



STATE OF WASHINGTON  
OFFICE OF FINANCIAL MANAGEMENT

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM  
P.O. Box 40911 · Olympia, WA 98504-0911 · (360) 407-4101 · FAX (360) 586-4694

April 23, 2015

TO: Patrick Neville, WPEA

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

SUBJECT: Robert Herbruger v. Bellevue College (BC)  
Remedial Action REMA-15-001

On March 10, 2015, the State Human Resources office (SHR) received Robert Herbruger's request for remedial action. (Exh.1) By letter dated March 13, 2015, Director's review staff acknowledged receipt of the request and asked BC to provide Mr. Herbruger's appointment letter and his payroll time records for the relevant time period. (Exh. 2)

BC's Human Resources office provided the requested information on March 25, 2015. BC provided the Hourly/Student Employment Authorization form Mr. Herbruger signed on July 22, 2014 (Exh. 4) and the hours he worked from July 21, 2014 to February 5, 2015. (Exh. 4)

After reviewing the information BC provided, I requested additional documents. On April 21, 2015, BC provided copies of:

- Mr. Herbruger's original Hourly/Student Employment Authorization form which indicates he was originally employed as a temporary employee on July 1, 2011. (Exh. 5)
- Mr. Herbruger's appointment letter for the Project Operations Support/Plant Communications Coordinator position which indicates his project appointment was effective February 6, 2015. (Exh. 6)

Based on the additional information provided, Mr. Herbruger's temporary employment concluded on February 5, 2015. He began employment in a five month project position effective February 6, 2015.

The Collective Bargaining Agreement (CBA) between the State of Washington and the Washington Public Employees Association (WPEA) provides that temporary positions are subject to remedial action under the provisions of Chapter 357-49 WAC. Project positions are governed by the provisions of the CBA. Project positions are not temporary appointments subject to remedial action.

The Hourly/Student Employment Authorization forms define 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 forms notified Mr. Herbruger 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.

### **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. Herbruger's request. Mr. Herbruger's temporary employment ended February 5, 2015. His request for remedial action was filed March 10, 2015, more than thirty days after the conclusion of his temporary appointment.

In addition, the Hourly/Student Employment Authorization forms clearly notified Mr. Herbruger of his right to appeal if his hours of work exceeded 1049 hours in any 12 consecutive month period from the original date of hire. The form also notified him that an appeal must be in writing and filed within thirty calendar days after the effective date of the alleged violation.

Mr. Herbruger was aware of his right to appeal and aware of the timeline in which to file an appeal. Because his request for remedial action was filed more than thirty days after the conclusion of his temporary appointment, his request is untimely.

Further, after reviewing Mr. Herbruger's employment records, I conclude the number of hours he worked in an temporary/hourly classified position between July 1, 2014 through February 5, 2015, did not exceed 1050 hours. Therefore, had his request been timely, his hours of work would not have met the conditions to confer permanent status, as outlined in WAC 357-19-450(1).

According to WAC 357-49-010(5), the request for remedial action must be made "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.”

Mr. Herbruger was provided proper notice of the conditions of his employment and the rules governing his employment. In addition, he had knowledge of the hours he worked by creating and submitted his timesheets and he was provided notice of his right to appeal if he felt the rules governing his employment were violated. Mr. Herbruger's last day of employment as a temporary employee was February 5, 2015. His request for remedial action was not received until March 10, 2015. Therefore, his request is untimely and this matter is closed.

### **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: Aaron Hilliard, BC  
Robert Herbruger, EE  
Connie Goff, OSHRD

Enclosure: List of Exhibits