

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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PUBLIC EMPLOYMENT  
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THE PEZLEY GROUP,	)	
Appellant,	)	
	)	
and	)	
	)	CASE NO. 14-MA-12
STATE OF IOWA (DEPARTMENT OF HUMAN	)	
SERVICES),	)	
Appellee.	)	

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PROPOSED DECISION AND ORDER

This is a non-contract grievance appeal brought pursuant to Iowa Code section 8A.415 (1) and Iowa Administrative Code rule 621-11.2. Several state employees, collectively self-describing themselves as The Pezley Group, filed a state employee grievance appeal with the Public Employment Relations Board on January 24, 2014. The Pezley Group alleges “disparate treatment” by their employer, the State of Iowa, the Department of Human Services, and the Department of Administrative Services. (DHS) The alleged “disparate treatment” was DHS’s decision to require the employees “to begin to pay 20% of health premiums.” The Pezley Group further alleges that “no other employees of DHS are required to do the same.” The Pezley Group asks that they be made whole, “including rescinding the 20% co-pay required of non-contract employees and rescinding same for those in this group retiring after January 1, 2014.”

In response, on February 4, 2014, the Department of Administrative Services (DAS), whose staff represents DHS before the PER Board, filed a

motion to dismiss claiming the PER Board lacked jurisdiction to hear this appeal. DAS asserts The Pezley Group's initial Step 1 filing with DHS was untimely because it was filed on October 24, 2013, forty-two days past the DHS filing deadline of September 12, 2013. Additionally, DAS also contends the PER Board lacks jurisdiction because The Pezley Group filed the instant appeal on January 24, 2014, two days past the subsequent PER Board filing deadline of January 22, 2014.

In this appeal, The Pezley Group is represented by Machel Pezley. DHS is represented by Stephanie Reynolds.

This ALJ concludes that this appeal must be dismissed for both reasons advanced by DAS.

#### Findings of Fact

The Pezley Group originally consisted of fourteen non-contract DHS employees: Machel R. Pezley, Beth A. Stratton, Kathleen K. Burkhardt, Liam M. Healy, Melissa L. Barrett, Russell A. Hayes, Jacqueline L. Wilson, Debra J. Schroeder, Hillary R. Law, Shannon M. Oakleaf, Carena J. Clark, Daphney N. Uthoff, Laurie L. Ludman, and Amanda Winkler. The Pezley Group's self-appointed representative, Machel Pezley, works as a social work supervisor for the Department of Human Services (DHS) in Keokuk, Iowa. Initially, Pezley claimed that she represented all of her fellow, thirteen non-contract DHS employees in this grievance. However, in a recent e-mail to this ALJ, Pezley stated that she currently has no contact information on Amanda Winkler and apparently no longer considers Winkler to be a group member.

Pezley and her co-employees received an August 29, 2103, e-mail sent to all State of Iowa non-contract employees. The e-mail gave notice of DHS's decision to make future changes to their employee health insurance plan. The most significant change was that beginning January 1, 2014, all non-contract employees would be required to pay twenty percent of the cost of their health insurance premium.

On October 18, 2014, Pezley filled out and signed a non-contract grievance on the standard DAS form. In the box requiring the name of the employee, Pezley typed in: "Machelle Pezley w. others see attached." Attached to the form was a list of the names of the thirteen employees listed above, none of whom signed either the form, the attachment, or provided written authority for Pezley to represent them.

As for other personal information required by the form, such as an employee's work unit, supervisor, department, etc., Pezley only provided her information, including the name of her supervisor, Leta Hosier.

When asked to identify the particular rule or statute DHS had allegedly violated, Pezley entered "disparate treatment by virtue of DHS group grievance belong to." Next, in the box marked, *State the issue involved and the date the incident took place*, Pezley typed:

On January 1, 2014 non contract employees of the Department of Human Resources will be required to begin paying 20% of health insurance premiums. Additionally, we recently were informed this will continue beyond retirement for this group. We believe this is disparate treatment by virtue of the fact we belong to a group comprised of non-contract employees and no other employees of DHS are require to do the same.

