

STATE OF WISCONSIN
BEFORE THE WISCONSIN EMPLOYMENT RELATIONS COMMISSION

DOUGLAS CURTIS, Appellant,

vs.

STATE OF WISCONSIN, DEPARTMENT OF CORRECTIONS, Respondent.

Case ID: 1.0116

Case Type: PA

DECISION NO. 36330

Appearances:

Troy Bauch, AFSCME Wisconsin Council 32, 1190 Ruffedt Road, Cornell, Wisconsin, appearing on behalf of Douglas Curtis.

Amesia N. Xiong, Department of Administration, 101 E. Wilson Street, 10th Floor, P.O. Box 7864, Madison, Wisconsin, appearing on behalf of State of Wisconsin, Department of Corrections.

DECISION AND ORDER DENYING MOTION TO DISMISS

Once again we face an attempt by the state to bar access to the hearing process because an employee has failed to successfully wind his way through the labyrinth otherwise known as the grievance process. Douglas Curtis filed a timely grievance challenging the imposition of a ten-day disciplinary suspension. On February 1, 2016, he received notice that his Step 1 grievance was denied. A copy was not provided to his representative. On February 4, 2016, Curtis acting on his own filed a second step appeal with Wilhelmina Mickelson at the Office of State Employment Relations.¹ Curtis had ten days from the date of receipt of the first step answer to “submit” his request. Mickelson waited until February 12, 2016 to respond indicating to Curtis that he should have submitted his request to David Hicks, an Employment Relations Specialist at the Department of Corrections’ central office. Again, Curtis’ representative was not copied on the email but Hicks was. Hicks was also provided with a copy of the grievance Curtis had “incorrectly” filed with Mickelson. In the interim and before receiving the Mickelson response, Curtis and his representative filed an appeal with the Wisconsin Employment Relations Commission on February 9, 2016. We served the appeal on that same date and DOC followed on February 12, 2016 with this motion to dismiss. While

¹ Now the Division of Personnel Management.

that was pending, DOC representative Hicks was apparently attempting to reschedule meetings to resolve the second step grievance.

Most troubling to us is the fact that attached to the motion to dismiss is an affidavit from Hicks, executed on February 12, 2016, swearing under oath that he had not received a copy of the second step grievance appeal as of that date. We have since been provided with an email from Mickelson to Curtis with a copy to Hicks dated February 12, 2016, sent at 8:24 a.m., referencing the grievances in question and noting that “copies of the two grievances are attached.” Brief of Appellant, Ex.4.

It is possible that Hicks executed the affidavit before receiving the 8:24 a.m. email or at least before opening the email. Nevertheless, the factual basis for the motion to dismiss – the failure to file a second step grievance with DOC – does not exist and accordingly the motion is denied. Additionally, DOC’s efforts to meet and process the second step grievance rendered their motion moot.

Curtis is correct in arguing that this bureaucratic nightmare together with the attendant delay in processing the grievance could have been avoided by simply copying the employee’s representative in the correspondence. We fail to see the “benefit” of refusing to copy the employee’s representative. It is worth noting that employee agents are specifically authorized by statute to participate in appeals before the Commission. § 230.44(4)(e), Stats. The failure to extend the simple courtesy of a copy to an employee’s agent or representative in the grievance process is unwarranted. Furthermore, it leads to the type of confusion we find in this case.

We will assume for the purpose of resolving this matter that the second step grievance over the ten-day suspension and the calculation of the suspension period have been denied. We will hold the appeal in abeyance and allow DOC ten days from the date of this decision to resolve the matter and, if it is not resolved, we will assign the matter for hearing.

ORDER

1. The motion to dismiss is denied.
2. The appeal is held in abeyance for a period of ten days from the date of this decision during which the State of Wisconsin, Department of Corrections shall have an opportunity to resolve the grievance and, failing a resolution, the matter will be assigned for hearing.

Signed at the City of Madison, Wisconsin, this 11th day of April 2016.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

James R. Scott, Chairman

Rodney G. Pasch, Commissioner

James J. Daley, Commissioner