

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

DENISE E. MARTIN,
Complainant,

and

UNISERV UNIT TWO/ISEA/NEA,
CLEAR LAKE, IOWA REGIONAL OFFICE,
Respondent.

Case No. 8539

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RULING

On July 6, 2012, Complainant, Denise E. Martin, filed the present prohibited practice complaint with the Public Employment Relations Board (Board or PERB) pursuant to Iowa Code section 20.11 (2011) and rule 621—3.1(20). Respondents, Uniserv Unit Two, the Clear Lake Regional Office of the Iowa State Education Association, and the National Education Association (collectively ISEA) filed a motion to dismiss on October 25, 2012, contending that the complaint was not timely filed. Thereafter, Martin submitted numerous documents to PERB in support of her claims and to resist the motion to dismiss. An administrative law judge held a phone conference on the motion on February 6, 2013. Martin represented herself, and Gerald Hammond represented ISEA. On the call, the parties agreed to have the ALJ consider the motion based on the record developed at that time including all evidence and documents thus far submitted.

In her ruling on the motion dated April 15, 2013, the ALJ first dismissed claims that alleged violations of Iowa Code sections 20.10(2)(a) and (2)(f)

because these sections govern conduct by an *employer* rather than an *employee organization*. She then focused her ruling on the timeliness of the remaining portion of Martin's complaint – that ISEA had committed prohibited practices within the meaning of Iowa Code section 20.10(3)(a). In doing so, the ALJ set forth the timeline of events establishing the basis of Martin's claims along with the dates when Martin knew or should have known of the acts which constituted a prohibited practice. After a lengthy analysis of the law and facts, the ALJ concluded that Martin's claims based upon ISEA's purported refusal to arbitrate were untimely, but that Martin timely filed her claims based upon ISEA's alleged failure to maintain the confidentiality of her records. Accordingly, the ALJ dismissed the refusal to arbitrate claims and denied ISEA's motion to dismiss the confidentiality claims. On May 1, 2013, Martin filed a notice of appeal with the Board, asking it to review the ALJ's April 15 ruling pursuant to Rule 6.104(2) of the Iowa Rules of Appellate Procedure and PERB rule 621—9.2(20).

While not controlling over intra-agency appeals, PERB has applied the standards of the predecessor rules of Iowa Rule of Appellate Procedure 6.104(2) when reviewing an ALJ's interlocutory ruling. *See O'Hara & AFSCME Iowa Council 61*, 99 PERB 5532 at p. 3 (June 17, 1999); *Mason & State of Iowa (Dep't of Pers., Dep't of Corrections)*, 97 PERB 5378 at pp. 3-5 (Mar. 20, 1997); *Devine & State of Iowa (Dep't of Natural Res.)*, 89-MA-08 at pp. 4-6 (Oct. 11, 1989). PERB has previously held that a party does not have an appeal to the Board as of right from interlocutory rulings. *Id.* Just as the Iowa Supreme

Court acting pursuant to what is now Iowa Rule of Appellate Procedure 6.108, PERB has treated such appeals as applications for its discretionary review of the interlocutory order.

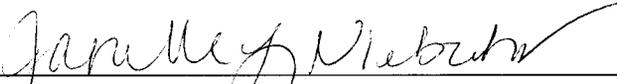
Iowa Rule of Appellate Procedure 6.104(2) provides that an application for interlocutory appeal may be granted if it is found that the ruling or decision involves substantial rights and will materially affect the final decision and that a determination of its correctness before trial on the merits will better serve the interests of justice. Appellate tribunals disfavor interlocutory appeals, preferring uninterrupted proceedings at the trial level with a single and complete review, so as to avoid the delay, inconvenience, and expense associated with piecemeal adjudication. Only exceptional situations warrant review of an interlocutory ruling. *See, e.g., O'Hara*, 99 PERB 5532 at p. 4.

This is not one such exceptional situation. The Board does not find that the ALJ's interlocutory ruling in this matter will materially affect the final decision. Martin may, however, challenge the interlocutory ruling after the ALJ has considered and ruled on the merits of the case. *Cf. Iowa R. App. P. 6.103(3)*. Consequently, Martin's application for interlocutory review of the ALJ's April 15, 2013, ruling is hereby DENIED.

DATED at Des Moines, Iowa, this 16th day of May, 2013.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: 
James R. Riordan, Chair


Janelle L. Niebuhr, Board Member


Jamie Van Fossen, Board Member

Email and/or mail copies to:

Denise E. Martin
1216 8th Street SW
Mason City, IA 50401
snoopymd@mchsi.com

Gerald L. (Jay) Hammond
Iowa State Education Association
777 3rd Street
Des Moines, IA 50309
JHammond@isea.org