

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

KENNETH KEPKE, Appellant,

vs.

DEPARTMENT OF VETERANS AFFAIRS, Respondent.

Case 30
No. 72736
PA(adv)-366

DECISION NO. 35040

Appearances:

Kenneth Kepke, 2145 East Dayton Street, Madison, Wisconsin, appearing on behalf of himself.

Wilhelmina Mickelson, Labor Relations Specialist, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin 53707-7855, appearing on behalf of the Respondent Department of Veterans Affairs.

Kenneth Kepke was employed by the Department of Veterans Affairs (“DVA”) for eleven years. Kepke received a notice of layoff on October 11, 2013, advising that he would be laid off on December 6, 2013. On November 6, 2013, Kepke filed an appeal with the Wisconsin Employment Relations Commission. We served the DVA on the same date. General Counsel Davis advised Kepke and the agency that the appeal would be held in abeyance until the grievance procedure was exhausted and the Commission was advised the matter had not been resolved. Kepke exhausted the internal grievance procedure and, on January 5, 2014, the Office of State Employment Relations (“OSER”) issued a third-step answer denying Kepke’s grievance. Kepke did not file a new appeal to the Commission, and the DVA has filed a motion to dismiss based upon Kepke’s failure to refile an appeal with this agency.

DECISION AND ORDER DENYING MOTION TO DISMISS

It is easy to understand why Kenneth Kepke did not believe that he was required to file a second appeal to this agency after he first filed an appeal with us on November 6, 2013. First of all, prior to the adoption of 2013 Wisconsin Act 123, effective January 24, 2014, we had the ability to entertain direct appeals in cases of demotion, layoff, suspension, discharge or

reduction in base pay for alleged lack of just cause under §§ 230.44(1)(c) and 230.45(1)(a), Stats. Nevertheless, we encouraged Kepke to exhaust the grievance procedure and advised him that once he completed the grievance process “your appeal will then be assigned to a WERC examiner.” (November 6, 2013 email, Davis to Kepke). Kepke began keeping General Counsel Davis apprised of his progression through the grievance procedure. On November 29, 2013, Davis advised Kepke (with a copy to the DVA) that we would “await word as to when the (grievance) procedure has been completed.” (November 29, 2013 email, Davis to Kepke).

Understandably, Kepke may well have assumed no new appeal was necessary to trigger review by this agency. The DVA argues that the third-step answer clearly placed Kepke on notice that the next step following the denial was an appeal in writing to the Commission within thirty days. All true save for the fact Kepke had already filed an appeal, in writing, to this agency. We believe Kepke has satisfied the requirements of the procedure sufficiently to warrant review by the Commission.

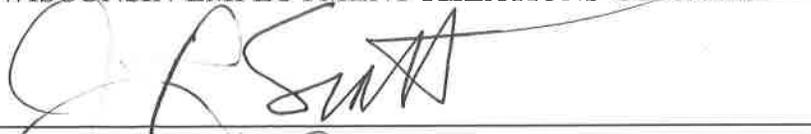
The purpose of a unilaterally adopted grievance procedure is to provide the agency employer and OSER the opportunity to review serious employment actions to determine if the action or decision is fully supported and warranted. The employee has an opportunity to relate his or her version of events. Ultimately, in the cases of demotions, discharges, suspensions, and reductions in base pay, the employee will be entitled to a full-blown hearing before this agency presumptively adequate to satisfy procedural due process rights that the employee enjoys. In fact, the extensive hearing provided by this agency, post-termination, eliminates the need for anything but the most attenuated of pre-termination due process. *Hudson v. City of Chicago*, 374 F.3d 554, 560 (7th Cir. 2004). Given the role a Commission appeal provides in satisfying the State’s constitutional obligations, we believe that access to review should be freely provided without undue procedural hurdles. The grievance procedure is after all being utilized almost exclusively by those lacking legal representation. Complicated time limit calculations serve only to confuse the uninitiated.

ORDER

The motion is denied and the matter will be assigned to an examiner for hearing.

Dated at the City of Madison, Wisconsin, this 19th day of June 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION



James R. Scott, Chairman



Rodney G. Pasch, Commissioner