

STATE OF WISCONSIN

PERSONNEL COMMISSION

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COLLEEN CASHMAN,

Appellant,

v.

DEPARTMENT OF AGRICULTURE,
TRADE, & CONSUMER PROTECTION,

Respondent.

Case No. 78-43-PC

* * * * *

INTERIM
DECISION

NATURE OF THE CASE

This is an appeal of the denial of a non-contractual grievance. A question arose at the prehearing conference as to the scope of the issues that might properly be considered in the hearing of this appeal and the parties have submitted arguments on this question. The respondent also has moved to dismiss on the ground that "no substantial issues have been raised in the appeal which would warrant conduct of an appeal proceeding." (Letter from G. A. Schueler, 10/9/78.) The findings of fact which follow are based on matter which appears to be undisputed.

FINDINGS OF FACT

1. The third step of this non-contractual grievance was dated by appellant March 20, 1978.
2. On that grievance form under the section entitled "description of problem" the appellant included the following:

"On Wednesday, March 8, at the staff meeting I raised the issue of our present lab policy of accepting out-of-state samples for testing. As a consequence of asking certain questions relating to this policy and asking for the answers to these questions I had two meetings.... During these meetings I was subjected to

verbal harassment by Drs. Lyle and Siegfried in which they expressed their disapproval of my action in raising these questions at staff meeting. Since these meetings an arbitrary change was initiated in my work duties regarding export procedures. Specifically, after I set up all export cases the papers must now be taken into Dr. Siegfried's office for her to look at and examine. In the past I have always taken these papers and put them in the export basket situated on Martha's desk... I feel the change made in export procedures serves no purpose; I consider this change unreasonable and unnecessary. Since there had been no prior indication that this change was forthcoming I feel this change in export procedures constitutes personal harassment in that it was started simply because I asked questions about lab policy and they apparently did not want these issues raised."

3. The grievance form included under "action requested": "for export procedures to return to former status."

4. The grievance was answered by the respondent at the third step on April 3, 1978, as follows: "Grievance denied--export procedures were changed for valid management reasons."

5. The appellant received letters of reprimand dated March 24, 1978, and August 4, 1978.

6. The appellant stated in a letter to the Commission dated September 20, 1978, that she withdrew her request to have merit award rejections incorporated into the grievance hearing.

7. At the prehearing conference the respondent indicated it had no objections to jurisdiction over the issues relating to changes in duties and responsibilities and harassment.

CONCLUSIONS OF LAW

1. In order for an issue to be considered by the Commission in an appeal of a non-contractual grievance denial, the issue should have been included in the grievance presented to the agency.

2. In this appeal the issues before the Commission on appeal will be limited to those fairly included in the original grievance as set forth in finding 2.

3. Those issues do not include the letters of reprimand or the denial of merit awards (the latter issue was also withdrawn by the appellant.)

4. Time limits contained in agency grievance procedures are not jurisdictional.

5. The appellant should be given an opportunity to file grievances concerning these letters of reprimands, if she desires.

6. The Commission does not have the authority to dismiss an appeal on the grounds that the appeal raises no substantial issues and the respondent's motion to dismiss must be denied.

OPINION

Appeal documents, including employe grievance forms, should be liberally interpreted in proceedings before this Commission. See e.g. Oakley v. Bartel, Wis, Pers. Comm. No. 78-66-PC (10/10/78). However, if in an expansive reading of a grievance as presented to the agency it cannot fairly be interpreted as raising a specific transaction, that transaction cannot be considered on appeal to the Commission.

While the letters of reprimand were not raised by appellant in her grievance and cannot be considered in this appeal of the denial of that grievance, in the opinion of the Commission the appellant ought to be permitted to file a grievance or grievances with the agency with respect to these letters of reprimand. The appellant stated in her argument on

the scope of the issues before the Commission on this appeal:

1. The original grievance incorporated the same subject matter as the reprimands, i.e., improper and hostile management response to constitutionally protected petition for redress of grievances to administrators and the state legislature.
2. I reasonably believed the reprimands would be included, and due to disrupted Personnel Board structure, could not obtain a ruling.
3. The entire matter is by nature inclusive and generalized. Management has repeatedly complicated the issues by harassment and injecting old disputes into the matter. Thus, it is improper for management to seek a narrow focus with regard to the reprimands.

The Personnel Board has held that the time limits in a non-contractual grievance procedure are not jurisdictional in nature. See Schaut v. Schmidt, No. 74-67 (11/24/75), which cited with approval from Elkouri Elkouri, How Arbitration Works, pp 148-149, (3d. Ed 1978):

'It has been held that doubts as to the interpretation of contractual time limits or as to whether they have been met should be resolved against forfeiture of the right to process the grievance. (Cases footnoted.) Moreover, even if time limits are clear, late filing will not result in dismissal of the grievance if the circumstances are such that it would be unreasonable to require strict compliance with the time limits specified by the agreement. (Cases footnoted.) (Emphasis added.)'

As we stated above, the time limits in the grievance procedure are not jurisdictional. Here, Grievants were understandably confused as to the proper procedure. They attempted to correct the situation and thereby preserve their grievances as soon as they found out that a written appeal was necessary. We conclude that it is unreasonable under these circumstances to apply the time limits strictly to these Grievants and, therefore, conclude that their appeal from the third step decision was timely.

The Commission agrees with the principles set forth in this decision, and believes that under the circumstances Ms. Cashman ought to be given an opportunity to file grievances concerning these letters of reprimand.

The respondent has also moved to dismiss the appeal on the ground that "no substantial issues have been raised in the appeal which would warrant conduct of an appeal proceeding... The appeal does no more than challenge the right of management to make work changes it believes necessary in carrying out the lab functions." (Letter from G. A. Schueler dated 10/9/78.)

The Commission votes that the prehearing conference report contains the following items under "ISSUES":

- Respondent: (1) changes in duties and responsibilities
(2) harassment
(There are no objections to jurisdiction over these two issues.)

The respondent has not raised any jurisdictional questions to date. The motion to dismiss runs to the merits. The Commission has no authority under §§230.44 or 230.45 or chapter 227 of the statutes to dismiss an appeal summarily on the grounds that the appeal on its face does not in the Commission's opinion raise substantial issues. Section 227.07(1), Wis, Stats., provides in part: "In a contested case, all parties shall be afforded an opportunity for hearing after reasonable notice." Informal disposition of a case is permitted only in case of a "stipulation, agreed settlement, consent order, or default," §227.07(5), and none of these are present here.

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ORDER

The hearing on this appeal will be limited to the issues fairly included in the original grievance form dated March 20, 1978. These issues do not include either the letters of reprimand or the rejection of merit awards. The respondent's motion to dismiss on the ground that the appeal fails to raise substantial issues is denied.

Dated: November 2, 1978.

Edward D. Durkin
Edward D. Durkin
Commissioner

Dated: Nov. 2, 1978.

Charlotte M. Higbee
Charlotte M. Higbee
Commissioner