



STATE OF WASHINGTON
OFFICE OF FINANCIAL MANAGEMENT

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM
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January 7, 2015

TO: Inti Tapia, WFSE

FROM: Holly Platz, SPHR
Director's Review Program Investigator

SUBJECT: Casey Bohlmann v. Bellevue College (BC)
Remedial Action REMA-14-003

On October 20, 2014, the State Human Resources office (SHR) received Casey Bohlmann's request for a Director's review of his hourly position asking the Director to take remedial action to confer permanent status (Exhibit A-1). He included timesheets showing his hours of work from November 18, 2013 through September 13, 2014 (Exhibit A-2).

In response to Mr. Bohlmann's request, BC's Human Resources office provided additional information including the Hourly/Student Employment Authorization form Mr. Bohlmann signed on July 8, 2014. This form indicates that Mr. Bohlmann's home department was Grounds (Exhibit B-1). At my request, BC confirmed that Mr. Bohlmann's initial date of hire as a non-student employee was November 12, 2013 and that his first day of work was November 18, 2013 (Exhibit B-22). BC provided a copy of Hourly/Student Employment Authorization form Mr. Bohlmann signed on November 4, 2013. The November 2013 form indicated that Mr. Bohlmann's home department was Grounds/Ops.

The form defines hourly employment as:

Temporary work which does not exceed 1,049 hours in any 12 consecutive month period from the original date of hire. Hourly employees generally work 16 hours per week, and are generally not eligible for retirement benefits.

The form further notified Mr. Bohlmann that:

An employee desiring to appeal alleged violation of WAC 357-19-435(1) of the Department of Personnel rules may appeal under the provisions of WAC 357-19-447. The appeal must be in writing and filed in the office of the director, Department of Personnel, within thirty calendar days after the effective date of the alleged violation of the conditions of employment.

In response to Mr. Bohlmann's remedial action request, BC provided time records beginning November 18, 2013 through September 9, 2014 (Exhibits B-2 through B-21). At my request, BC also provided a table showing the regular and overtime hours Mr. Bohlmann worked beginning November 18, 2013 through November 15, 2014 (Exhibit B-24). The table included the time he worked in Campus Operations and in Athletics. In addition, BC provided Mr. Bohlmann's timesheets for his work in Athletics (Exhibit B-25).

Relevant Laws and Rules

The State Civil Service Law is found in Chapter 41.06 RCW. RCW 41.06.070 provides, in part:

(1) The provisions of this chapter do not apply to:

...
(l) Inmate, student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board;

The state civil service rules are found in Title 357 WAC. WAC 357-04-010 provides, in part:

The provisions of the civil service rules apply to all employees and employers under the jurisdiction of chapter 41.06 RCW

WAC 357-19-435 provides:

A higher education employer may make a temporary appointment for the following reasons:

(1) The number of hours to be worked by the individual will not exceed one thousand fifty hours in any twelve consecutive month period from the original date of hire or October 1, 1989, whichever is later, in accordance with WAC 357-04-045; or

(2) The employing official formally assigns a classified employee the duties and responsibilities of a higher-level class for a period of less than six consecutive months.

WAC 357-19-450 provides:

For individuals in higher education temporary appointments under the provisions of WAC 357-19-435(1), the director may take remedial action to confer permanent status, set base salary, and establish seniority when it is determined that the following conditions exist:

(1) The employee has worked in one or more positions for more than one thousand fifty hours in any twelve consecutive month period since the original hire date or October 1, 1989, whichever is later. (Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the one thousand fifty hours.)

(2) The position or positions are subject to civil service.

(3) The employee has not taken part in any willful failure to comply with these rules.

WAC 357-19-450 provides, in part, the following:

For individuals in higher education temporary appointments under the provisions of WAC 357-19-435(1), the director may take remedial action to confer permanent status, set base salary, and establish seniority when it is determined that the following conditions exist:

(1) The employee has worked in one or more positions for more than one thousand fifty hours in any twelve consecutive month period since the original hire date or October 1, 1989, whichever is later. (Overtime and time worked as a student employee under the provisions of WAC 357-04-040 are not counted in the one thousand fifty hours.)

WAC 357-19-448 provides, in part, that "[r]equests for remedial action must be received in writing within thirty calendar days as provided in chapter 357-49 WAC. . . .