Over the years this group has been subject to disparate treatment many times and continues to be subject to such. A few of the inequities that have been experienced have been withholding of pay raises, having to work furlough without pay, additional 40 hours of personal leave that is not subtracted from sick leave which can be carried over yearly up to 80 hours total, and non-contract reimbursement of meals. Additionally, this disparate treatment will continue beyond retirement for this group of employees only.

The final box in the form asked Pezley to provide: *Remedy Requested*. She wrote:

Make all whole including rescinding the 20% co-pay required of non-contract employees and rescinding same for those in this group retiring after January 1<sup>st</sup>, 2014.

Rather than send this Step 1 form to her immediate supervisor, Leta Hosier, Pezley sent it to Tara Granger, a Senior Resource Manager with the Iowa Department of Administrative Services (DAS) in Des Moines. That same day, Granger responded by e-mail to Pezley stating that her Step 1 grievance had to go to Hosier. Pezley, in turn, filed this same grievance with Hosier on October 24, 2013.

On November 8, 2013, Pezley and Hoiser conducted a Step 1 grievance meeting. When both agreed to waive the grievance to Step 3 of the grievance process, Hosier formally answered the grievance that day by stating the parties had “mutually agreed to waive to 3<sup>rd</sup> Step” of the grievance process. DAS received this Step 3 grievance on November 14, 2013.

Next, both DAS and Pezley agreed that the deadline for filing any supporting documentation to DAS would be November 25, 2013, and that, in turn, DAS would issue a written decision by December 25, 2013.

On December 23, 2013, DAS denied the grievance. DAS determined that Pezley (and the others she claimed to represent) had been notified of the 20% co-pay requirement by e-mail on August 29, 2013. Pursuant to DAS rules, Pezley had fourteen days to file the Step 1 grievance, not later than September 12, 2013. However, Pezley did not file the Step 1 grievance until October 24, 2013, forty-two days past this deadline. Given this belated filing, DAS denied the grievance for failing to file the grievance to Step 1 within the required time limit. DAS concluded its decision by providing Pezley with notice that she could appeal the DAS decision by filing an appeal with the PER Board within thirty calendar days, not later than January 22, 2014.

Pezley chose not to file the appeal with the PER Board; however, Beth Stratton, a fellow group member, did so. On January 24, 2014, two days past the deadline, Stratton filed the instant appeal. Her written appeal utilized the standard PER Board form: *State Employee Grievance or Disciplinary Action Appeal*. In the very first box on the form, Stratton identified the *Appealing Employee* as “Beth Ann Stratton for (Machelle Pezley Group).” However, Stratton then listed her own home phone number, her office phone number, and her DHS office address in Muscatine, Iowa. In that part of the appeal form which asked for the date of DAS’s grievance decision, Stratton erroneously wrote: “1/22/14.”

The PER Board appeal form also asked Stratton to describe briefly why “you are not satisfied with the [DAS] decision” and directed her to attach a copy of the DAS decision along with any other relevant documents. Stratton failed

to attach any documents, nor did she identify either the Chapter 8A code provision or the DAS personnel rule involved in the grievance. However, Stratton did write this:

The 20 percent amount being assessed to non-contract employees for health insurance is disparate treatment. This is based on contract employees with the same agency not being required to pay the same amount. We welcome the opportunity to continue the appeal process by submitting this grievance to your agency.

When asked to identify the relief requested, Stratton wrote:

Rescind the 20 percent payment rule for non-contract employees- in essence to treat this group the same as other employees represented by union contract.

Next, in the PER Board appeal form titled, *Your Representative*, Stratton was permitted to “designate someone to represent you in this appeal.” Stratton identified this representative as:

The Pezley Group of supervisors are represented by Machelie Pezley, Lee Co. DHS. 307 Bank Keokuk, IA 52632 (319) 524-1052

Finally, Stratton signed the appeal, but she did not sign in her own name. Instead, Stratton signed the appeal as: “Beth Stratton for Machelie Pezley Group.” Next to this signature, Stratton wrote this date: “1-22-14.”

