.” He further provided that approved time off for Friday or Monday was “just like it had been.”

Ritchie, ultimately utilized eight hours of vacation leave for Saturday, March 13, 2021, and four hours of vacation leave for Monday, March 15, 2021.

#### 1.4 Procedural History

On March 9, 2021, Ritchie filed a grievance at Step 1 of the grievance process, based on IWD requiring her to take four additional hours of vacation on the adjacent Friday or Monday of the mandated eight-hour Saturday overtime shift for which she used vacation leave. Ritchie’s initial grievance challenged the fairness of the IWD policy. Ritchie requested as a remedy that IWD be prohibited from requiring employees to take vacation on days not requested, and that IWD reinstate any vacation leave IWD required employees to take that was in addition to the specific days requested. IWD management denied Ritchie’s grievance on March 16, 2021. In the denial, IWD management stated that supervisors have a right to deny vacation requests based on business need. IWD further added that current business needs require people to take additional vacation on a day contiguous to Saturday to appropriately distribute workload or be available for Saturday and one day contiguous to it.

Ritchie filed her grievance at Step 2 on March 17, 2021. IWD management denied the grievance on March 22, 2021. In its answer, IWD stated the imbalance between the workforce on Friday and Saturday makes proper distribution of

staffing difficult so IWD needed the same personnel working both Friday and Saturday or Saturday and Monday.

Ritchie submitted her grievance at Step 3 on March 23, 2021. The State denied Ritchie's grievance at Step 3 on June 28, 2021.

Ritchie filed her 8A.415(1) grievance with PERB on July 21, 2021. The State denied the allegations of her appeal. The parties stipulated to a number of facts and additionally submitted exhibits to be considered in lieu of an evidentiary hearing. The parties submitted briefs on June 17, 2022.

## **2. SUMMARY OF ARGUMENT AND ISSUE**

Ritchie argues that State of Iowa and IWD policy does not require an employee working mandatory OT to take off additional time not requested when requesting vacation leave. Ritchie contends vacation leave is a benefit for the employee and the State should not force a greater use of the benefit that causes the employee to use accrued vacation time they may have saved for another occasion. Ritchie also states that IWD began a practice for vacation leave approvals without notifying all employees. She claims the forced use of this earned benefit is detrimental to both the employee and employer as it was unnecessary in order to obtain the goal of accomplishing the heavy workload.

The State argues that Ritchie did not meet the burden to show IWD failed to substantially comply with the applicable Iowa Code or administrative rules. The State claims that Iowa Administrative Code 11—63.2 allowed IWD to require employees to take vacations based on agency needs. IWD knew a large number of employees would request vacation leave for Saturdays, and therefore required

employees to take an additional four hours on the contiguous Friday or Monday to lessen the number of requests made by employees.

The parties stipulated that the issue in this case is specific to Ritchie's circumstances and not to be considered as a group grievance. The parties also stipulated that the sole issue before PERB is whether IWD failed to substantially comply with DAS administrative rule 11-63.2(2)(8A) when it responded to Ritchie's request to use vacation leave for a mandated Saturday shift that it would be granted on the condition that four additional hours be taken on her adjacent Monday or Friday shift.

### **3. CONCLUSIONS OF LAW**

#### **3.1 General 8A.415(1) standard**

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

##### *1. Grievances*

. . . .

*b.* If not satisfied [with the third step response to the employee's grievance], 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.

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 the applicable 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 Ritchie, bears the burden to establish the State failed to substantially comply with the cited statute or rule. *McCandless and State of Iowa (Dep't of Corrections)*, 2021 PERB 102483, 102484, & 102485 at 6.

3.2 *Analysis of Iowa Administrative Code 11—63.2(2)*

The rule at issue in this case, Iowa Administrative Code 11—63.2 discusses vacation leave. The rule states in relevant part that vacation leave is subject to the following conditions:

a. Vacation shall be subject to the approval of the appointing authority. The appointing authority shall approve vacation so as to maintain the efficient operation of the agency; take into consideration the vacation preferences and needs of the employee; and make every reasonable effort to provide vacation to prevent any loss of vacation accrual.

