

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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RYAN DAHM, Appellant,	)	
and	)	CASE NO. 102633
STATE OF IOWA (DEPARTMENT OF TRANSPORTATION), Appellee.	)	

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RULING AND ORDER

On October 26, 2021, Appellant Ryan Dahm filed this state employee grievance appeal with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 8A.415(1) and PERB rule 621—11.2. In his appeal, Dahm asserts the State violated Iowa Administrative Code rule 11—53.7(8A) when the State failed to grant him a fiscal year 2021 3% within-grade pay increase, to which he became eligible for on June 25, 2021. On October 29, 2021, the State filed a motion to dismiss the appeal asserting Dahm failed to show the State did not comply with rule 11—53.7(8A) and that Dahm’s initial Step 1 filing was untimely.

On March 10, 2022, Dahm submitted a brief in response to the State’s motion. Oral arguments on the State’s motion concerning the timeliness of Dahm’s Step 1 filing were heard telephonically on March 14, 2021. Attorney Nathan Reckman represented the State and Ryan Dahm appeared *pro se*. Both parties presented arguments in support of their respective positions.

## FINDINGS OF FACT

In litigating this preliminary timeliness issue, both parties submitted documents and referenced facts outside of the pleadings. Specifically, Dahm attached a number of exhibits with his appeal, including a copy of his original non-contract grievance with the State's responses at each Step; a copy of his June 24, 2021, Iowa Department of Transportation Individual Performance Plan and Evaluation; and a series of email correspondences dated from July 29 through August 11, 2021. Additionally, during oral arguments, both parties referenced a July 16, 2021, direct deposit and payroll warrant and Dahm requested the undersigned take "official notice" of the fact that his payroll warrant does not itemize wage increases. The exhibits, pleadings, and arguments reveal the following undisputed facts.

Dahm is employed as a Motor Vehicle Investigator in the Iowa Department of Transportation's (IDOT) Bureau of Investigation and Identity Protection in Ankeny, Iowa. Dahm's position is merit-covered and is part of the public safety bargaining unit represented by the American Federation of State, County and Municipal Employees, Iowa Council 61 (AFSCME).

On June 23, 2021, Dahm met with his immediate supervisor for his annual performance review. Dahm's Individual Performance Plan and Evaluation reveals that he received an overall rating of "meets expectations." However, in the section of the evaluation labeled "Recommended Actions: Salary Increase (for non-contractual positions only)," neither the "Yes" nor "No" box was checked. Dahm signed the performance evaluation indicating that he received and

discussed the evaluation with his supervisor. Dahm's performance evaluation was finalized the next day, June 24, 2021.

The record reflects that IDOT did not grant Dahm a within-grade pay increase for "meeting expectations" on his annual performance evaluation as permitted by Department of Administrative Services (DAS) rule 11—53.7(8A). During oral arguments, the parties agreed that had IDOT granted Dahm a within-grade pay increase, the pay increase would have taken effect the next pay period, beginning June 26, 2021.

On July 1, 2021, pursuant to AFSCME's collective bargaining agreement (CBA), all employees in the public safety bargaining unit received a 4.5% pay increase for the 2022 fiscal year, beginning July 1, 2021 and ending June 30, 2022. Although the 4.5% pay increase was for the new fiscal year, pursuant to the CBA, it retroactively took effect at the beginning of the June 26, 2021, pay period.

During oral arguments, Dahm acknowledged that on July 16, 2021, he received a direct deposit and a payroll warrant reflecting his rate of pay for the June 26, 2021, pay period. Dahm acknowledged that his July 16 payroll warrant reflected his 4.5% pay increase. On July 29, 2021, Dahm emailed his payroll point of contact stating, in relevant part:

...I have a question to may payroll change rates.

My anniversary is late June 2021 from my promotion—I should have a 3% step increase based on my IPPE result and anniversary late June. I didn't receive that 3% step increase.

I did receive the step increase of 4.5% that would have been for July 1 and the across the board raise for July 1. Are you the correct point

of contact to review this? If not, will you point me in the right direction?

Thank you,

On August 5, 2021, Dahm received a response stating that his question was not a payroll issue and that Dahm should direct his question to his human resources administrator. Emails dated August 10 and 11, 2021, reflect that Dahm presented his concerns to his immediate supervisor and others in human resources or the IDOT chain of command.

