BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

KIM GERACI-ELWELL, Appellant, v. CASCADIA COMMUNITY COLLEGE, Respondent.	Case No. DISM-04-0092 ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. INTRODUCTION

1.1 **Consideration of Motion.** This appeal came on for hearing before the Personnel Appeals Board, BUSSE NUTLEY, Vice Chair, and GERALD L. MORGEN, Member, for consideration of Respondent's Motion for Summary Judgment. The motion was considered on June 6, 2005.

1.2 **Representation.** Appellant is *pro se*. Morgan Damerow, Assistant Attorney General, represented Respondent Cascadia Community College.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including Respondent's Motion for Summary Judgment, with attachments, filed April 25, 2005. Appellant did not file a response.

II. BACKGROUND AND FACTS

2.1 On August 13, 2003, the Public Employment Relations Commission certified the Washington Public Employees Association (WPEA) as the exclusive bargaining representative for the Classified Staff Bargaining Unit (CSBU) at Cascadia Community College (CCC). The CSBU members held an election to determine whether membership in the union would be a requirement

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for all CSBU members. The CSBU members voted affirmatively establishing a union shop provision within the CSBU. Appellant was employed as a part-time Payroll Technician, and her position was included within the CSBU.

2.2 By letter dated June 25, 2004, the WPEA notified CCC President Dr. Victoria Muñoz Richart that Appellant was not in compliance with the union shop requirements and requesting that Appellant be terminated from employment. The WPEA indicated that Appellant was provided notice of her obligations under the union shop certification on November 14, 2003, January 20, 2004, and June 9, 2004.

2.3 President Muñoz Richart contacted Appellant by letter dated June 30, 2004, informing her of the WPEA's request that Appellant be terminated and requested that she notify CCC whether she intended to meet her union shop obligations. On July 9, 2004, Appellant responded and indicated she had considered her options and was not willing to join the WPEA. Appellant wrote, " … I understand that my employment at Cascadia Community College as the Payroll Technician … will be terminated at the close of business day on July 23, 2004."

2.4 By letter dated July 20, 2004, CCC Acting President Jean Hernandez notified Appellant, that pursuant to WAC 251-14-058, her employment was terminated effective August 4, 2004.

2.5 Appellant filed a timely appeal with the Personnel Appeals Board on August 30, 2004.

2.6 On April 25, 2005, Respondent filed a Motion for Summary Judgment. Respondent argues that the undisputed facts establish that Appellant failed to fulfill her obligation under the union shop certification requirement and she failed to provide any legal justification for failing to do so. Respondent argues that because Appellant failed to provide any evidence that would authorize and

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require a rescission of the termination, the appointing authority's decision to terminate should be upheld.

III. DISCUSSION

3.1 Summary Judgment may be rendered where there are no genuine issues as to any material fact and the appeal should be decided or dismissed as a matter of law. WAC 358-30-060(1). All facts and reasonable inferences therefrom are to be determined in favor of the nonmoving party.

3.2 In order to preclude summary judgment, the non-moving party must set forth specific facts by affidavit or otherwise show a genuine dispute of material fact. A material fact is one upon which the outcome of the litigation depends. Hudeman v. Foley, 73 Wn.2d 880, 886, 441 P.2d 532 (1968).

3.3 The question here is whether Appellant's termination should be affirmed for her failure to comply with WAC 251-14-058, which provides as follows:

> Union Shop requirements. (1) When a majority of employees within a bargaining unit determine by election to require as a condition of employment membership in the employee organization designated as the exclusive bargaining representative, all employees included in that bargaining unit are required to pay to such employee organization the regular dues of the organization, or pay a representation fee or nonassociation fee, within thirty calendar days of the beginning of their employment within the bargaining unit or within thirty calendar days of the date of the union shop representative election, whichever is later.

2.4 There is no dispute that Appellant did not comply with her obligations under the union shop certification as required under WAC 251-14-058.

3.5 WAC 251-11-100, provides as follows:

> Appointing authorities shall dismiss an employee who is employed within a bargaining unit that has a certified union shop representative when notified by the union shop representative of the employee's failure to comply with union shop requirements per WAC 251-14-058. The employee shall be given the opportunity to respond to the representative's notification as provided in WAC 251-11-020

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> before the notice of dismissal is given. If, thereafter, notice is necessary, it shall be furnished in writing to the employee at least fifteen calendar days prior to the effective date of the action. Prior to the effective date, the dismissal shall be rescinded upon the employee's presenting evidence to the appointing authority of compliance with WAC 251-14-058 or that the union shop representative has not complied with WAC 251-14-020(2) or the representation fee or nonassociation fee requirements of WAC 251-14-058.

3.6 Appellant was provided with an opportunity to respond to the WPEA's request for termination. She did not provide any information contesting the legitimacy of the information provided. To the contrary, she acknowledged her obligation but affirmatively declined to join the union, and she did not provided any evidence as provided by WAC 251-11-100. Appellant has failed to provide a response to this motion, and she has failed to present any specific facts that establish a genuine dispute of material fact exists. Respondent has proven that under the facts and circumstances, dismissal was the appropriate sanction.

3.7 Therefore, Respondent's Motion for Summary Judgment should be granted, and the appeal should be denied.

Having reviewed the file and record in this matter and being fully advised in the premises, the Board enters the following:

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion for Summary Judgment is granted, and the appeal of Kim Geraci-Elwell is denied.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

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Busse Nutley, Vice Chair

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Gerald L. Morgen, Member

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