



DANE COUNTY EGR 720
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Step 3 Grievance: SharePoint Access

Employer: Dane County	Date of Alleged Infractions: 09/03/2020
Department: Human Services	Supervisors: Nikia Morton, Tony Sis
Employees: Multiple	Work Location: Job Center Office (JCO)
Grievance No: 20200903	Dates: 9/17/2020 (initial), 11/23/2020 (modified)

Relevant Sections of Dane County Civil Service Ordinance, Chapter 18, Dane County Code

- Section 18.06 “Employees Right to Self-Organization”
- Section 18.24 “Employee Benefit Handbook”

Employee Benefit Handbook Violations

- Existing Benefits
- Vacation
- Any other provisions that may apply

Statement of Circumstances:

All Economic Assistance and Work Services (EAWS) Division staff received an email from Tony Sis on September 3, 2020 (Attachment A) stating that the division would end Capital SharePoint access for all Dane County Economic Support Specialists (ESS).

Violations of the Employee Benefit Handbook:

1. SharePoint: An Existing Benefit/Amenity

Dane County ESS have enjoyed access to SharePoint for approximately seven and a half years. This platform was first used by the employer in 2013 as the EAWS Division converted from an “individual caseworker” model to the “consortium” model. This was a significant change in operations for the agency: under the consortium model, the majority of the daily work performed by ESS is done via a call center and certain staff levels need to be maintained. The primary method of tracking coverage levels and staff outages is through a calendar within the SharePoint platform. Therefore, the calendar has been integral in allowing ESS to review needed coverage, plan their own time off requests, and ensure their

supervisor has documented approved requests correctly. Since employees with read-only access of the SharePoint calendar generally do not need access to the calendar to perform their day-to-day job duties, it follows the only feasible reason it had been provided to employees was as an amenity to help employees manage their time off requests.

The Employee Benefit Handbook (EBH) states, “the County shall continue existing benefits [...] or other amenities not mentioned herein that are primarily related to wages, hours and conditions of employment, but established by practice with the knowledge and tacit consent of the County, for the life of this Handbook.” (Attachment B)

A further illustration of how ESS have used the SharePoint platform as an existing amenity is helpful in framing this particular issue. As in many workplaces, one of the most frequent stretches of time off requests in the division occurs during the weeks of Christmas and New Year’s Day. The consortium’s call center remains open those weeks, and every year there are staff who are denied time off requests. Over the past seven years with read-only SharePoint access, any employee could review minimum coverage levels for any particular day. If an employee saw that a certain day was quickly approaching the limit - for example, during the aforementioned holiday season - they would be able to send a time off request immediately to their supervisor. If an employee had been denied a request, they could review SharePoint and view which other employees had been granted time off and personally request that employee to switch days off. Without access to the SharePoint calendar, the employee is essentially flying blind; the division has indicated in such a situation, they would now have to ask on their own to find out which individual employees have approved time off on the day the employee is seeking time off, before even asking if that employee would be willing to switch shifts.

The calendar within SharePoint also serves as an amenity in multiple ways:

- It allows employees to ensure that time off requests and other changes to their normal work schedule have been added appropriately to SharePoint without have to wait for confirmation via email from their supervisor (Attachment C shows an example of such confirmation).
- In instances where a supervisor does add the time off request to the SharePoint calendar, but fails to respond to an employee confirming the request has been approved (Attachment D), the employee can review the SharePoint calendar to check the status of their request. If it has been added, no additional action is required on behalf the employee.
- It provides a level of clarity for the employee not obtainable through emails between the employer and supervisor, as there is often confusion regarding whether or not time off requests have been added correctly. For example, Attachment E shows how an employee who previously requested time off for September 30, 2020 (see again Attachments C & D), is sent an email on that day from her supervisor, with a copy to the division’s Workload Manager. The employee’s supervisor inquires if the employee is at work at the office by reviving an email thread about a separate time off request the employee had requested on September 24, 2020 for a medical appointment. Obviously, the employee is out of the office, but responds the next day wondering why this was in question when she had already asked for the time off. The supervisor responds indicating he did not update SharePoint with the medical appointment. In fact, the employee was not at a medical appointment the day prior – the medical appointment occurred during the prior week on September 24.
- It can often quickly resolve any potential concerns relating to employee performance. Attachment F demonstrates how the supervisor indicates he is concerned with the employee’s time off requests because she asked for overlapping requests on the same day. The employee asks for

clarification regarding which requests overlapped, but again, never receives a response. Coincidentally, earlier in the year, the same supervisor told the same employee to check SharePoint to make sure such her requests were being added accurately (Attachment G). If managers cannot keep track of time off requests of employees they supervise even with access to SharePoint, one must question how employees can be expected to track their approved time off without such access.

