

September 1, 2009

TO: Karyl Elinski

FROM: Teresa Parsons, SPHR
Director's Review Program Supervisor

SUBJECT: Karyl Elinski v. Public Employment Relations Commission (PERC)
Director's Review Request No. RULE-09-004

On June 10, 2009, the Department of Personnel received your request for a Director's review regarding allegations that PERC violated civil service laws and rules. On June 18, 2009, Karen Wilcox, Director's Review Coordinator, provided a list of dates for both parties to send in additional written responses to the allegations. I conducted a Director's review based on the written documents in the file. A complete list of exhibits is attached.

Nature of Alleged Violation

Specifically, you allege PERC violated RCW 41.06, WAC 357-40-010, and WAC 357-40-015 with regard to a letter of reprimand you received on May 11, 2009.

RCW 41.06.010 establishes a system of personnel administration for the state that governs, in part, discipline, as well as training and career development of civil service employees.

Chapter 357-40 WAC discusses disciplinary actions. WAC 357-40-010 states that "a[n] appointing authority may dismiss, suspend without pay, demote, or reduce the base salary of a permanent employee under his/her jurisdiction for just cause.

WAC 357-40-015 provides the following:

Employers may develop a corrective discipline policy that identifies actions that an appointing authority may take other than dismissal, suspension, demotion, or reduction in base salary, that represent alternative formal measures that do not deprive an employee of pay, yet still help an employee address unsatisfactory performance. Actions taken by an appointing authority in accordance with the employer's corrective discipline policy carry the same weight as disciplinary actions which impact pay.

Background

You began your employment with PERC in February 2003, and your current classification is a Labor Relations Adjudicator/Mediator 2. In early 2006, Mark Downing, Field Services Manager, became your supervisor.

On May 11, 2009, you received a letter of reprimand from your supervisor, Mr. Downing (Exhibit 4).

Summary of Ms. Elinski's Allegations

You contend the letter of reprimand you received served as a disciplinary action. You assert WAC 357-40-010 and WAC 357-40-015 establish only two classes of discipline that an employer may take: 1) the disciplinary actions included in WAC 357-40-010, which do not include letters of reprimand, or 2) alternative disciplinary actions described in an employer's corrective discipline policy. You assert PERC violated the above rules because PERC has not adopted any policy regarding letters of reprimand or corrective action. You further assert the letter of reprimand was issued without just cause and that it contained false and misleading statements presented out of context. You argue that no investigation occurred regarding the statements in the letter of reprimand and that no one asked for your side of the story. As a result, you contend you were denied due process. You acknowledge PERC provided you the option of attaching a statement to the letter of reprimand; however, you assert it was after the letter had been issued and included in your personnel file. You contend the letter of reprimand should be removed from your personnel file entirely.

Summary of PERC's Response to Alleged Rule Violations

PERC contends the letter of reprimand issued by your supervisor served as a corrective action, not a formal disciplinary action, as outlined in WAC 357-40-010. PERC also notes the letter of reprimand was not issued by the appointing authority. PERC asserts the letter of reprimand was issued with the goal of correcting undesirable on-the-job behavior, which PERC contends was verified before issuing the letter. PERC asserts the letter stated the issues, the expectations, and the consequences if the behavior continued. PERC further asserts that your supervisor has an obligation to hold you accountable in meeting the required core competencies of your position. PERC contends an agency may issue a letter of reprimand without having a corrective disciplinary policy in place, noting that such a policy is optional. PERC indicates that on the date you received the letter of reprimand, the Human Resources (HR) Manager, Diane Tucker, asked you if you had any questions, invited you to have further discussion, and informed you that you could write a rebuttal. PERC asserts Ms. Tucker also informed you that you could provide a written request to remove the letter of reprimand, which would be reviewed by the Executive Director to determine whether the issues in the letter were still relevant concerns. PERC asserts you did not submit a rebuttal or engage in any further discussion with HR. PERC maintains that no rule violations occurred.

Director's Determination and Rationale

WAC 357-40-010 provides that "an appointing authority may **dismiss, suspend without pay, demote, or reduce the base salary** of a permanent employee under his/her jurisdiction for just cause" (emphasis added). The rule refers to formal disciplinary actions taken by an appointing authority. In this case, your supervisor issued a letter of reprimand intended to correct undesirable behavior in the workplace. Letters of reprimand are not considered formal disciplinary actions, as described in WAC 357-40-010.

WAC 357-40-015 provides, in part, that an employer "may develop a corrective discipline policy that identifies actions that an appointing authority may take . . . that represent alternative formal measures . . . yet still help an employee address unsatisfactory performance." Although PERC's Executive Director, Cathleen Callahan, may have been aware of the letter of reprimand, the letter still served as a corrective action issued by your supervisor. This differs from a formal disciplinary sanction imposed by an appointing authority. Further, the rule provides an employer with the discretion to develop a corrective discipline policy. This is further supported by the Required and Recommended Agency Policies identified on the Department of Personnel's website (Exhibit 7 attachment) and <http://www.dop.wa.gov/rules/Tools/Pages/Requiredandrecommendedagencyolicies.aspx>.

In summary, WAC 357-40-010 and WAC 357-40-015 govern disciplinary actions imposed by an appointing authority for just cause. The rules do not prohibit an agency from using corrective action instead of formal disciplinary action. Therefore, you have not met your burden of proving that PERC violated any civil service laws or rules.

Appeal Rights

WAC 357-49-018 provides that either party may appeal the results of the Director's review to the Personnel Resources Board (board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination.

The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located at 600 South Franklin, Olympia, Washington. The main telephone number is (360) 664-0388, and the fax number is (360) 753-0139.

If no further action is taken, the Director's determination becomes final.

c: Diane Tucker, PERC
Tina VanderWal, DOP
Connie Goff, DOP

Enclosure: List of Exhibits

Karyl Elinski v. Public Employment Relations Commission

RULE-09-004

List of Exhibits

1. Request for Director's Review of alleged rule violations, received June 10, 2009
2. Letter of Explanation from Karyl Elinski (pages 1-6)
3. Email correspondence between Karyl Elinski and Cathleen Callahan (March 6 – 11, 2009)
4. Letter of Reprimand, dated May 11, 2009
5. Email correspondence between Karyl Elinski and Cathleen Callahan (March 5 & 6, 2009) Subject: Deferral to Arbitration Discussion
6. WAC 357-40-010 and WAC 357-40-015
7. June 18, 2009 letter to the parties from Karen Wilcox scheduling written review
8. July 16, 2009 letter to Karen Wilcox with PERC's response to alleged rule violations
9. August 3, 2009 letter from Karyl Elinski in response to PERC's July 16, 2009 letter (in Exhibit 8)
10. August 20, 2009 letter from Diane Tucker, PERC, in response to Karyl Elinski's August 3, 2009 letter (in Exhibit 9)