

2. In a memo to Ms. Norman-Nunnery dated January 15, 1988, and received by her on January 19, 1988, appellant took issue with the December 16 memo. Appellant did not characterize his memo as a non-contractual grievance nor did he use a grievance form.

3. Ms. Norman-Nunnery did not respond to appellant's January 15 memo.

4. Appellant filed a copy of his January 15 memo with respondent's Bureau of Personnel and Employment Relations (BPER) on February 4, 1988. Appellant did not characterize his memo as a non-contractual grievance nor did he use a grievance form.

5. BPER did not respond to appellant's January 15 memo.

Section ER 46.05(1), Wis. Adm. Code, provides:

ER 46.05 Form and filing of the grievance. (1)
Grievances shall be submitted to the designated employer representative on the forms provided by the employer.

Section ER 46.06, Wis. Adm. Code, provides:

ER 46.06 Procedures and time limits. (1) All grievances shall be filed with the designated employer representative no later than 30 calendar days from the date the employe first became aware or should have become aware of the matter grieved.

(2) Grievances shall be pursued in accordance with the following steps and time limits:

(a) First step. Within 7 calendar days of receipt of the grievance from the employe or representative, the designated employer representative shall meet with the grievant and representative to hear the grievance and deliver a written decision on the grievance form to the grievant and representative.

(b) Second step. 1. If the grievant is dissatisfied with the decision received from the employer representative at the first step under par. a., the decision must be grieved to the next designated employer representative within 7 calendar days from receipt of the answer at the first step under par. (a).

2. The employer representative shall meet with the grievant and representative and attempt to resolve the grievance. A written decision shall be placed on the grievance form following the meeting by the employer representative and delivered to the grievant and representative within 7 calendar days from receipt of the grievance by the employer representative.

(c) Third step. 1. If the grievant is dissatisfied with the decision received from the employer representative at the second step under par. (b) 2. the decision must be grieved to the appointing authority or designee within 7 calendar days from receipt of the answer at the second step under par. (b) 2.

2. Upon receipt of the grievance at the third step under subd. 1, the designated employer representative shall meet with the grievant and representative to discuss and attempt to resolve the grievance. Following this meeting, the written decision of the agency shall be placed on the grievance form by the appointing authority of the agency or designee and delivered to the grievant and representative within 21 calendar days from receipt of the grievance to the third step under this paragraph.

(3) If the last day on which a grievance is to be filed or a decision is to be grieved or served is a Saturday, Sunday, or legal holiday, or the day specified in s. 230.35(4)(a) 10., Stats., the grievance may be filed or the decision may be grieved or served on the next day which is not a Saturday, Sunday, or legal holiday, or the day specified in s. 230.35(4)(a) 10., Stats.

(4) A grievance or a decision is timely if received by the employer during normal business hours or post-marked by 12:00 midnight on the due date.

(5) The employer and grievant may mutually agree in writing to waive the time limits at any step under sub. (2).

(6) The employer and grievant may mutually agree to waive a meeting at any step to facilitate or expedite resolution of the grievance.

(7) The employer and grievant may mutually agree in writing to conduct either or both the second and third step meetings under sub. (2)(b) and (c), respectively, by telephone.

Section ER 46.07, Wis. Adm. Code, provides:

ER 46.07 Personnel commission. (1) If the grievant is dissatisfied with the decision received from the appointing authority or designee at the third step under s. ER 46.06(2)(c) 2., the decision may be grieved to the commission only if it alleges that the employer abused its discretion in applying subch. II, ch. 230, Stats., or the rules of the administrator promulgated under that subchapter, the rules of the Secretary promulgated under ch. 230, Stats., or written agency rules, policies, or procedures, except that decisions involving the following personnel transactions may not be grieved:

- (a) A written reprimand;
- (b) A performance evaluation/ or
- (c) The evaluation methodology used by an employe to determine a discretionary pay award, or the amount of the award.

(2) Grievances to the commission must be filed within 30 calendar days after service of a decision issued at the third step of the grievance procedure under s. ER 46.06(2)(c) 2., or within 30 calendar days after the last day on which the employer could have served a timely decision, whichever is sooner.

Section ER 46.08, Wis. Adm. Code, provides:

ER 46.08 Failure to meet time limits. (1) The employer shall reject any grievances not filed or any decision not grieved in accordance with the time limits set forth in this chapter. Any decision not grieved in a timely manner shall be decided on the basis of the last preceding decision.

(2) If the grievance is not answered within the time limits set forth in this chapter, the grievant may proceed to the next step under s. ER 46.06(2) within 7 calendar days after the last day on which the grievance could have been timely answered.

(3) If the grievance at the third step under s. ER 46.06(2)(c) 2. is not answered within the time limits set forth in this chapter, the grievant may proceed directly to the personnel commission in accordance with s. ER 46.07.

It is clear that appellant failed to follow the proper procedure for filing a non-contractual grievance:

a) Appellant did not submit a completed grievance form to respondent nor did he designate his January 15 memo as a non-contractual grievance; (see Section ER 46.05(1), Wis. Adm. Code)

b) Appellant did not file his January 15 memo with the proper individual or office at the first step;

c) Appellant did not file his January 15 memo within 30 days of the date he received notice of Ms. Norman-Nunnery's memo. (see Section ER 46.06(1)(4), Wis. Adm. Code)

The PC concludes, therefore, that neither respondent nor the Personnel Commission is required to process appellant's January 15 memo as a non-contractual grievance, i.e., respondent was not required to issue a decision in response to such memo and there is, therefore, no decision of respondent's which the Personnel Commission may review.

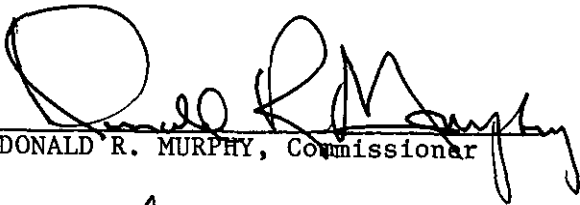
Moreover, the December 16, 1987, memo to appellant from Ms. Norman-Nunnery, is clearly a written reprimand; even if not expressly designated as such by respondent. Section ER 46.07(1)(a), Wis. Adm. Code, clearly provides that written reprimands may not be grieved to the Personnel Commission at the 4th step of the non-contractual grievance process. Although appellant contends that he is actually grieving respondent's failure to discuss the substance of such memo with him before issuing it, such a distinction is not compelling in this instance.

ORDER

Respondent's motion is granted and this appeal is dismissed.

Dated: July 27, 1988 STATE PERSONNEL COMMISSION

LRM:jmf
JMF10/1


DONALD R. MURPHY, Commissioner


LAURIE R. McCALLUM, Commissioner

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