- It allows employees to focus on their job duties by proactively catching errors made by the supervisor. Attachment H shows how an employee was assigned a list of work, which should not have been assigned as she had previously received approval to be off work during that period of time. However, since the request was not added to SharePoint, the employee then had to follow up with the supervisor who sent her the list of work to clarify why she did not work on the assigned tasks. With access to the SharePoint calendar, the worker would have been able to proactively fix the situation before it became a larger issue by notifying the supervisor of the apparent oversight.

Such examples are a clear demonstration that email correspondence alone is not an adequate replacement for the transparency and accountability that the SharePoint calendar provides to employees.

The division has also indicated they do not believe SharePoint qualifies as an existing benefit and/or amenity subject to this section of the Employee Benefit Handbook for various reasons. They have questioned whether a software program can be considered such a benefit, raising hypotheticals relating to cost or changing other software services the division currently uses. In this instance, the SharePoint software itself is not the existing amenity as much as the information, transparency and accountability it provides to staff. For example, the records in SharePoint could alternatively be maintained via a physical consortium-wide calendar instead of a software program. Removing access to SharePoint is akin to putting such a theoretical physical calendar under lock and key. This would also be viewed as revoking an existing amenity since the information and transparency the physical calendar provided would no longer be available to employees.

Additionally, the Employee Benefit Handbook does address vacation selection more broadly: “Each Dane County department head shall designate vacation periods for employees within his/her department according to classification or types of job of employees. Such vacation periods as are designated shall be sufficient to allow all employees to select their vacations. Employees shall be allowed to select their vacations from the designated period according to their seniority with the County. [...] No employee having properly selected his/her vacation according to his/her seniority shall be denied such vacation.” (Attachment B) Without a system to review vacation selections, employees are unable to verify if the employer is violating such provisions in the EBH when a vacation request is denied, which ultimately nullifies the employee’s guaranteed rights. The division asserts that because there have been no recent complaints or violations regarding this provision, it is not necessary to provide such information going forward. However, similar information regarding time off requests have been requested by the Employee Group Representative 720 (EGR 720) pertaining to safety-related concerns, which continue to go unanswered. This obviously makes it difficult to advance complaints when such information is withheld and amounts to illegal interference by the employer (which will be further detailed later in this grievance).

The division also contends the Existing Benefits clause only covers “negotiated” benefits such as health insurance or paid parental leave, noting there were no official negotiations pertaining to SharePoint when the employer first started utilizing the software in 2013. However, in the Step 2 Grievance Decision regarding this matter (Attachment I), Shawn Tessmann, Director of the Department of Human Services, acknowledged access to SharePoint is in fact an existing amenity for employees, labeling it “convenient

access to information.” Tessmann goes on to assert that it within management’s rights to impose unilateral changes by limiting this access to information. But since the department has in fact affirmed that the information contained within the SharePoint calendar is a convenience to employees, it now undoubtedly falls under the protection of the Existing Benefits clause of the EBH as an amenity used to implement vacation and other time off requests, established by practice and with the County’s approval. Therefore, any alteration and/or revocation of SharePoint access is subject to the process set forth in Dane County Ordinance 18.24(3) and (4) (Attachment J).

