BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

JOSEPH "TRYGVE" VANDAL, Appellant, vs. BELLEVUE COMMUNITY COLLEGE, Respondent.	CASE NO. R-RULE-18-001 ORDER OF THE BOARD FOLLOWING HEARING ON EXCEPTIONS TO THE DETERMINATION OF THE DIRECTOR

Consideration of Exceptions. This appeal came before the Personnel Resources Board, NANCY HOLLAND YOUNG, Chair and VICKY BOWDISH, Vice Chair, on Appellant's exceptions to the Director's Determination dated August 5, 2018. This matter was considered based on the record, information obtained during the hearing on exceptions on October 9, 2018, and the written submissions of the parties.

Representation. Appellant, JOSEPH "TRYGVE" VANDAL, was present. Respondent, BELLEVUE COMMUNITY COLLEGE, was represented by Kelly M. Woodward, Assistant Attorney General.

Background. Appellant was employed in a temporary part-time hourly position at the Bellevue Community College in various positions throughout his tenure as a student and while not attending classes. Appellant and Respondent agree the records indicate the Appellant's first non-student employment shows an original hire date as a temporary, non-student employee as July 16, 2016; the Respondent coded the Appellant as a temporary non-student employee in error. The Appellant was enrolled in classes at Bellevue Community College and therefore, any hours worked during this appointment are irrelevant to the case at hand.

Over the course of the next several months, Appellant continued to work in various capacities for the Respondent as a student employee. The Appellant was coded as such in the Respondent's

system, and when Appellant was not enrolled in classes, Respondent would change Appellant's coding, without informing the Appellant, thus causing confusion throughout Appellant's tenure.

During the summer quarter of 2017, the Appellant was not enrolled in classes, as a result even though WAC 357-04-040(3)(a) does not have a requirement that summer hours be counted, the Respondent recoded the Appellant as a non-student, temporary employee.

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:
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> (1) **The employee has worked in one or more positions for more than one thousand fifty (1050) 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.

[emphasis added]

As stated in WAC 357-19-450(1), in order for the Director to take remedial action and confer a temporary employee of a higher education institution to permanent status, the employment hours must be at least 1050 hours. Additionally, in a hearing on exceptions to a Director's determination, pursuant to WAC 357-52-110, the Appellant has the burden of proof.

Summary of Appellant's Arguments. Appellant argues that establishing the original date of hire as an hourly employee is a fundamental part of remedial action and that any requests for remedial action must be received in a timely manner. Appellant further argues that WAC 357-04-040(3)(A) is ambiguous because the term, "temporary position(s)" and states, "… the law was written with

clear intent to necessitate the role's temporary nature over summer and other academic breaks. However, the budget coordinator position I was hired into on March 6th, 2017, Appellant's Exhibit 7, lists no end date. Furthermore, to this day I have yet to receive any formal notice of termination from the position." Because Appellant failed to notify Appellant that his classification had changed, and did not provide any written notice, this somehow confers these hours during this time period to non-student employment hours.

Summary of Respondent's Arguments. Respondent argues that Appellant has the burden of proof in a hearing on exceptions, and Appellant has failed to meet that burden. Respondent states, "The Director's designee correctly determined that Mr. Vandal was not eligible for permanent status because he did not exceed 1,050 hours of work." Respondent alleges that Appellant was a student employee until the summer of 2017, and had clear notice of his student status. During this time, Appellant was employed as a Student Assistant IV in the Technology Compliance and Administration Department and worked less than 516 hours in any six-month period because when WAC 357-04-040(3)(a) is applied, excluding summer and other breaks in the academic year, the Appellant fell short of the required hours. Respondent argues the payroll and human resource records clearly show the employment status of the Appellant, and give clear evidence the Appellant's non-student employment hours do not exceed 516 hours, nor at any point during a 12-month period exceed the 1,050 hour threshold to confer permanent status.

Primary Issue. Whether the Director's determination denying Appellant's request for remedial action should be affirmed.

Decision of the Board. The Personnel Resources Board has jurisdiction over the parties hereto and the subject matter herein. The question in this appeal is whether Appellant worked more than 1050 hours in any twelve-month period since Appellant's original date of hire.

Although the Respondent repeatedly re-coded the Appellant in their system, and failed to notify the Appellant, those actions do not change the overlying evidence that clearly shows the Appellant did not work 1,050 as non-student, temporary employee in any 12-month consecutive period.

Based on precedent of the Personnel Appeals Board (predecessor to this Board), DOP formal opinions, and the historical interpretation and application of the language in WAC 357-19-450, remedial action is based on the hours worked during any twelve consecutive month period, on an annualized basis, from the original date of hire. Appellant alleges that he exceeded the 1,050 hour threshold. However, based on Appellant's original date of hire to a non-student, temporary employee, and regardless of the Respondent's failure to give appropriate notice to Appellant of the changes in employment status, the Appellant has failed to meet the burden of proof. Therefore, his appeal should be denied.

The Board is rendering this decision based on the requirements of WAC 357-19-450, however, the Board is troubled by the Respondent's actions of the repeated change in employment coding without notification to the Appellant. This caused confusion and let the Appellant to believe that he would be conferred to permanent status because he had not received notification of all of the changes in his status. It is incumbent upon the Respondent to ensure all employees are kept well informed of any employment status changes, and such notice should be in writing.

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by JOSEPH "TRYGVE" VANDAL is denied and the Director's determination dated May 16, 2018, is affirmed and adopted.

DATED this 10 day of January, 2019.

WASHINGTON PERSONNEL RESOURCES BOARD

Nancy Holland Young

NANCY HOLLAND YOUNG, Chair

Vicky Bowdish

VICKY BOWDISH, Vice-Chair

WASHINGTON PERSONNEL RESOURCES BOARD
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