Stratton mailed the appeal form to the PER Board by regular mail. Whether she mailed it on January 22, 2014, cannot be determined by the postmark on the envelope she used. The appeal arrived by regular mail to the PER Board on January 24, 2014, and was immediately filed at 9:16 a.m. As is the PER Board’s practice, the staff retained the postmarked envelope in the file, where it remains. The envelope’s postmark is not clear. This ALJ can only make out a partial date of: “Jan 2\_\_, 20\_\_”.

## Conclusions of Law

As mentioned above, DHS filed a motion to dismiss asserting that the Step 1 grievance and the subsequent PER Board appeal were both belatedly filed. DHS asks that the instant appeal be dismissed.

A motion to dismiss admits the truth of all well-pleaded, relevant facts. However, it does not admit mere conclusions of fact or law not supported by allegations of ultimate facts. This means a pleader must allege ultimate facts and not legal conclusions alone. A proper pleading consists of statements of ultimate facts and when so stated the pleader has a right to state conclusions based upon those facts. *UNI-United Faculty and State of Iowa (Brd of Regents, UNI)*, PER Board #8558 (filed Feb. 15, 2013) at 4 (citing *Hagenson v. United Tel. Co. of Iowa*, 164 N.W.2d 853, 855 (Iowa 1969)). This means that DHS's motion to dismiss will be sustained only if there is no genuine issue of material facts which would preclude The Pezley Group from prevailing as a matter of law.

This ALJ will first address the claim that The Pezley Group missed the filing deadline for its PER Board appeal.

### *a. Belated PER Board filing*

DHS asserts the PER Board has no jurisdiction to hear The Pezley Group's appeal because the appeal was filed two days late, on January 24, 2014. In response, The Pezley Group contends that the appeal was mailed January 22, 2014, on the last day of the thirty day deadline.

Iowa Code section 8A.415(1)(b) provides, in pertinent part, that a grievant dissatisfied with a DAS third step decision, "may, *within thirty calendar days* . .

file an appeal with the public employment relations board.” (Emphasis added.)

Iowa Administrative Code subrule 11–61.2(5) similarly provides:

Appeal of grievance decisions. An employee who has alleged a violation of Iowa Code sections 8A.401 to 8A.458 or the rules adopted to implement Iowa Code sections 8A.401 to 8A.458 may, *within 30 calendar days after the date the director’s response at the third step of the grievance procedure was issued* or should have been issued, file an appeal with the public employment relations board.

(Emphasis added.)

As highlighted above, a grievance appeal must be filed with the PER Board within thirty days of DAS’s decision. Filing the appeal within this thirty day window is jurisdictional. This means an appeal filed outside the thirty day window cannot be heard by the PER Board and must be dismissed. *Choquette and State of Iowa (Dept. of Health)* PER Board #94-MA-03 (filed Mar. 23, 1994) at 3-4 (dismissing appeal of non-contract grievance filed thirty-three days late); *Jones and State of Iowa (Dept. of Employment Services, Dept. of Personnel)* PER Board #94-MA-11 (filed Dec. 23, 1993) at 3 (dismissing non-contract grievance appeal filed four days late); see *Brown v. Pub. Employment Relations Bd.*, 345 N.W.2d 88, 90 (Iowa 1984) (PER Board has no jurisdiction of prohibited practice complaint filed outside ninety day window).

Despite The Pezley Group’s allegation of a January 22nd mailing, the mailing itself bears no discernable postal service postmark to support this claim. Accordingly, the appeal is viewed as having been filed on the date delivered to the PER Board by the U.S. Postal Service, which was January 24, 2014. Iowa Code § 17A.12(9); see *Iowa Central Community College and Iowa*

*Central Community College Classified Employees Assoc.*, PER Board #6051 (filed Sept. 10, 1999) at 1. The Pezley Group's appeal must be dismissed as a matter of law.