. . . .

j. Vacation shall be cumulative to a maximum of twice the employee's annual rate of accrual, including sick leave conversion. An appointing authority may require an employee to take vacation whenever it would be in the best interests of the agency. The employee shall be given reasonable notice of the appointing authority's decision to require the use of accrued vacation. However, an employee shall not be required to reduce accrued vacation to less than 80 hours.

The first sentence of this provision clarifies that an employee's vacation leave is not an unlimited right or benefit earned by the employee. The appointing authority, in this case IWD, has the authority to refuse to approve vacation.

Iowa Administrative Code 11—63.2(2)(j) also allows IWD to require an employee to take vacation leave when it would be in IWD's best interests. However, IWD can only require an employee to take vacation leave after providing

the employee with reasonable notice and when the use of the employee's vacation would not require the employee to reduce accrued vacation to less than 80 hours.

In order to establish the State failed to substantially comply with Iowa Administrative Code 11—63.2(2), Ritchie needs to show one of the following: the conditional vacation approval process was not in IWD's best interest, IWD did not provide her with reasonable notice of its decision to require this additional four hours of vacation leave when she requested vacation leave for mandatory OT on a Saturday, or IWD required Ritchie to reduce her accrued vacation to less than 80 hours.

In this case Ritchie did not show that IWD's conditional vacation approval process for mandatory OT on weekends did not serve IWD's best interests. The stipulated facts in the record emphasize that during the pandemic IWD often could not grant employees' vacation requests due to unprecedented workloads. The record also demonstrates that IWD employees put in a lot of effort and overtime to meet this unprecedented demand for IWD services. However, the parties also agreed in the stipulated facts that IWD made attempts to grant vacation to employees based on workflow and the agency's needs.

Ritchie's broad statement in her brief that IWD's conditional vacation approval policy did not make sense is not enough to show the policy did not serve IWD's best interests. Ritchie contends that IWD's conditional vacation approval policy did not make sense as it forced employees to take additional vacation leave when the need for workers was high. The State maintains in its grievance responses that it used this policy to evenly distribute workload. The State also



claims in its brief that it employed this policy to reduce the number of vacation leave requests for mandatory OT on Saturdays. Neither party presented sufficient evidence to support these statements.

The record does not contain evidence to ascertain whether this policy did or did not serve IWD's best interests. Ritchie, however, has the burden of proof. As such, Ritchie did not show the State failed to substantially comply with this portion of the rule.

Additionally, Ritchie did not demonstrate that IWD failed to provide her with reasonable notice of this conditional vacation leave policy. Ritchie knew of this policy at least by February 19, as she contacted a union staff representative about the issue at that time. The March 5, 2021, email from IWD division administrator Witt to IWD employees about mandatory OT showed that IWD considered this conditional vacation leave policy an ongoing policy at this time. Ritchie knew about this policy almost a month prior to her requested vacation leave date of March 13. Ritchie did not present any additional evidence to support the conclusion that this timeframe was unreasonable. Ritchie simply has not provided enough information to conclude that IWD failed to provide her with reasonable notice of the vacation leave policy for mandatory OT on weekends.

Finally, Ritchie has presented no evidence that IWD's vacation approval process would result in reducing her accrued vacation to less than 80 hours.

Ritchie has not established the State failed to substantially comply with Iowa Administrative Code 11—63.2(2) in this particular case. As such, Ritchie’s claim must be dismissed.

I consequently propose the following:

ORDER

Ritchie’s state employee grievance appeal is DISMISSED.

The proposed decision and order will become PERB’s final agency action on the merits of Ritchie’s 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 8th day of September, 2022.

/s/ Amber DeSmet

Administrative Law Judge

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