



## FINDINGS OF FACT

The relevant facts are not in dispute. Antoinette Johnson was employed by the Iowa Department of Human Services at Independence Mental Health Institute as a Residential Treatment Worker. This position was a bargaining unit position represented by AFSCME Iowa Council 61. On May 29, 2013, Johnson was terminated from state employment. Johnson filed a contract grievance with regards to the termination on June 3, 2013. A representative of the Iowa Department of Administrative Services denied the grievance on August 9, 2013. On July 8, 2014, Johnson filed the initial complaint.

## CONCLUSIONS OF LAW

In considering a motion to dismiss, the facts as plead by the complainant are accepted and allegations are viewed in a light most favorable to the complainant with doubts resolved in that party's favor. *UNI-United Faculty & Board of Regents*, 12 H.O. 8501 at 5.

The State asserts that PERB is without jurisdiction in this matter because Johnson's termination – the event upon which forms the basis for the complaint – occurred on May 29, 2013, more than 90 days prior to the complaint's filing. Although Johnson acknowledged that the termination occurred more than 90 days prior to filing of the complaint, she argues that because the 90 day time limit is not statutory, PERB may use its discretion in determining whether to enforce this requirement and asks that a hearing be held to determine if circumstances exist to extend the 90 day time requirement for filing the complaint.

Iowa Code section 20.11(1) provides that prohibited practice proceedings against a party:

shall be commenced by filing a complaint with the board within ninety days of the alleged violation, causing a copy of the complaint to be served upon the accused party.

Both PERB and the Iowa Supreme Court have concluded that the 90 day filing requirement contained in section 20.11(1) is mandatory and jurisdictional, not directory, and may not be waived by the agency. *Brown v. PERB*, 345 N.W. 2d 88, 93-94 (Iowa 1984); *John K. Lomen & AFSCME Iowa Council 61*, 99 PERB 5966 at 3. As a result, PERB has consistently held that it possesses no jurisdiction over complaints which were filed late; filed more than 90 days following the alleged violation. See e.g., *Amy M. Holecek & City of Hiawatha*, 10 PERB 8073; *Kenneth Kincaid & State of Iowa (Dept. of Transportation)*, 05 H.O. 6895; *Kenneth E. Kincaid & AFSCME/Iowa Council 61*, 02 PERB 6445; *AFSCME, Council 61 & State of Iowa*, 89 PERB 3498.

It is uncontested that Johnson's complaint against the State was not timely filed with PERB as it was filed more than 90 days after her termination which is the basis for her complaint.

There are two exceptions to the 90 day jurisdictional requirement which, if established by the Complainant, would excuse a late filing. *Brown*, 345 N.W. 2d at 95-96; *AFSCME, Council 61*, 89 PERB 3498 at 7; *Dubuque Policemen's Protective Association & City of Dubuque*, 00 H.O. 6105 at 6. The first exception is the "discovery-rule" exception which tolls the running of the 90 day statutory requirement until the aggrieved party knew or should have known that the

statutory rights were violated. *Brown*, 345 N.W. 2d at 96; *AFSCME, Council 61*, 89 PERB 3498 at 8-9. The second exception is the “misrepresentation” exception which concerns fraudulent concealment of a cause of action. *Brown*, 345 N.W. 2d at 96; *Amy M. Holecek*, 10 PERB 8973 at 3. However, neither the complaint, supporting documentation, or arguments made at hearing support either of these recognized exceptions to the mandatory and jurisdictional 90 day filing requirement. Accordingly, Johnson’s complaint was untimely.

Having determined that the complaint was not timely filed, it is not necessary to discuss the other grounds for dismissal raised in the State’s motion. I consequently conclude the State’s motion must be granted and propose entry of the following:

ORDER

Johnson’s prohibited practice complaint against the State is hereby DISMISSED.

Dated at Des Moines, this 10th day of July, 2015.

Susan M. Bolte  
Susan M. Bolte  
Administrative Law Judge

File original.

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