WAC 357-49-010(5) provides, in part, that an individual may make a request for remedial action "within thirty calendar days of the date the individual could reasonably be expected to have knowledge of the action giving rise to violation of the nonpermanent appointment or temporary appointment rules."

The Personnel Resources Board (PRB) has affirmed that "remedial action is based on the hours worked during any twelve consecutive month period, on an annualized basis, from the original date of hire." Rea v. South Puget Sound Community College, PRB Case No. R-RULE-08-002 (2009).

Director's Determination

As the Director's designee, I carefully considered all of the documentation and exhibits in the file. I first considered the timeliness of Mr. Bohlmann's request. As discussed below, Mr. Bohlmann exceeded the 1050 hour limit for temporary employment on July 8, 2014, the same date that he signed a second Hourly/Student Employment Authorization form. While the forms informed Mr. Bohlmann of his right to appeal and the timeline for such an appeal, having him sign a second form before he completed his initial twelve consecutive month period of temporary/hourly employment could blur an employee's understanding of the bright line of timeliness for when the time period of an appeal begins. In addition, I find it suspect that BC provided a second Hourly/Student Employment Authorization form to Mr. Bohlmann for signature on the same date that he exceeded the 1050 hour limit. Therefore, under the unique circumstances of this case, I find Mr. Bohlmann's request for remedial action timely filed.

With the assistance of BC staff, I compared Mr. Bohlmann's timesheets to the table BC produced showing the non-overtime and overtime hours he worked (Exhibit B-24) to determine the actual non-overtime hours that Mr. Bohlmann worked for the period relevant to this review. After reviewing Mr. Bohlmann's employment records, I conclude the number of hours worked in a temporary/hourly classified position meets the conditions to confer permanent status, as outlined in WAC 357-19-450(1). I also find that there is no indication that Ms. Bohlmann took part in a willful failure to comply with the rules. Therefore, I am granting his request for remedial action.

Background

For purposes of determining whether remedial action is warranted, the original date of hire is the date a person is hired into a non-student temporary/hourly appointment. Mr. Bohlmann's original date of hire into a non-student, temporary/hourly appointment was November 12, 2013. Therefore, consistent with WAC 357-19-450, the twelve consecutive month period has been established as November 12 through November 11.

Rationale for Determination

The twelve month period relevant for this review is November 12, 2013 through November 11, 2014. Based on my review of Exhibit B-24 and the relevant timesheets, the following summarizes Mr. Bohlmann's non-overtime work hours for this period.

PAY PERIOD	NON-OVERTIME HOURS
11/12/2013-11/16/13	0
11/17/2013-11/23/2013	40
11/24/2013-11/30/2013	24
12/1/2013-12/7/2013	40
12/8/2013-12/14/2013	40
12/15/2013-12/21/2013	40
12/22/2013-12/28/2013	33
12/29/2013-01/04/2014	16
1/5/2014-1/11/2014	40
1/12/2014-1/18/2014	40
1/19/2014-1/25/2014	32
1/26/2014-2/1/2014	40
2/2/2014-2/8/2014	35
2/9/2014-2/15/2014	40
2/16/2014-2/22/2014	26.5
2/23/2014-3/01/2014	40
3/2/2014-3/8/2014	32.5
3/9/2014-3/15/2014	31
3/16/2014-3/22/2014	35
3/23/2014-3/29/2014	40
3/30/2014-4/5/2014	28
4/6/2014-4/12/2014	40
4/13/2014-4/19/2014	35
4/20/2014-4/26/2014	33.5
4/27/2014-5/3/2014	40
5/4/2014-5/10/2014	37.5
5/11/2014-5/17/2014	34.5
5/18/2014-5/24/2014	21
5/25/2014-5/31/2014	27.5
6/1/2014-6/7/2014	40
6/8/2014-6/14/2014	16
6/15/2014-6/21/2014	16
6/22/2014-6/28/2014	16
6/29/2014-7/5/2014	16
7/6/2014-7/12/2014	16
7/13/2014-7/19/2014	16
7/20/2014-7/26/2014	8
8/10/2014-8/16/2014	16
8/17/2014-8/23/2014	40
8/24/2014-8/30/2014	32
8/31/2014-9/6/2014	40
9/7/2014-9/13/2014	16
9/14/2014-11/11/14	0
TOTAL	1250

Mr. Bohlmann's work hours exceeded 1,050 during the relevant twelve consecutive month period since the original hire date. Specifically, he exceeded 1,050 hours on, July 8, 2014.

