

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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STEVE EHRICH, Appellant,	)	CASE NO. 102667
and	)	
STATE OF IOWA (DEPARTMENT OF TRANSPORTATION), Appellee.	)	
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SCOTT GEER, Appellant,	)	CASE NO. 102668
and	)	
STATE OF IOWA (DEPARTMENT OF TRANSPORTATION), Appellee.	)	

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**RULING AND ORDER**

Appellants, Steve Ehrich and Scott Geer, filed state employee grievance appeals on February 15, 2022, with the Public Employment Relations Board (PERB or Board) pursuant to Iowa Code section 8A.415(1) and PERB rule 621—11.2(1). In the appeals, Ehrich and Geer allege the State failed to substantially comply with Iowa Code chapter 8A, subchapter IV and DAS rules when management removed their lead worker pay.

On February 25, the State filed a motion to dismiss the appeals claiming Ehrich and Geer did not grieve the matter at Step 1 in a timely manner, and this time limitation is mandatory and jurisdictional. The Appellants resist the State's motion.

The undersigned ALJ held oral arguments on the motion telephonically on April 13, 2022. Nathan Reckman represented the State during the proceedings

and Matt Butler represented Ehrich and Geer. During the oral arguments, the undersigned consolidated PERB Case Nos. 102667 and 102668 without objection from the parties as the cases contain common questions of law and fact.

### **1. Undisputed Facts**

PERB proceedings are governed by chapters 17A, 20, and PERB's administrative rules. PERB has not adopted the Iowa Rules of Civil Procedure, but has recognized a motion to dismiss by practice and has obtained guidance from the Iowa Rules of Civil Procedure on procedural issues. *AFSCME/Iowa Council 61 and State of Iowa (Bd. of Regents-Univ. of Northern Iowa) (Dep't of Admin. Servs.)*, 03 PERB 6673 at 1-2; *UNI-United Faculty and State of Iowa (Bd. of Regents, UNI)*, 13 H.O. 8558 at 3.

Generally, when considering a motion to dismiss, the court considers only the facts in the pleadings. *Carroll v. Martir*, 610 N.W.2d 850, 856 (Iowa 2000). However, a court may consider matters outside the pleadings where facts arise after a plaintiff filed the petition, when parties do not dispute the facts, and when the issues in the motion to dismiss do not concern the adequacy of the petition to state a claim for relief. *Brubaker and Estate of DeLong*, 700 N.W.2d 323, 326 (Iowa 2005); *Carroll*, 610 N.W.2d at 856.

The parties do not dispute the facts relevant to the State's motion to dismiss Ehrich and Geer's appeals. At all relevant times, Ehrich and Geer worked as electricians for the State of Iowa, Department of Transportation (DOT). Ehrich and Geer started receiving lead worker pay in 2000. DOT management

questioned their status as lead workers and whether they were eligible to receive the pay around 2009. However, Ehrich and Geer continued receiving lead worker pay through June 2017.

On June 28, 2017, DOT management informed Ehrich and Geer that they would no longer be receiving the 5% lead worker pay as of July 2017. AFSCME Iowa Council 61 filed a group grievance on June 28, 2017, pursuant to the collective bargaining agreement between the State of Iowa and AFSCME Iowa Council 61, alleging the electricians should continue to receive the lead worker pay as it was a long-standing wage agreement. Both Ehrich and Geer are named in the group grievance materials. In October 2017 the parties held a grievance meeting regarding AFSCME's group grievance filed on behalf of the electricians. Both Ehrich and Geer attended this meeting. Both parties to this contractual grievance have had numerous representation changes during the last five years. The contractual grievance has not been arbitrated and remains unresolved.

## **2. Procedural History**

Ehrich and Geer filed non-contract grievances, pursuant to the uniform grievance procedure referenced in Iowa Code section 8A.415, on October 25, 2021. Their grievances were denied at both Step 1 and Step 2. Ehrich and Geer filed grievances at Step 3 on January 6, 2022. The State denied the grievances on February 4, 2022, stating that Ehrich and Geer failed to timely file their grievances at Step 1 of the non-contract grievance procedure.

