

STATE OF IOWA  
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

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|---------------------------------|---|-----------------|
| DOUGLAS WISE,                   | ) |                 |
| Appellant,                      | ) |                 |
|                                 | ) |                 |
| and                             | ) |                 |
|                                 | ) | CASE NO. 100005 |
| STATE OF IOWA                   | ) |                 |
| (DEPARTMENT OF HUMAN SERVICES), | ) |                 |
| Appellee.                       | ) |                 |

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DECISION AND ORDER

In our Decision on Review issued December 19, 2016, the Public Employment Relations Board (PERB or Board) affirmed the administrative law judge's (ALJ) proposed decision that the State failed to establish just cause within the meaning of Iowa Code section 8A.415(2) for its termination of Wise's employment. We further affirmed the ALJ's order for the State to reinstate Wise to his former position at Glenwood Resource Center or, if the position did not exist, to a substantially equivalent position with back pay, a restoration of benefits and other appropriate adjustments. We retained jurisdiction to address any remedy-related matters and to specify the precise terms of the remedy in the event the parties failed to reach agreement. Subsequently, the parties informed PERB that there was agreement on all aspects of an appropriate remedy except the parties disagreed whether the State should pay interest on the back pay owed Wise.

Pursuant to Iowa Code sections 20.1(4) and 20.6(4), we presided over an evidentiary hearing on March 1, 2017, to receive evidence and arguments to determine whether interest is due on Wise's back pay and to review and approve

the parties' joint stipulation of its mutual agreement on all other aspects of an appropriate remedy in this matter. The parties filed pre-hearing briefs and were represented at the hearing through their respective counsel: Jeff Edgar for the State of Iowa and Charles Gribble for Wise.

Based upon our review of the record, and having considered the parties' briefs and arguments, we conclude that the State shall pay interest on the total back pay due to Wise. From our review of the parties' joint stipulation, we approve the parties' mutual agreement on all other aspects of the appropriate remedy.

#### I. FINDINGS OF FACT

On October 31, 2014, the State terminated Wise from his employment as treatment program administrator for the Department of Human Services at the Glenwood Resource Center (GRC). The GRC provides care and treatment for people with intellectual disabilities. Wise oversaw one of GRC's three treatment areas, which included seven homes where approximately 100 individuals resided. Following his termination, Wise received unemployment compensation and IPERS benefits.

The parties agree on all aspects of an appropriate remedy except for one; they disagree whether interest is owed on the back pay. The parties' joint stipulation sets forth their agreement on all the agreed-upon aspects of an appropriate remedy in this matter and is summarized as follows:

The State will reinstate Wise to an Executive 3 position with the Department of Human Services at the GRC. Wise is owed back pay, health and dental premiums, and deferred compensation contributions the State would have

otherwise made— all of which are calculated from the time of his termination to the time of his reinstatement. Wise’s back pay amount will be offset by the amount of unemployment compensation he received. He received no other wages or income with the exception of IPERS benefits. Wise will be made whole with regards to the IPERS contributions he and the State would have paid on his behalf had he not been terminated: the IPERS employee contributions Wise would have made during that time will be deducted from Wise’s back pay and paid directly by the State to IPERS; the State will pay its employer share for those periods to IPERS; Wise will repay all benefits (monies) he had received from IPERS since January 2015; and the State will reimburse Wise for the taxes he paid on those IPERS benefits (monies).

The parties have agreed upon the dollar amounts of all agreed-upon components of the appropriate remedy. Additionally, the parties agreed that if interest is due on back pay, the interest will be calculated pursuant to Iowa Code section 535.2.

## II. ANALYSIS

This case is a disciplinary action appeal under Iowa Code section 8A.415(2), which provides in relevant part:

. . . If the public employment relations board finds that the action taken by the appointing authority was for political, religious, racial, national origin, sex, age, or other reasons not constituting just cause, the employee may be reinstated without loss of pay or benefits for the elapsed period, or the public employment relations board may provide other appropriate remedies . . .

In addressing the specifics of an appropriate remedial order in section 8A.415 cases, our guiding principle is to fashion a “make-whole” remedy. We

have indicated that this requires the Board to “. . . attempt to place the grievant in the position he would have been in had no rule violations occurred, and to make the grievant whole for damages incurred.” *Harrison & State of Iowa (Dept. of Human Servs.)*, 05-MA-04 at 5 (Board 2008); *Israni & State of Iowa*, 92-MA-23 at 18 (Board 1993).

A properly structured remedy in a discharge case makes the employee whole, but avoids an undue financial burden or penalty, or an economic windfall, for either party. *Steven Scott and State of Iowa (Dept. of Transp.)*, 13-MA-03 at 4 (Board 2014); *Harrison*, 05-MA-04 at 6. For this reason, the remedy’s specifics are tailored to the facts of the particular case. *Scott*, 13-MA-03 at 4; *Harrison*, 05-MA-04 at 6. For section 8A.415(2) discharge cases, the make-whole remedy may include reinstatement with back pay and benefits for the elapsed period and other appropriate remedies. *See* § 8A.415(2).

With respect to section 8A.415(2) appeals such as this case, an appropriate remedy includes the payment of interest on back pay due to the employee. The payment of interest is consistent with the principle of making the employee whole. It is neither a penalty to the employer nor a windfall to the employee. It is not awarded as a penalty, but rather it reflects the lost value of the use of money awarded. *In re Marriage of Baculis*, 430 N.W.2d 399, 401 (Iowa 1988). Interest is compensation for the deprivation of the use of money. *In re IBP Confidential Business Documents Litig.*, 755 F.2d 1300, 1320 (8<sup>th</sup> Cir. 1985).

In the present case, the appropriate remedial order is one which makes Wise whole. Interest on the back pay is part and parcel of this “make-whole”

remedy in addition to the others components mutually agreed upon by the parties.

The Board has fully considered all of the State's brief and arguments. None have persuaded us to reach a different conclusion.

Accordingly, we enter the following:

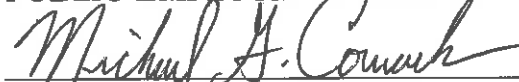
### ORDER

The parties' mutual agreement is approved. The parties shall make the payments and take all actions contemplated by the agreement as well as other actions ordered in our Decision on Review, including making appropriate adjustments in his personnel records and all other actions not contemplated by the agreement necessary to restore him to the position he would have been in had his employment not been terminated on October 31, 2014. Additionally, the State will pay interest on the back pay due to Wise, from the time of his termination to the time of his reinstatement, calculated pursuant to Iowa Code section 535.2.

DATED at Des Moines, Iowa, this 15th day of March, 2017.

PUBLIC EMPLOYMENT RELATIONS BOARD

By:



Michael G. Cormack, Board Chair



Jamie K. Van Fossen, Board Member



Mary T. Gannon, Board Member

Electronically filed.  
Parties served via eFlex.