2. Protecting Employee Confidentiality: Who is Exposed?

The employer has provided multiple reasons behind their revocation of SharePoint. They have stated there could be confidential information contained within SharePoint and pointed to a recent incident of how an employee used the calendar to speculate about the likelihood of other workers getting a promotion in a different county. On this matter, there is some agreement between the division and EGR 720 that confidential employee information should be safeguarded, as demonstrated by a correspondence sent from EGR 720 to Mr. Sis the same day the revocation was announced (Attachment K). The correspondence goes on to request “SharePoint remain accessible to general staff” and then lists alternative ways to maintain employee confidentiality such as “removing all extraneous details of attendance (FMLA, planned/unplanned, vacation/sick) [...] off of SharePoint and staff schedule details being limited to ‘in,’ ‘out,’ ‘in at __,’ or ‘out at __.’” Simply revoking SharePoint for a group of employees does not actually solve the issue of confidentiality as dozens of lead workers and supervisors across various counties with the consortium still maintain access to the SharePoint platform. EGR 720 contends the solution is instead to change how such confidential personnel information is maintained within SharePoint by supervisors and/or other employees who have the ability to modify the contents of the platform. There can also be consortium-wide guidelines for employees with read-only access of the SharePoint calendar so they are aware what constitutes appropriate use of the platform (provided such guidelines do not interfere with the employees’ existing rights). If those guidelines are not followed, management can take the necessary actions to rectify inappropriate behavior.

Another concern the division has cited as a reason for revoking SharePoint access is a potential violation of FMLA rules. EGR 720 found this particular reason somewhat curious, as the Family and Medical Leave Act was signed into law in 1993, twenty years before SharePoint access was approved for ESS. When pressed on the issue, the division could also not explain how such “FMLA rules” have changed during the seven and a half years that ESS have enjoyed access to the software, nor why such discussions did not originally occur in 2013. The Family Medical Leave Act does provide protections to employees in that individually-identifiable health information and medical records should be maintained in separate files/records from the usual personnel files. Consequently, such sensitive medical information should never be included within the SharePoint application. Therefore, as stated earlier, the issue ultimately can only be resolved by ensuring that those who have access to edit the SharePoint system do so in a way that protects employee privacy, as such information will still be available to dozens of staff and managers even if access is revoked for another group of employees.

The division has also indicated Dane County Corporation Counsel has opined that allowing ESS to access SharePoint leaves the county “exposed.” EGR 720 has requested written records leading up to the division’s decision. Mr. Sis orally shared the opinion of Ms. Mary Kasparek of Dane County Corporation Counsel on September 23, 2020 with EGR 720. Both EGR 720 representatives present at the time recall the opinion was only a few sentences long, did not contain any legal citations, and focused on how SharePoint could be used to prove patterns of unfair/disparate treatment.

Given such reasoning, it is important to elaborate on the context in which the decision to revoke SharePoint access was made. The announcement came merely two and a half weeks after EGR 720 informed the employer it was conducting a safety grievance investigation and made several requests for data, including information such as the “average hours of leave taken [...] within each job title” and the number of “instances a worker scheduled for front desk or OCL [on-call lobby] called in and a replacement was needed for the shift.” Such information could show patterns of unfair or disparate treatment as it pertains to worker safety and could potentially also be accessed through the SharePoint platform. So, while the division has stated its decision to limit SharePoint access was in the interest of employee confidentiality, it is now clear an alternative factor behind the decision was to reduce transparency in an attempt to limit the information available to employees, rather than engaging in productive dialogue and conversations to ensure the division is treating all employees fairly and avoiding disparities. The fact the division opted to proceed with this decision when it was aware EGR 720 was actively conducting an investigation amounts to illegal interference and domination by the employer while EGR 720 pursues its stated purpose of engaging with the employer, as described in Dane County Ordinance 18.06 (3) (Attachment J).

Request for Settlement or Corrective Action:

Employee Group Representative 720 requests that:

- a) All Dane County ESS access to SharePoint is restored while simultaneously maintaining confidential employee information,
- b) EAWS Administrators be enjoined against modifying the terms and conditions of employment except through the Employee Benefit Handbook process described in Sections 18.24(3) & (4) of Dane County Ordinance,
- c) EAWS Administrators refrain from interference and domination as described in Sections 18.06(3) of Dane County Ordinance,
- d) and that the employee(s) be made whole for any losses.

Derek Wallace

Derek Wallace

EGR 720 Steward

November 23, 2020

Date