*b. Belated Step 1 filing with DAS*

Alternatively, DHS contends that DAS properly dismissed The Pezley Group's grievance because Pezley did not file the Step 1 grievance by the deadline imposed by Iowa Administrative Code rule 11–61.1. This rule sets forth the three steps to be followed in a DAS's 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 seven 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 to the grievant with a copy to the director.

b. Step 2. If the grievant is not satisfied with the decision obtained at the first step, the grievant may, within seven calendar days after the day the written decision at the first step is received or should have been received, file the grievance in writing with the appointing authority. The appointing authority shall, within seven calendar days after the day the grievance is received, attempt to resolve the grievance within the bounds of these rules, by affirming, modifying, or reversing the decision made at the first step, or otherwise grant appropriate relief. The decision shall be given to the grievant in writing with a copy to the director.

c. Step 3. If the grievant is not satisfied with the decision obtained at the second step, the grievant may, within 7 calendar days after the day the written decision at the second step was received, or should have been received, file the grievance in writing with the director. The director shall, within 30 calendar days after the day the grievance is received, attempt to resolve the grievance and send a decision in writing to the grievant with a copy to the appointing authority. The director may affirm, modify, or reverse the decision made at the second step or otherwise grant

appropriate relief. If the relief sought by the grievant is not granted, the director's response shall inform the grievant of the appeal rights in subrule 61.2(5).

(Emphasis added.) These rules were adopted pursuant to statute: “[DAS shall adopt] a uniform plan for resolving employee grievances and complaints.” Iowa Code § 8A.413(19).

DAS also adopted a subrule to address a grievant’s failure to follow the above time lines.<sup>1</sup> Iowa Administrative Code subrule 11–61.1(2)(a) provides:

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.

It is undisputed that Pezley and the others received the e-mail on August 29, 2013. Accordingly, the Step 1 deadline was September 12, 2013. It is also undisputed that Pezley did not file the Step 1 grievance until October 24, 2013, six weeks late.

In her written resistance, Pezley, on behalf of The Pezley Group, alleged only that the fourteen day time period should not run from the date of the August 29<sup>th</sup> e-mail. Instead, Pezley alleged it should run from some later date when DHS offered more details about the 20% contribution program. Pezley did not attach any documents to support these alleged later dates, but even if she had, these subsequent details would be relevant, if at all, only on the issue of alleged damages.

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<sup>1</sup> DAS also adopted a subrule which applies if the employer fails to follow these timelines. See 11 IAC 61.1(2)(b).

The PER Board has previously determined that a grievant bears the burden of proving a Step 1 grievance was filed within fourteen days of the date grievant first became aware of the grievance issue or should have become aware of it through the exercise of reasonable diligence. *Steinbronn and State of Iowa (Dept. of Human Services)* PER Board #05-MA-07 (filed Feb. 28, 2008) at

13. The PER Board reasoned:

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.

*Id.* at 9. However, in *Steinbronn*, the PER Board concluded it was premature to dismiss grievant's claim by a motion to dismiss. The Board found that the pleadings, when viewed in the light most favorable to Steinbronn, did not conclusively establish exactly when she had received notice of her claim. *Id.* at 13.

In contrast to the *Steinbronn* pleadings, this ALJ concludes it is undisputed from the instant pleadings that Pezley and the others knew on August 29, 2013, that the 20% co-pay would go into effect on January 1, 2014. Furthermore, it is undisputed that the 20% co-pay was the basis for the belatedly filed grievance, as well as the basis for the belatedly filed instant appeal to the PER Board. Given this notice, the Step 1 grievance should have been filed no later than September 12, 2013, and when it was not, by rule the grievance was deemed settled. *In re: Vickie Rule and State of Iowa (Dept. of*

*Human Services*) PER Board #06-MA-03 (filed Apr. 20, 2006) at 2 (grievance faxed to employer one day late was untimely); see *Steinbronn, supra*, at 13, *Teigland and State of Iowa (Dept. of Corrections)* PER Board #03-MA-10 (filed Feb. 24. 2004) at 4 (rejecting grievant’s alternate claim as untimely).

