

STATE OF IOWA
BEFORE THE PUBLIC EMPLOYMENT RELATIONS BOARD

MITCHELL EVEN GROUP, Appellant, and STATE OF IOWA (DEPARTMENT OF CORRECTIONS), Appellee.))))))))	CASE NO. 102118
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RULING AND ORDER

Mitchell Even filed a state employee grievance appeal with the Public Employment Relations Board (PERB) pursuant to Iowa Code subsection 8A.415(1) and PERB subrule 621—11.2(1). Even is employed as a correctional officer (CO) with the Iowa Department of Corrections at the Iowa State Penitentiary (DOC-ISP). He filed the instant appeal on behalf of all affected ISP CO's who worked during the Labor Day holiday on September 4, 2017. Even contends the DOC did not properly calculate overtime pay for the affected employees. The Iowa Department of Administrative Services (DAS) denied Even's grievance at the third-step of the grievance procedure. Even appealed DAS' denial to PERB on November 2, 2017. On November 22, 2017, the State filed a motion to dismiss over PERB's purported lack of jurisdiction to hear the appeal as grieved.

By telephone conference on September 10, 2020, the parties indicated to the undersigned that they were not requesting arguments on the pending motion, but would instead rely on the motion and other documents in the record. As such, oral arguments were not held.

Undisputed Facts and Course of Proceedings

From the parties' filings, the following pertinent facts are undisputed. During the 2017 Labor Day holiday, a number of CO's worked as part of their regularly scheduled work week. When payroll was disbursed for this pay period, it showed the DOC did not include the actual hours worked on Labor Day (September 4) in calculating overtime pay for the affected employees. The filings do not provide the number or identity of the affected employees, but no dispute exists that actual hours worked on September 4 were not counted toward calculating overtime.

On September 14, 2017, Even filed a grievance on behalf of all affected CO's who worked on Labor Day. On the written grievance, Even identified DAS rule 11—53.11(8A), regarding overtime in general, and 53.11(6), regarding holiday hours in overtime calculation, as being at issue in the filed grievance. The DOC denied the grievance at step one and step two of the grievance procedure.

On September 22, 2017, Even appealed the grievance to DAS at step three of the grievance procedure. He argued that ISP violated DAS rules by not paying the affected CO's time and a half for any actual hours they worked in excess of forty hours during the week that included Labor Day. DAS found the DOC did not count the hours worked on Labor Day as part of an employee's overtime calculation if the employee already received a premium rate of pay for working holiday hours. The DAS subrule 53.11(6) at issue states, "Holiday hours that have already been paid at a premium rate shall not be counted in calculating

overtime.” Based upon the parties’ written submissions, DAS ultimately concluded that DOC correctly applied the language of 53.11(6) in computing overtime pay. On October 20, 2017, it denied Even’s grievance.

Even appealed DAS’ denial to PERB on November 11, 2017. In the written appeal to PERB, Even stated:

I am appealing the response given at Step 3 on 10/20/2017 because we, the group, disagree with the denial of the appeal. The DAS designee asserts that our argument was that the ISP violated DAS rules and Iowa code when computing overtime premium pay. The argument was that the DAS rule [11-53.11(6)] is a violation of the Fair Labor Standards Act which states all hours over 40 in a week will be paid at a premium rate.

The State filed a motion to dismiss the appeal on November 22, 2017. The State argues the group’s claim that DAS rule 11—53.11(6) violates federal law is improperly before PERB because it is outside of the agency’s statutorily limited jurisdiction. It contends that because PERB’s jurisdiction in 8A.415(1) appeals is limited to determining whether the State substantially complied with chapter 8A, subchapter IV, or DAS rules, appeals seeking adjudication of the State’s compliance with federal law is improperly before the agency. The State asks for dismissal of the appeal.

Applicable Legal Standards

PERB’s authority and the controlling decisional standard in grievance appeals such as the instant case is established by 8A.415(1), which 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 the 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.

The section 8A.415(1)(b) reference to the "rules of the department" refers to administrative rules adopted by DAS. As subsection 8A.415(1) reveals, PERB's decisions in grievance appeals "shall be based upon a standard of substantial compliance with [subchapter IV of chapter 8A] and the rules of the department [of administrative services]." Thus, in order to prevail, Even's appeal must allege a lack of substantial compliance with a provision of Iowa Code chapter 8A, subchapter IV, or a DAS rule.

Analysis of Law

The sole issue to be determined is whether Even's appeal is within PERB's jurisdiction to adjudicate. In ruling on a motion to dismiss, the hearing officer accepts as true the allegations of the appeal and construes any doubts or ambiguities in a light most favorable to the non-moving party. *Callahan and State of Iowa (Dept. of Transp.)*, 04-MA-02 at 2; *Capps and State of Iowa (Dept. of Corr.)*, 03-MA-07/03-MA-09 at 6-7.

"Precise, unambiguous language will be given its plain and rational meaning in light of the subject matter." *Carolan v. Hill*, 553 N.W.2d 882, 887

(Iowa 1996). No ambiguity exists that the correct decisional standard to apply in this appeal is found in 8A.415(1)(b), which directs that “[d]ecisions rendered shall be based upon a standard of substantial compliance” with chapter 8A, subchapter IV and DAS rules. Thus, the State’s position that PERB is without jurisdiction to adjudicate whether DAS subrule 53.11(6) violates federal law is well supported. To the extent the instant appeal asks PERB to adjudicate whether the State’s adoption or application of DAS subrule 53.11(6) complies with the Federal Labor Standards Act, the State’s motion to dismiss is granted.

Under the record presented, however, I find it improper to dismiss the appeal in its entirety. It is apparent from Even’s initial filing at step one of the grievance procedure that he was alleging the DOC failed to substantially comply with DAS subrule 53.11(6) in its computation of overtime pay for the affected employees. After each denial, Even moved the grievance forward while still arguing the DOC’s computation of overtime did not substantially comply with DAS rule 53.11. Furthermore, once DAS denied the grievance, Even appealed the denial to PERB, which was premised on the issue of whether the DOC substantially complied with DAS rule 53.11. These filings demonstrate, or at least suggest, that Even’s appeal still seeks a determination on whether the DOC substantially complied with DAS overtime rules, which is within PERB’s jurisdiction to adjudicate. For that reason, dismissal of the appeal in its entirety is improper, and is denied.

In considering the legal principles previously articulated, I find that PERB has no jurisdiction to adjudicate whether the State complied with the Federal

Labor Standards Act. However, PERB will retain jurisdiction of the appeal to determine whether the DOC failed to substantially comply with DAS rule 53.11 in its computation of overtime pay for the affected employees.

For the reasons set forth above, I enter the following:

ORDER

The State's motion to dismiss is GRANTED in part and DENIED in part.

DATED at Des Moines, Iowa this 7th day of October, 2020.

/s/ Jasmina Sarajlija
Administrative Law Judge

Electronically filed.
Parties served via eFlex.