

STATE OF WISCONSIN

PERSONNEL COMMISSION

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 DAVID WING,
 Appellant,
 v.
 President, UNIVERSITY OF
 WISCONSIN SYSTEM,
 Respondent.
 Case No. 81-328-PC
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DECISION
 AND
 ORDER

This matter is before the Commission following a prehearing conference at which the parties waived a hearing and agreed to submit the matter for decision on briefs on the following issues:

- 1) Did the respondent comply with the APM's requirements regarding the non-contact grievance procedure relative to the grievance filed by the appellant on 6/22/81?
- 2) Was the failure to attach documents to a grievance form an insufficient or illegal basis for not accepting the grievance.

This matter involves an appeal pursuant to §230.45(1)(c), Stats., of a noncontractual grievance. Both parties have made reference in their briefs to various provisions in the Administrative Practices Manual (APM), Subject: Non-contractual Employee Grievance Procedures, Bulletin Number 1, Date Effective: August 24, 1966, Date Revised: October 1, 1974, published pursuant to §Pers. 25.01, Wis. Adm. Code, and the Commission will take official notice of the entire document.

FINDINGS OF FACT

1. The appellant initially requested a meeting with his immediate supervisor to discuss the subject matter of his grievance. This meeting

was refused because of the appellant's insistence that it be tape-recorded.

2. The appellant submitted a written grievance at Step 1, with his immediate supervisor, on June 22, 1981.

3. On June 24, 1981, the appellant submitted an amended grievance form to his immediate supervisor. This form contained a change in a rule number cited by the appellant.

4. The respondent's non-contractual grievance procedure provides that "A written answer will be provided by the supervisor within seven (7) calendar days after the grievance is received," and that "Grievances not answered by the employer may be appealed to the next step if done so within the time limits so designated."

5. The appellant's immediate supervisor answered the first step grievance on July 1, 1981.

6. In the meantime, the appellant had appealed to step two on the theory that the respondent had not responded at step one within seven days in accordance with the requirements set forth above.

7. The appellant's grievance was denied at the second step on July 2, 1981, and at the third step on July 23, 1981.

8. The statement of the appellant's grievance at the first step was as follows:

Please see attachments
- Memo to Swanson & [unintelligible]
- Memo to Szymanski

No attachments were included.

9. The respondent's first step response to the grievance was as follows:

I am not accepting the grievance on 6/24/81 for the following reasons:

- (1) It is not in the correct form - a copy of the proper form is attached.
- (2) No attachments were included with the grievance as noted on your grievance report.
- (3) The grievance report submitted was not legible, and in the future, only the original copy will be accepted for further action.

10. The respondent's response at step two was summarized as follows:

In summary, it would be my judgment that since the application was amended and received on June 24 by Mr. Szymanski, he had until July 1 to respond. He did respond to you on July 1, indicating the inadequacies of your grievance application. Since you have not responded in the sense of furnishing either the appropriate form, the attachments, or a legible copy, I would indicate that there has been no grievance filed at this time. This I am not accepting a grievance ✓ step two, but would ask that you re-submit in the appropriate form and begin with step one.

11. The respondent's response at step three was:

I support the contention of the Stout Administration that this grievance was not properly filed at the first step of the UW System grievance procedure. Secondly, the grievance subject matter as expressed in your documents fails to meet the definition of a unilateral grievance.

12. The respondent's grievance form that was current at the time the instant grievance was submitted contained the following statement:

Describe the grievance - state time, place, names, etc., attach documents, failure to provide specific information may delay processing of your grievance.

CONCLUSIONS OF LAW

1. This matter is properly before the Commission pursuant to §230.45(1)(c), Stats.

2. The respondent failed to comply with the APM's requirement regarding the non-contract grievance procedure relative to the grievance filed 6/22/81 with respect to affording the appellant a meeting prior to the filing of the written grievance, but did comply in other respects.

3. The appellant's failure to attach documents to his grievance form was not an insufficient or illegal basis for the respondent to decline to accept the grievance.

OPINION

For the most part, there was no disagreement as to the facts.

The first finding of fact regarding the respondent's refusal of a meeting at the outset of the process is based on an allegation which was not denied or in any way contradicted by the respondent's factual allegations.

The parties disagree diametrically as to whether the first step grievance had the indicated attachments when it first was submitted. In support of his position, the appellant points to the fact that he had no clerical support staff and that he personally prepared the grievance and included the attachments. The respondent points to two contemporaneous documents which refer to the absence of attachments, a memo dated June 24, 1981, from Mr. Szymanski to Mr. Bloodhart, and the memo from Mr. Szymanski to Mr. Wing dated July 1, 1981, denying the grievance, which is quoted in finding nine.

Since the parties have waived a hearing, the Commission must resolve this factual dispute based on the facts before it, keeping in mind that the appellant has the burden of proof. In the judgment of the Commission, particularly in light of the existence of the two contemporaneous memos, there is not a preponderance of the evidence in support of the appellant's contention that his grievance included the indicated attachments.

The second issue before the Commission is:

Was the failure to attach documents to a grievance form an insufficient or illegal basis for not accepting the grievance.

The Commission concludes that the failure to attach documents was not an insufficient or illegal basis for not accepting the grievance. Without the attachments, there was no intelligible statement of the grievance. While the agency presumably could have asked for the documents while the matter still was pending at the first step, this might have lead to an additional issue regarding an alleged failure to have processed the grievance promptly at the first step. Furthermore, once the decision was made at the first step on July 1, 1981, the appellant could have resubmitted the grievance at the first step, with the attachments, and the result would have been practically the same as if he had submitted them while the first step was still pending, with only a slight delay of a few days in the processing of the matter at the first step.

The second issue is:

Did the respondent comply with the Administrative Practices Manual's requirements regarding the non-contract grievance procedure relative to the grievance filed by the appellant on 6/22/81?

The respondent failed to provide Mr. Wing with a meeting with his immediate supervisor, as required by the APM:

Agency grievance procedures shall provide that the employe shall first discuss any problem or complaint with his/her immediate supervisor within 10 work days from the date of awareness of the action or condition giving rise to the problem or complaint...." § I.D. 1.e.


It has not been argued, nor is it apparent to the Commission, that Mr. Wing's insistence on tape recording such a meeting is prohibited by the APM or in any other sense provides a basis for the respondent to have denied a meeting.

The next question is whether the respondent erred in its determination that the time for answering the first step was extended by the appellant's filing of an amended grievance. The APM does not specifically address this issue. However, the respondent's construction of the grievance procedure cannot be said to be improper. If the agency has to respond to a grievance within seven days, it would not be reasonable to require that it respond on the seventh day to an amended grievance, which might vary in substance from the original grievance. In the instant case the amendment was not substantial, but the agency should not be required, on a case by case basis, to determine what amendments are substantial and would permit an additional seven days.

ORDER

Having considered this grievance as an appeal at the fourth step, this matter is remanded with directions that, if Mr. Wing wishes to pursue this grievance, that it be refiled at the first step with the indicated documents attached, and that the respondent afford the appellant a meeting prior to the filing of the written grievance, if requested.

Dated: February 7, 1983 STATE PERSONNEL COMMISSION


DONALD R. MURPHY, Chairperson

AJT:jmf


LAURIE R. McCALLUM, Commissioner

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