On August 11, 2021, Dahm filed a grievance at Step 1 of the State's non-contract grievance procedure alleging that he did not receive a fiscal year 2021 (July 1, 2020 through June 30, 2021) raise of 3% that he was eligible for on June 25, 2021, in violation of Iowa Administrative Code rule 11—53.7(8A). Dahm's grievance was denied at steps 1 and 2 of the State's non-contract grievance procedure on the grounds that it was not timely filed. At Step 3, the DAS Director's designee denied Dahm's grievance on the grounds that it was not timely filed and, alternatively, that no provision of Iowa Code section 8A, subchapter IV or DAS rules requires the State to grant employees within-grade pay increases. Dahm subsequently filed a timely appeal with PERB on October 26, 2021.

#### Summary of the arguments

The State asserts that Dahm failed to file his initial grievance at Step 1 of the State's non-contract grievance procedure within 14 calendar days of the date Dahm knew, or should have known, of the grievance issue as required by DAS

rule 11—61.1(8A). Specifically, the State contends that Dahm knew or should have known he did not receive a pay increase on June 23, 2021, when Dahm signed his annual performance evaluation, which left blank the section titled “Recommended Actions: Salary Increase.” Alternatively, the State argues that, at the latest, Dahm should have known he did not receive a pay increase on July 16, 2021, when Dahm received his payroll warrant reflecting his rate of pay for the June 26, 2021, pay period. In either case, the State contends Dahm’s grievance filed on August 11, 2021, was untimely and, therefore, PERB is without authority to consider the merits of Dahm’s appeal.

In response to the State’s first argument, Dahm asserts the performance evaluation failed to notify him of the grievance issue because the section of the evaluation labeled “Recommended Actions: Salary Increase” stated “for non-contractual positions only.” As his position is covered by the CBA, Dahm claims he reasonably believed the section was inapplicable. As to the State’s second argument, Dahm contends that the payroll warrant failed to notify him of the grievance issue on July 16, 2021, because the warrant did not itemize pay raises and it took him time to investigate and confirm that he did not receive a within-grade pay increase. As such, Dahm asserts that he first learned of the grievance issue on July 29, 2021, and that he timely filed his grievance at Step 1 within 14-days of that date.

## CONCLUSIONS OF LAW

### Consideration of facts outside the pleadings

A preliminary issue in this case concerns the scope of evidence at issue in this proceeding. PERB proceedings are governed by chapters 17A, 20, and PERB's administrative rules. *See Pub., Prof'l & Maint. Emps., Local 2003 & Lewis Cent. Cmty. Sch. Dist.*, 92 H.O. 4755 at 5. Although PERB is not bound by the Iowa Rules of Civil Procedure, PERB often follows them when its own rules are silent on the matter. *See AFSCME/Iowa Council 61 & State of Iowa (Bd. of Regents-University of Northern Iowa) (Dep't of Admin. Servs.)*, 03 PERB 6673 at 1-2. As such, Iowa Supreme Court case law is instructive in determining the appropriate evidence to consider on a motion to dismiss.

Ordinarily on motions to dismiss, "the questions are legal and all well-pleaded facts are taken to be true in deciding the issue." *See Sanchez v. State*, 692 N.W.2d 812, 814 (Iowa 2005). Therefore, when considering a motion to dismiss, courts are generally limited to the facts stated in the pleadings and should not consider evidence outside the pleadings. *See Wilson v. Ribbens*, 678 N.W.2d 417, 418 (Iowa 2004).

However, the Iowa Supreme Court has held that in certain circumstances a court may consider facts outside the pleadings. *See id.* These circumstances include: (1) when facts arise after a plaintiff filed the petition, (2) when parties do not dispute the facts; and (3) when the issues in the motion to dismiss do not concern the adequacy of the petition to state a claim for relief. *See Carroll v. Martir*, 610 N.W.2d 850, 856 (Iowa 2000). For instance, in *Carroll*, the Iowa

Supreme Court allowed the consideration of affidavits and other evidence attached to the motion to dismiss and the resistance to the motion to dismiss because no party raised an objection and the motion to dismiss concerned the delay of service rather than failure to state a claim for relief. *See Carroll*, 610 N.W.2d at 856.

