

STATE OF WISCONSIN  
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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TROY PFLUM, Appellant,

vs.

DEPARTMENT OF CORRECTIONS, Respondent.

Case 263  
No. 73185  
PA(adv)-408

DECISION NO. 35067

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**Appearances:**

Troy Pflum, 3 Blue Jay Lane, North Fond du Lac, Wisconsin, appearing on behalf of himself.

Laura Amundson, Labor Relations Specialist - Senior, Office of State Employment Relations, 101 East Wilson Street, 4th Floor, P.O. Box 7855, Madison, Wisconsin, appearing on behalf of the Respondent Department of Corrections.

**DECISION AND ORDER DENYING MOTION TO DISMISS**

Once again we face a motion to dismiss on appeal to the Commission based upon the former employee's inability to follow the cryptic timelines set forth in the State Employee Handbook ("Handbook"). Exhausting the various steps in the procedure is now necessary in order to access a review by the Commission.<sup>1</sup>

Here the Appellant, Troy Pflum, was discharged from his position as a correctional officer on December 13, 2013. On December 26, 2013, he filed a grievance challenging the discharge. Under the Handbook, he had thirty days to do so. The employing agency then has thirty days to meet with the employee and supply a written response to the grievance. Pflum received a one-word response, "Denied," and apparently no meeting occurred. The response was mailed within the thirty-day time limit. We are told that the Department of Corrections routinely waives this first step in the procedure although the Handbook makes no provision for such action.

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<sup>1</sup>Appellant Pflum's discharge and initial grievance occurred prior to the change in the law. In theory at least, Pflum could have sought review under the old statute which provided for direct review by the Commission. *Cf. Boeck v. Department of Corrections*, Dec. No. 35039 (WERC, 6/14).

At this point, Pflum has ten days from receipt of the response to appeal to the second step. Curiously, the form advising him of the first denial does not specify the ten-day requirement. It references the Handbook and cautions that failure to comply will result in loss of appeal rights. In any event, Pflum filed his second step appeal on January 9, 2014, one day after receiving the response.

The Handbook requires that a “management designee must meet with the employee and provide a written response within thirty days of receipt of the grievance.” The DOC says it received the grievance on January 15, 2014, met with the grievant on February 20, 2014, and mailed its response on February 24, 2014. Both the meeting and the response were untimely as they did not occur within the thirty day timeframe specified under the Handbook.

On March 12, 2014, Pflum filed a third step appeal to the Office of State Employment Relations. The Handbook requires that that appeal be made “within 10 days from the date of the answer or within 10 calendar days of the date on which the response should have been answered.”

Strictly speaking, Pflum’s appeal was untimely as of February 24, 2014, because the DOC’s second step answer was due on February 14, 2014. Of course, it would be difficult for Pflum to figure that out and, furthermore, he would not know whether he was “dissatisfied” with a response that he had not yet received. The DOC does not rely on this “lapse” but, of course, Pflum’s third step appeal was not filed within ten days of the date of the answer.<sup>2</sup> Pflum acknowledges his tardiness but says he was confused and believed he had thirty days.

We understand his confusion. This grievance procedure is a model of obfuscation, full of shifting deadlines and different means of calculating time. Here, most importantly, the DOC ignores its own deadlines under the Handbook and then seeks to apply the employee deadlines against Pflum. In our judgment, having missed the second step time limit, the DOC is equitably estopped from asserting Pflum’s tardiness as a bar.<sup>3</sup> The purpose of a grievance procedure is to provide a meaningful review of complaints prior to the conduct of a full blown administrative hearing. Tripping up the unwary with convoluted procedural steps should not be part of the process.

Accordingly, we issue the following:

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<sup>2</sup> All of the management deadlines are calculated from the date of receipt, while all the employee deadlines begin to run from the date on the document not when the employee received the document.

<sup>3</sup> In administrative proceedings, courts typically excuse pro se litigants from the strict adherence to procedural rules applicable to lawyers. *See Rutherford v. Labor and Industry Review Commission*, 2008 WI App. 66 ¶ 27, 309 Wis.2d 498, 752 N.W.2d 897.

**ORDER**

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

Dated at Madison, Wisconsin, this 22nd day of July 2014.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

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James R. Scott, Chairman

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Rodney G. Pasch, Commissioner