

April 7, 2008

Tyler H.L. Tornabene, Attorney at Law
Etter, McMahon, Lamberson, Clary,
Troppmann & Oreskovich, P.C.
Bank of Whitman Building, 2nd Floor
618 West Riverside Avenue
Spokane, WA 99201

RE: Director's Review Request for Richard Harwood [RULE-08-001]

Dear Mr. Tornabene:

On March 25, 2008, the Department of Personnel received your request for a Director's review of Richard Harwood's Grievance (Grievance #WHRC-03-08). The Department of Personnel, however, lacks jurisdiction to consider this request.

In the Director's review request, you allege the Washington State Horse Racing Commission (WHRC) violated WAC 357-19-025, which pertains to an employee's trial service period.

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 . . .**"

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 . . .**" (emphasis added).

The Director's review of an alleged rule violation is the first step in the appeal process (WAC 357-49-017). Since Mr. Harwood appears to be covered by a collective bargaining agreement, he does not have the right to file such an appeal under the RCW.

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Therefore, we will consider this matter closed. If you have any questions, please contact me at (360) 664-0479.

Sincerely,

Teresa Parsons, SPHR
Director's Review Program Supervisor
Legal Affairs Division

c: Robert Leichner, WHRC
Anita Hunter, WFSE