

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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| LAURIE ANN PIERCE, Appellant, |) | |
| |) | |
| and |) | Case No. 100728 |
| |) | |
| STATE OF IOWA (DEPARTMENT OF HUMAN SERVICES), Appellee. |) | |
| |) | |

PROPOSED DECISION AND ORDER

On April 18, 2016, Appellant Laurie Ann Pierce filed this Iowa Code section 8A.415(1) State employee grievance appeal with the Public Employment Relations Board (PERB). Pierce submitted a number of documents with her appeal, including a copy of her original non-contract grievance and the response to it issued by a designee of the director of the Iowa Department of Administrative Services (DAS).

The State subsequently moved to dismiss the appeal on a number of grounds, and its motion is resisted by Pierce. Oral arguments on the motion were heard by telephone conference call on July 12, 2016. Both parties participated, Pierce on her own behalf and Attorney Kathryn Greenfield on behalf of the State.

Procedural Background

From the parties' various filings, a number of undisputed facts are clear. At all relevant times Pierce has been employed as a clerk specialist with the Department of Human Services. Workplace interactions with a coworker on

February 5, 2016 (which Pierce believed constituted the coworker's violation of the State's Violence-Free Workplace Policy) as well as what she viewed as her supervisors' unsatisfactory February 8 response to her complaint about the coworker's conduct, prompted Pierce to complete and file a non-contract grievance with DAS. In the section of the State's non-contract grievance form in which the employee is to identify the provision(s) of subchapter IV of Iowa Code chapter 8A or DAS rule allegedly violated, Pierce indicated simply "Violence Free Workplace."

The DAS director's designee issued an answer on March 18, 2016, denying the grievance on the basis that in a non-contract grievance DAS is without jurisdiction to consider allegations of a violation of a policy which is not a provision of subchapter IV of Iowa Code chapter 8A or DAS rule. The answer also noted that the grievance may not have been properly before DAS due to it not having been filed at the first and second steps of the uniform grievance procedure, but did not specifically base the denial on this ground.

Pierce's PERB appeal from the DAS response was filed April 18, 2016, and the State's moved to dismiss it on May 6, 2016.

Applicable Law

Iowa Code section 8A.415(1) establishes PERB's authority and the controlling decisional standard in appeals from the DAS director's non-contract grievance responses. That section provides:

8A.415 Grievances and discipline resolution.

1. *Grievances.*

- a. An employee, except an employee covered by a collective bargaining agreement which provides

otherwise, who has exhausted the available agency steps in the uniform grievance procedure provided for in the department rules may, within seven calendar days following the date a decision was received or should have been received at the second step of the grievance procedure, file the grievance at the third step with the director. The director shall respond within thirty calendar days following receipt of the third step grievance.

b. If not satisfied, the employee may, within thirty calendar days following the director's response, file an appeal with the public employment relations board. The hearing shall be conducted in accordance with the rules of the public employment relations board and the Iowa administrative procedure Act, chapter 17A. Decisions rendered shall be based upon a standard of substantial compliance with this subchapter and the rules of the department. Decisions by the public employment relations board constitute final agency action.

c. For purposes of this subsection, "*uniform grievance procedure*" does not include procedures for discipline and discharge.

Of central significance here is the section 8A.415(1)(b) provision that PERB's decisions in grievance appeal proceedings "shall be based upon a standard of substantial compliance with this subchapter [IV] and the rules of the department [of Administrative Services]." PERB has thus long recognized that in order for an employee to prevail in a non-contract grievance appeal, he or she must establish the employer's lack of substantial compliance with some provision of DAS rule or subchapter IV of Iowa Code chapter 8A. See, e.g., *Stratton/Human Services*, 93-MA-13; *Taylor/Employment Services*, 92-MA-08.

The State's Motion

The State argues that Pierce's appeal should be dismissed on three distinct grounds: (1) that Pierce did not exhaust the available agency steps in

the uniform grievance procedure because she filed her grievance directly with DAS, bypassing the first and second steps in the procedure; (2) that because Pierce's grievance failed to allege a violation of any DAS rule or provision of subchapter IV of Iowa Code chapter 8A, both her grievance and her appeal to PERB fail to state a claim upon which PERB relief may grant relief and (3) that her PERB appeal was not timely filed.

Discussion

Pierce's grievance did not allege either a violation of DAS rule or subchapter IV of Iowa Code chapter 8A, but instead merely asserted that the events she complained of violated the State's Violence-Free Workplace Policy. PERB has previously disapproved the notion that an employee's citation of a specific DAS rule or Iowa Code provision is a mandatory requirement and that an employee's failure to do so is a fatal jurisdictional defect. See *Steinbronn/Human Services*, 06-MA-07. The mere failure of a grievant to cite to a specific DAS rule or Iowa Code provision is thus not itself fatal to a later grievance appeal. In *Steinbronn*, where the employee's grievance included the verbatim text of the rule involved but did not make a specific numerical citation to it, PERB denied the State's motion to dismiss because the grievance provided the State with adequate notice of the nature and basis of the employee's claim, which the State plainly understood. *Id.*

But circumstances like those in *Steinbronn* are not present here, where Pierce's claim is not that there has been an absence of substantial compliance with an uncited DAS rule or provision of subchapter IV of Iowa Code chapter

8A. Instead, as she confirmed during oral arguments on the State's motion, Pierce's grievance and the instant PERB appeal were based solely on alleged violation(s) of the Violence-Free Workplace Policy.

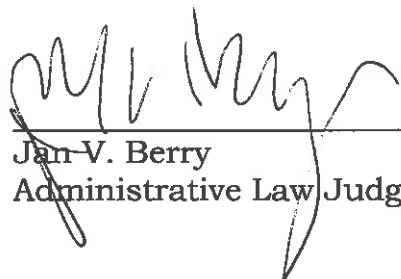
The State's Violence-Free Workplace Policy for executive branch employees has not been codified as a part of Iowa Code chapter 8A, nor is it a DAS rule. Consequently, even assuming (without deciding) the accuracy of all of the facts and conclusions alleged in Pierce's grievance and her appeal, these are wrongs which PERB is without legal authority to remedy. See *Schaa/Human Services*, 01-MA-05, and *LaPree/Veterans Affairs*, 01-MA-13, both of which involved employee non-contract grievances and PERB appeals based upon alleged violations of the Violence-Free Workplace Policy.

Pierce's grievance and her appeal do not assert a claim for which relief may be granted in this forum. Because the motion must be granted on this ground, it is unnecessary to address the other grounds for dismissal urged by the State. Accordingly, I propose entry of the following:

ORDER

The State's motion is GRANTED and the State employee grievance appeal of Laurie Ann Pierce is hereby DISMISSED.

DATED at Des Moines, Iowa, this 15th day of July, 2016.



Jan V. Berry
Administrative Law Judge