Similarly, in *Mormann v. Iowa Workforce Development*, the Iowa Supreme Court allowed consideration of evidence outside the pleadings because the motion to dismiss concerned the timeliness of the petition, and thus, the court's authority to hear the case, rather than failure to state a claim for relief. *See* 913 N.W.2d 554 (Iowa 2018). In affirming the district court's decision to consider evidence outside the pleadings, the Iowa Supreme Court stated, "In the future...we encourage district courts to actively manage the disposition of preliminary questions regarding subject matter jurisdiction and authority in particular cases." *Mormann*, 913 N.W.2d at 566. The Court explained:

Although a motion to dismiss is clearly the appropriate vehicle to raise the issue, the district court should determine based upon the framing of the issues and input from the parties whether preliminary issues of subject matter or authority is to be heard solely on the pleadings under the standards of a motion to dismiss, whether factual materials outside the pleadings will be considered under the standards of a motion for summary judgment, or whether the hearing will be a trial-type hearing on the merits of the preliminary issue with an appropriate opportunity afforded to the parties to conduct discovery on the limited preliminary issues.

*Id.*

In the instant case, both parties submitted exhibits and presented arguments referencing facts outside the pleadings; those facts are material to the preliminary question of whether PERB has authority to hear this particular

case; and the parties did not object to the evidence nor dispute the material facts. Under these circumstances, I conclude this case falls within the exceptions established by the Iowa Supreme Court and that it is in the best interest of the agency and the parties to consider the undisputed facts outside the pleadings to address the preliminary timeliness issue.

### Motion to dismiss

At issue is whether Dahm's initial grievance was timely filed. DAS rule 11—61.1(8A) governs the State's non-contract grievance procedure. Subrule 61.1(1) provides, in relevant part:

#### **61.1(1) *Grievance procedure.***

*a.* Step 1. The grievant shall initiate the grievance by submitting it in writing to the immediate supervisor, or to a supervisor designated by the appointing authority, within 14 calendar days following the day the grievant first became aware of, or should have through the exercise of reasonable diligence become aware of, the grievance issue...

“If the grievant fails to proceed to the next available step in the grievance procedure within the prescribed time limits, the grievant shall have waived any right to proceed further in the grievance procedure and the grievance shall be considered settled.” Iowa Admin. Code r. 11—61.1(2)(a). As such, if an employee fails to initiate their grievance within the 14-day time limit, under rule 61.1, the employee waives their right to proceed further in the grievance process and their grievance is deemed settled.

The Board has recognized the importance of DAS rule 11—61.1's time limits to the State's overall system for resolving employee grievances, explaining:



The main objective of rule 11—61.1 is the establishment of an expeditious system for resolving employee grievances. That timeliness is deemed essential seems apparent from the subrule 61.1(2) provision that failure to proceed within the prescribed time periods ends the matter, absent the parties' agreement to an extension.

*Steinbronn & State of Iowa (Dept. of Hum. Servs.)*, 05-MA-07 at 13.

Although the filing deadlines are essential to rule 11—61.1, “The rule...specifically recognizes and incorporates a version of the ‘discovery rule’ exception to [the] statutes of limitation.” *Id.* As the Iowa Supreme Court explained, the discovery rule exception applies “when it would be unfair to charge ‘a plaintiff with knowledge of facts which are unknown and inherently unknowable.’” *LeBeau v. Dimig*, 446 N.W.2d 800, 802 (Iowa 1989) (quoting *Urie v. Thompson*, 337 U.S. 163, 169 (1949)). In *Mormann*, the Court further explained:

The application of the discovery rule...is based upon the common sense notion that a potential claim should not be barred when the failure to bring a timely action arises from the plaintiff's lack of knowledge about key facts that are unknown to the plaintiff and cannot reasonably be discovered by the plaintiff even in the exercise of due diligence.

