

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF:)
)
LARRY R. HEDLUND,)
 Petitioner,)
)
and)
)
STATE OF IOWA (DEPARTMENT OF)
PUBLIC SAFETY),)
 Intervenor.)

Case No. 8746

PUBLIC EMPLOYMENT
RELATIONS BOARD
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DECLARATORY ORDER

This matter comes before the Public Employment Relations Board (the Board or PERB) upon Larry R. Hedlund's petition for a declaratory order filed on February 14, 2014. The Board subsequently granted the petition for intervention of the State of Iowa (Department of Public Safety). The State filed a brief on the matter on March 14, 2014. No oral arguments were heard.

Iowa Code section 17A.9(2) (2013) requires agencies to adopt rules providing for the form, contents, and filing of petitions for declaratory orders, and for their prompt disposition. Accordingly, PERB adopted chapter 10 of its rules, which governs declaratory order proceedings before this agency. No evidentiary hearings are held or factual determinations made in such proceedings. Instead, any declaratory order issued is based solely upon the facts specified in the petition.

Hedlund's petition sets out a number of purported facts, representing that he was a Special Agent Supervisor, also known as a Special Agent in Charge (SAC), in the major crimes unit (MCU) at the Iowa Department of Public

Safety (Iowa DPS). During his tenure with Iowa DPS, Hedlund repeatedly raised objections and concerns and disclosed information to Iowa DPS leadership about actions and conduct which he reasonably believed evidenced a violation of the law or rule, mismanagement, and abuse of authority or a substantial and specific danger to public health or safety.

On May 1, 2013, Hedlund was placed on paid administrative leave and was given a Notice of Investigation which alleged that he was disrespectful and insubordinate during a conference call with DCI leadership on April 18, 2013, that he was operating a state vehicle during a period of approved leave status, that he failed to request and receive approval before taking leave on April 30, 2013, and that he engaged in conduct that impairs the operations of the Department. Hedlund denies these allegations. The Iowa DPS subsequently terminated his employment on July 17, 2013.

On August 12, 2013, Hedlund filed an administrative appeal of his termination pursuant to Iowa Code section 80.15 with the Employment Appeal Board (EAB). (EAB Docket No. 13DPSD003). Hedlund also filed a Motion for Declaratory Order with the EAB specifically requesting an agency order that no administrative exhaustion requirement exists under section 80.15. On December 10, 2013, an administrative law judge (ALJ) in the Department of Inspection and Appeals issued a ruling denying Hedlund's motion pending before the EAB, but noting that administrative exhaustion is only required "[i]f the employee wants to seek their reinstatement to the position they were terminated from, then they must file an appeal pursuant to Iowa Code section

80.15.” Hedlund does not seek reinstatement and therefore moved to dismiss the EAB proceeding, which was granted on January 21, 2014.

In a letter dated January 23, 2014, Hedlund was advised that his employment with the Iowa DPS was terminated effective January 30, 2014.¹

Hedlund’s instant petition poses the following specific question:

Is a non-contract, non-merit-based employee who seeks back pay and front pay, but who does not seek reinstatement, required to pursue an administrative action with the PERB before commencing an action in district court pursuant to Iowa Code section 70A.28(5)?²

Hedlund asks the Board to answer this question in the negative.

In its brief, the State argues that Hedlund has failed to cite any law that gives the Board authority to determine a district court’s jurisdiction under section 70A.28 and that a declaratory order issued by the Board would not be binding on the district court.

Iowa Code section 20.6 grants the Board express authority to “[i]nterpret . . . the provisions of [chapter 20].” But the Board is unaware of any statutory provision which grants it like authority to interpret section 70A.28. Given the Board’s limited interpretive authority over section 70A.28, a declaratory order on the question presented would not command the same level of judicial

¹ Hedlund’s petition lists two distinct termination dates: July 7, 2013, and January 30, 2014. As noted, the Board bases its declaratory order on the facts pled in the petition, and therefore, the recitation of facts in this order reflects the inconsistency found in the petition. Because the actual date of Hedlund’s termination is irrelevant to the analysis of the question presented, the Board accordingly proceeds with its discussion.

² The question presented in Hedlund’s petition is actually posed in terms of subsection (2) of section 70A.28. Because subsection (5) creates the cause of action, the Board believes this was a mere typographical error and will answer accordingly.

deference as a declaratory order issued on a chapter 20 matter, and the Board could rightfully decline to answer the question presented on the ground listed in paragraph (e) of PERB rule 621—10.9(1).³

That being said, the Board sees no reason to decline to answer a question where the plain language of a statutory provision resolves the issue. Here, Iowa Code section 70A.28 unambiguously creates two alternative enforcement mechanisms: one through a civil action in district court and the second through an administrative action filed with PERB. Section 70A.28 provides in part:

5. Subsection 2 may be enforced through a civil action.
* * *

6. Subsection 2 may also be enforced by an employee through an administrative action pursuant to the requirements of this subsection if the employee is not a merit system employee or an employee covered by a collective bargaining agreement. An employee eligible to pursue an administrative action pursuant to this subsection who is discharged, suspended, demoted, or otherwise receives a reduction in pay and who believes the adverse employment action was taken as a result of the employee's disclosure of information that was authorized pursuant to subsection 2, may file an appeal of the adverse employment action with the public employment relations board . . .

(emphasis added). The permissive language of subsections 5 and 6 indicates that the legislature intended for aggrieved employees to have a choice between pursuing an action in district court or before PERB, rather than requiring the employee to exhaust his or her administrative remedies prior to seeking judicial intervention. *See George v. D.W. Zinser Co.*, 762 N.W.2d 865, 872 (Iowa 2009).

³ Paragraph (e) of PERB rule 621—10.9(1) contemplates the Board's refusal to issue a declaratory order where "[t]he questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter."

See, also, Riley v. Boxa, 542 N.W.2d 519, 522 (Iowa 1996) (“[T]he exhaustion of administrative remedies doctrine does not apply if, by the terms and implications of the statutes authorizing an administrative remedy, such remedy is permissive only or not exclusive of the judicial remedy, warranting the conclusion that the legislature intended to permit resort to the courts even though the administrative remedy has not been exhausted.”) (citation and internal quotation marks omitted). The Board thus thinks that a non-contract covered, non-merit-based employee need not exhaust his or her section 70A.28(6) administrative remedies before commencing an action in district court pursuant to section 70A.28(5).

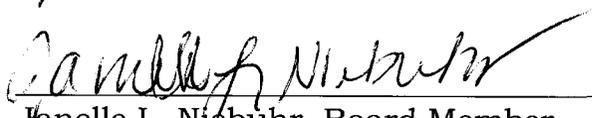
CONCLUSION

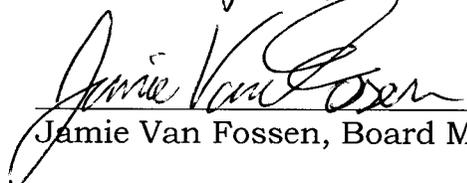
For the reasons stated above, the Board answers Hedlund’s question in the negative.

DATED at Des Moines, Iowa, this 7th day of April, 2014.

PUBLIC EMPLOYMENT RELATIONS BOARD

By: 
James R. Riordan, Chair


Janelle L. Niebuhr, Board Member


Jamie Van Fossen, Board Member

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