Because The Pezley Group’s grievance was deemed settled, this ALJ concludes as a matter of law that DAS appropriately dismissed the grievance.

*c. Other issues*

Finally, in dismissing this appeal, this ALJ does not decide whether the Pezley Group’s claim of “disparate treatment” — requiring a 20% contribution towards health insurance benefits — alleges a violation of either Iowa Code, section 8A.401 to 8A.458, or the DAS rules which implement these code sections. Importantly, these code sections confer subject matter jurisdiction on the PER Board to *only* address issues alleging violations of either Iowa Code Chapter 8A, subchapter IV, or DAS rules. *In the Matter of William Curler, Sr. and State of Iowa (Dept. of Veterans Affairs)* PER Board #06-MA-08 (filed Dec. 15, 2006) at 7-8; see *Teigland and State of Iowa (Dept. of Corrections)* PER Board #03-MA-10 (filed Feb. 24. 2004) at 13 (dismissing non-contract employee’s claim who did not receive similar vacation benefits as contract-covered employees who prevailed in a “time off with pay” grievance arising out of a severe winter storm).<sup>2</sup>

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<sup>2</sup> In her grievance Pezley did not identify the pertinent statute or rule DHS allegedly violated. Although this is a rule 11–61.1 requirement; nevertheless, the PER Board has held such noncompliance does not command dismissal, provided the grievant has otherwise provided the employer with reasonable notice of the claim being advanced. *Steinbronn, supra*, at 11.

Nor does this ALJ decide whether this matter must be dismissed because The Pezley Group is not a proper party to this appeal. Neither Pezley nor Stratton provided all of the necessary information required by the standard appeal forms and corresponding administrative rules. See IAC r. 11–61.1 (contents required in grievance filing); IAC r. 621–11.3 (contents required in PER Board appeal). That said, it is the fourteen state employees’ initial failure to file an individual grievance with his or her supervisor, (or one complaint signed by all fourteen, accompanied by all required individual data), which arguably flaws The Pezley Group’s collective complaint. Had each employee followed the express language of the statute and the applicable rules, then DAS’s administrative rules would have permitted DAS to combine the fourteen complaints:

*Group grievances.* When the appointing authority or the director determines that two or more grievances or grievants address the same or similar issues, they shall be processed and decided as a group grievance.

IAC r. 11–61.1(3).

In that event, and given a subsequent appeal to the PER Board, each grievant would be properly named as an appellant. See *e.g., Riddle, et. al. and State of Iowa (Dept. of Inspection and Appeals)* PER Board #02-MA-06 (filed Apr. 17, 2003) (nine employees appeal group grievance regarding inequitable pay within their classification); *Neal, et. al. and State of Iowa (Dept. of Human Services and Dept. of Personnel)* PER Board # 95-MA-08 (filed Sept. 26, 1995) (eight employees appeal group grievance contesting inequitable pay).

In addition, each appellant would have then have made it expressly clear in writing to the PER Board that each of Pezley's fellow, thirteen supervisors had authorized Pezley to represent them in such a collective appeal. In the instant appeal, evidence of Pezley's required authority is lacking. So, too, is Pezley's current ability to now contact Amanda Winkler.

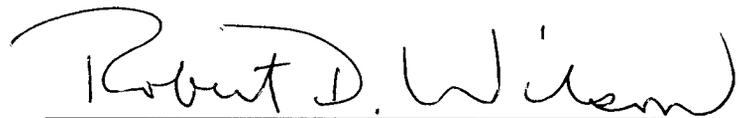
*d. Summary*

This ALJ concludes that there is no genuine issue of material fact that The Pezley Group belatedly filed its Step 1 grievance on October 24, 2013 and also belatedly filed its subsequent PER Board appeal on January 24, 2014. For both reasons, this appeal must be dismissed because The Pezley Group cannot prevail as a matter of law.

ORDER

DHS's motion to dismiss is granted and The Pezley Group's non-contract grievance is dismissed.

DATED at Des Moines, Iowa, this 29<sup>th</sup> day of May, 2014.



Robert D. Wilson  
Administrative Law Judge

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