Ehrich and Geer filed appeals of the Step 3 response with PERB on February 15, 2022. The State filed pre-answer motions to dismiss on February

25, 2022. The undersigned held oral arguments on the motions to dismiss on April 13, 2022.

The State contends that Ehrich and Geer did not file their initial merit system grievances in a timely manner. The State requests dismissal of the cases due to the alleged untimeliness of the initial grievances.

### **3. Applicable Law**

Iowa Code section 8A.413(17) requires the Department of Administrative Services (DAS) to adopt rules for the uniform grievance procedure for resolving employee grievances and complaints. Iowa Code section 8A.415(1), the provision governing the Appellants' grievances, refers to this uniform grievance procedure provided in DAS rules. Chapter 61 of DAS rules governs the State's non-contract grievance procedure as contemplated by these statutes. The relevant provisions states:

#### **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. The immediate supervisor shall, within 14 calendar days after the day the grievance is received, attempt to resolve the grievance within the bounds of these rules and give a decision in writing the grievant with a copy to the director.

...

#### **61.1(2) *Exceptions to time limits.***

a. 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.

b. If any management representative fails to comply with the prescribed time limits at any step in the grievance procedure, the grievant may proceed to the next available step.

c. The maximum time periods at any of the three steps in the grievance procedure may be extended when mutually agreed to in writing by both parties.

Iowa Administrative Code 11—61.1(1)–(2).

PERB has recognized the importance of the time limitations within DAS rules to the State’s overall non-contract grievance process. PERB has stated:

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 and State of Iowa (Dep’t of Human Servs.)*, 06-MA-07 at 9; *see also Dahm and State of Iowa (Dep’t of Transportation)*, 2022 ALJ 102633 at 8 and *Pezley Group and State of Iowa (Dep’t of Human Servs.)*, 14-MA-12 at 11 (discussing this section of the *Steinbronn* decision). PERB noted the DAS rule recognizes and incorporates the discovery rule. *Steinbronn*, 06-MA-07 at 11; *Dahm*, 2022 ALJ 102633 at 9. PERB has also determined the Appellant bears the burden of establishing the timeliness of the initial filing of the non-contract grievance. *Steinbronn*, 06-MA-07 at 12; *Pezley Group*, 14-MA-12 at 11. PERB has dismissed non-contract grievances for the grievant’s failure to file the initial grievance at Step 1 in a timely fashion. *See Dahm*, 2022 ALJ 102633 at 11–12; *Pezley Group*, 14-MA-12 at 12.

#### **4. Analysis**

In this case Ehrich and Geer grieved the removal of their lead worker pay. The parties do not dispute that Ehrich and Geer stopped receiving lead worker

pay in 2017, and that Ehrich and Geer knew they stopped receiving lead worker pay in 2017. The parties also do not dispute that Ehrich and Geer filed their non-contract grievances at Step 1 of the uniform grievance procedure on October 25, 2021. Ehrich and Geer failed to file their non-contract grievances within 14 calendar days following the day they first became aware of, or should have become aware of, the non-contract grievance issue. Ehrich and Geer did not assert that the State waived the non-contract grievance time limitations while the parties pursued resolution of the matter through the collective bargaining agreement grievance process. As Ehrich and Geer failed to proceed to Step 1 within the prescribed time limits, they waived any right to proceed further in the non-contract grievance procedure and their grievances were considered settled.

DAS appropriately dismissed Ehrich and Geer's non-contract grievances for the untimely initial filing.

Accordingly, I rule as follows:

ORDER

The State's motion to dismiss is GRANTED and Ehrich and Geer's employee grievance appeals are consequently DISMISSED.

DATED at Des Moines, Iowa this 25th day of May, 2022.

/s/ Amber DeSmet  
Administrative Law Judge

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