BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

JOHN BRAY, APPELLANT, vs. SEATTLE COLLEGES, RESPONDENT.	PRB CASE NO. R-JUR-18-011 **ORDER OF DISMISSAL**

This matter came before the Personnel Resources Board (the "Board"), NANCY HOLLAND YOUNG, Chair, VICKY BOWDISH, Vice-Chair, and SUSAN MILLER, Member, for dismissal pursuant to WAC 357-52-215 and WAC 357-52-220.

On July 24, 2018, the Personnel Resources Board (hereinafter the "Board") received John Bray's appeal of alleged rule violations that occurred during Appellant's contracted employment for Seattle Colleges.

The Appellant states that Seattle Colleges violated several rules and laws and that Seattle Colleges retaliated against him and his staff because the Appellant had advocated for better working conditions. The Appellant seeks reinstatement to his contract position of Executive Director, within the Financial Services and Planning section of the college.

Upon receipt of the appeal request, Board staff, on August 8, 2018, and pursuant to WAC 357-52-215(4), requested the parties provide written documentation outlining the jurisdictional issues prior to the Board's dismissal of matter. In particular, although several WACs and RCWs were provided as the alleged rule violations, the Board requested the parties address the issue of jurisdiction as it relates to employees exempted from civil service rules. The Board also sought a copy of the employment contract of the Appellant.

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The correspondence stated, "Affidavits and/or written argument must be submitted within twenty-one (21) calendar days of the date of this letter." Subsequently, on August 15, 2018, the Board received Respondent's response wherein it is asserted the Board lacks jurisdiction over the subject appeal as the position held by Appellant is exempt from civil service rules because the position held by the Appellant is subject to the provisions of RCW 41.06.070(2)(a).

The response included a copy of the exempt job announcement for which the Appellant was hired and subsequently signed a contract, and that the Appellant was not considered, nor classified in Washington Management Service. The Respondent further outlines the Appellant was a high-level, exempt manager that oversaw the district's policies across all three campuses. Respondent further argues that RCW 41.06.070(2)(a), which outlines the chapter's exemptions- right of reversion, precludes the Appellant from appealing because the duties performed by the Appellant align with, "[A]cademic divisions; other managerial or professional employees in an institution or related board having substantial responsibility for directing or controlling program operations and accountable for allocation of resources and program results…" Thus prevents the Appellant from appealing the college's decision to not renew the employment contract.

The Appellant argues Higher Education employees are not exempted from the rules promulgated under Chapter 357 WAC. Furthermore, the Appellant argues and cites several cases heard by higher courts whereby the courts' ruled that employees of higher education institutions should and must be treated the same as Washington General Service employees. Appellant states that with the present case he has an equal right to appeal, and therefore, the appeal should move forward.

Board Conclusion.

The Board having reviewed the file and records herein; and being fully advised in the premises, now and therefore enters the following order:

The Board lacks jurisdiction to hear appeals for those employees exempted from civil service. RCW 41.06.070 specifically outlines those employees that fall within those exemptions. These include both higher education and agency employees. Appellant's arguments that there is deferential treatment solely because of the employment location fail because some exemptions to civil service

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fall both within an agency and within a higher education institution and outside to both. Therefore, there is not a class of employees treated differently.

Although the cases cited by the Appellant do speak to fair treatment, the subject matter of the cases relate to pay (i.e. equal pay for equal work) and those employed within a higher education institution, in a classified position, must receive equal pay for the equal work performed. The cases do not cross over to exempted positions. This is plainly seen in Appellant's own arguments whereby Appellant outlines (only in part) the following:

- The Employees argue that the State's failure to equalize the basic salaries of common class employees…
- A party challenging classification bears the burden of proving it violates equal protection…
- A classification must be purely arbitrary to overcome the strong presumption that it is constitutional…
- …[T]he government action in question applies alike to all members of the designated class…

All of the cases cited by the Appellant are not the same subject matter as the case before the Board. The higher courts' rulings only applied to those employees allocated to the same or similar classes at higher education institutions that were paid differently than those employed within a state agency. Exempt positions are defined by RCW 41.06.070, and specifically higher education by RCW 41.06.070(2)(a), whereby the statute outlines that the following higher education position exemptions from civil service:

> Members of the governing board of each institution of higher education and related boards, all presidents, vice presidents, and their confidential secretaries, administrative, and personal assistants; deans, directors, and chairs; academic personnel; **and executive heads of major administrative** or academic divisions employed by institutions of **higher education**… other **managerial or professional employees in an institution** or related board having substantial responsibility for directing or controlling program operations and **accountable for allocation of resources and program results**, or for the formulation of institutional policy… [emphasis added]

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Based on the governing statute, the position held by the Appellant is exempted from civil service and therefore, the Appellant does not possess appeal rights before this Board.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED the appeals of JOHN BRAY V. SEATTLE COLLEGES, PRB CASE NO. R-JUR-18-011 is dismissed for lack of jurisdiction pursuant to RCW 41.06.070(2)(a).

DATED AND MAILED this 10 day of January, 2018.

WASHINGTON PERSONNEL RESOURCES BOARD

Nancy Holland Young

NANCY HOLLAND YOUNG, Chair

VICKY BOWDISH, Vice-Chair

SUSAN MILLER, Member

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