

August 1, 2007

Mr. Paul Vilja

RE: Request for Director's Review of Alleged Rule or Law Violation [RULE-07-003]

Dear Mr. Vilja:

On July 18, 2007, the Department of Personnel received your request for a Director's review of alleged violations of RCW 41.06.022, and several rules under WAC 357-13 and WAC 357-58 regarding classification and Washington Management Service (WMS). Director's reviews of alleged rule violations are governed by RCW 41.06.170. On July 24, 2007, Karen Wilcox, Director's Review Coordinator, contacted you by telephone to seek clarification on your request. At that time, Ms. Wilcox learned you were covered by a collective bargaining agreement (CBA) between the state of Washington and Service Employees International Union (SEIU) District 1199 NW. You followed up with an email regarding your request and the provisions of your CBA.

In a brief conversation with you on July 25, 2007, Ms. Wilcox informed you that it appeared DOP lacked jurisdiction to consider your request under RCW 41.06.170. In an email response you wrote that you "challenge the determination of the Department of Personnel that RCW 41.06.170 subsection (5) prevents any employee who is covered by a Master Agreement from filing for a review by the Director of Personnel . . ."

First, I want to clarify that Ms. Wilcox's comments were to provide you with information, not issue a Director's determination. I have, however, reviewed your request and concluded that DOP does lack jurisdiction to consider your request. RCW 41.06.170(2) applies to appeals of disciplinary actions and alleged rule violations:

Any employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service . . . **or any employee who is adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or rules adopted under it, shall have the right to appeal . . .**" (emphasis added).

RCW 41.06.170 (5) then notes, “[s]ubsections (1) and (2) of this section **do not apply to any employee who is subject to the provisions of a collective bargaining agreement . . .**”

The Director’s review of an alleged rule violation is the first step in the appeal process (WAC 357-49-017). Since you are covered by a collective bargaining agreement, you do not have the right to file such an appeal under the RCW.

If it is your intention to address the allocation or reallocation of your own position, RCW 41.06.170 (4) may be applicable. Because you reference Ward Program Manager positions in general, it is unclear to me whether you are referring to your own position or advocating on behalf of someone else. You may be able to pursue an allocation review by first going through your employer’s position review process and then requesting a Director’s review of your employer’s determination, if you disagree. Please reference your CBA for the position review process. If you have questions, I encourage you to contact your union representative.

For the reasons stated above, DOP lacks jurisdiction to consider your request for a Director’s review of an alleged rule violation. Therefore, we will consider this matter closed. If you have any questions, please contact me at (360) 664-0479.

Sincerely,

Teresa Parsons
Director’s Review Supervisor
Legal Affairs Division

c: Andrew Phillips, DSHS/WSH
Pam Pelton, DSHS