913 N.W.2d at 566-67.

As such, under the discovery rule, the limitations period begins to run when the injured party has actual or imputed knowledge of the acts that constituted the grievance. *See Brown v. PERB*, 345 N.W.2d 88, 85-96 (Iowa 1984); *see also UNI-United Faculty & State of Iowa (Bd. of Regents)*, 2013 ALJ 8246 at 15. Knowledge is imputed to a grievant when he/she gains information sufficient to alert a reasonable person of the need to investigate. *See UNI-United*

*Faculty*, 2013 ALJ 8246 at 15; *see also Ranney v. Parawax Co., Inc.*, 582 N.W.2d 152, 155 (Iowa 1998). As of that date, the limitations period begins to run and the grievant “is on inquiry notice of all facts that would have been discovered by a reasonably diligent investigation.” *UNI-United Faculty*, 2013 ALJ 8246 at 16. “The period of limitations is the outer time limit for making the investigation and bringing the action.” *Id.*

Finally, the duty to investigate does not depend on exact knowledge of the nature of the problem that caused the injury. Rather, it is sufficient that the injured party be aware that a problem existed, as one purpose of the inquiry is to ascertain its exact nature. *See id.* at 8; *see also Franzen v. Deere and Co.*, 377 N.W.2d 660, 662 (Iowa 1985).

In the instant case, it is undisputed that Dahm became eligible for a pay increase on June 25, 2021, but did not file his grievance concerning the issue until August 11, 2021, far more than 14-days after the alleged violation. Rather, Dahm relies upon the discovery rule exception to the 14-day limitation period asserting that he filed his grievance within 14-days of July 29, 2021, the date Dahm claims he acquired actual knowledge of the State’s alleged violation.

As such, resolution of this timeliness issue requires application of the discovery rule and the related concept of inquiry notice. As discussed above, under the discovery rule, the limitation period begins to run when the injured party knew or reasonably should have known of the acts that constituted the grievance.

In the instant case, viewing the record in the light most favorable to Dahm, I accept as true his claim that he did not have actual knowledge that he did not receive a within-grade pay increase until July 29, 2021. Further, I conclude the record presents a genuine issue of material fact as to whether Dahm should have known on June 24, 2021, that he did not receive a within-grade pay increase. Specifically, Dahm presented evidence that the section of his performance evaluation titled “Recommended Actions: Salary Increase” stated it was “for non-contractual positions only.” As the evaluation itself indicated the section was inapplicable, it is at least plausible Dahm did not know, or have reason to investigate, the issue on June 24, 2021.

However, I conclude Dahm was on inquiry notice of the State’s alleged failure to provide him a within-grade pay increase no later than July 16, 2021. At that point, Dahm was aware any potential pay increase should have taken effect June 26, 2021, and, on July 16, he received a direct deposit and payroll warrant reflecting his rate of pay for that pay period.

Although Dahm may not have actually reviewed his payroll warrant until later that month, the warrant’s information was nonetheless sufficient to alert Dahm of the problem, which he would have discovered through due diligence and a brief investigation. PERB has previously held that the receipt of a paycheck puts an employee on inquiry notice of facts involving their pay rate and range. *See Elsberry & State of Iowa (Dep’t of Hum. Servs.)*, 03-MA-13 at 4 (concluding grievant knew or should have known that she was not at the maximum rate of her pay range no later than the receipt of her first paycheck). Similarly, I

conclude Dahm should have known—and was thus on inquiry notice—that he did not receive a within-grade pay increase no later than the receipt of his direct deposit and payroll warrant on July 16, 2021.

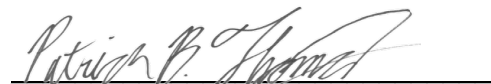
As Dahm was on inquiry notice as of July 16, 2021, the 14-day limitations period established by DAS rule 11—61.1(8A) began to run no later than that date. Accordingly, the final day for Dahm to file his Step 1 grievance was July 30, 2021. As Dahm did not file his grievance until August 11, 2021, his grievance was untimely and by rule was deemed settled. As such, I conclude DAS appropriately dismissed Dahm’s grievance and that PERB does not have authority to hear the merits of Dahm’s appeal. Consequently, I propose the following:

ORDER

The State’s motion to dismiss is GRANTED and this state employee grievance appeal filed by Ryan Dahm is hereby DISMISSED.

This proposed ruling and order 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 ruling files an appeal to the Board or the Board determines to review the proposed ruling on its own motion.

DATED at Des Moines, Iowa this 19th day of April, 2022.

  
Patrick B. Thomas  
Administrative Law Judge

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