He worked 77% of full-time hours for the period of November 12, 1013 – July 8, 2014, the date he passed the 1,050 hour threshold. The percentage of full-time hours is calculated as follows:

Month and Year	Total Non-overtime Hours	Total Work Hours Available
November 12-30, 2013	64	112 (8x14)
December 2013	138	176 (8x22)
January 2014	168	184 (8x23)
February 2014	125	160 (8x20)
March 2014	146	168 (8x21)
April 2014	162.5	176 (8x22)
May 2014	134.3	176 (8x22)
June 2014	96	168 (8x21)
July 1-8, 2014	24	48 (8x6)
Total	1057.8	1368
% of full-time hours	1057.8/1368 = 77%	(Includes holidays but not weekends)

In reaching my determination, I also reviewed a prior Personnel Appeals Board (PAB) decision Myers v. University of Washington, PAB Case No. RULE-01-0038 (2002). In Myers the Board found that “[i]n spite of Respondent’s efforts to monitor Appellant’s hours of temporary work . . . Appellant . . . exceeded the 1050 hour threshold.” While the circumstances differ from this case, in Myers the Board concluded respondent had been “aware of its duty and responsibility to monitor Appellant’s hours of work and to comply with the provisions of the temporary appointment rules,” which respondent, for the most part, had successfully done. However, the Board further concluded “the intent of the rules . . . lead to inclusion in the civil service with exclusion being the exception within narrowly defined parameters.” Therefore, the Board granted permanent status.

Following the guidance in Myers that the intent of the rules lead to inclusion in the civil service, Mr. Bohlmann’s request for remedial action meets the criteria outlined in WAC 357-19-450. Therefore, he became a permanent classified employee on July 8, 2014, the date he exceeded the 1,050 hour temporary/hourly employment limitation. His seniority date is July 8, 2014. The percentage of time is 77% of full-time. BC’s HR Office will establish his position’s allocation, salary range, and periodic increment date, and any vacation/sick leave accrual, holidays, personal holiday, personal leave, and eligible retirement in accordance with the civil service rules. Similarly, BC will pay the difference between the actual salary paid and the salary due, if any, including premium pay, had the appropriate employment procedures been applied.

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 on the 3rd floor of the Raad Building, 128 10th Avenue SW, Olympia, Washington. The main telephone number is (360) 407-4101, and the fax number is (360) 586-4694.

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

c: Casey Bohlmann
Aaron Hilliard, BC HR
Connie Goff, SHR

Enclosure: List of Exhibits

CASEY BOHLMANN v BELLEVUE COLLEGE
REMA-14-003

A. Casey Bohlmann Exhibits

1. Director's Review Form received October 20, 2014 (2 pages)
2. Timesheets from November 16, 2013 to September 15, 2014

B. Bellevue College Exhibits

1. July 2014 Bellevue College Employment Authorization Form
2. 9/1-9/15 2014 Timesheet
3. 8/16-8/31 2014 Timesheet
4. 8/1-8/15 2014 Timesheet
5. 7/16-7/31 2014 Timesheet
6. 7/1-7/15 2014 Timesheet
7. 6/16-6/30 2014 Timesheet
8. 6/1-6/15 2014 Timesheet
9. 5/16-5/31 2014 Timesheet
10. 5/1-5/15 2014 Timesheet
11. 4/16-4/30 2014 Timesheet
12. 4/1-4/15 2014 Timesheet
13. 3/16-3/31 2014 Timesheet
14. 3/1-3/15 2014 Timesheet
15. 2/16-2/28 2014 Timesheet
16. 2/1-2/15 2014 Timesheet
17. 1/16-1/31 2014 Timesheet
18. 1/1-1/15 2014 Timesheet
19. 12/16-12/31 2013 Timesheet
20. 12/1-12/15 2013 Timesheet
21. 11/16-11/30 2013 Timesheet
22. November 2013 Bellevue College Employment Authorization Form
23. December 8-9, 2014 email chain re: Investigator requesting/receiving original date of hire with relevant timesheets
24. Timesheets for Campus Operations
25. Timesheets for Athletics