

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 NANCY HARRIS,

4 Appellant,

5 v.

6 SEATTLE CENTRAL COMMUNITY
7 COLLEGE,

8 Respondent.

PRB Case No. R-ALLO-08-019

ORDER OF DISMISSAL

9 This matter came before the Personnel Resources Board, MARSHA TADANO LONG, Chair;
10 JOSEPH PINZONE, Vice Chair; and LAURA ANDERSON, Member, for dismissal pursuant to
11 WAC 357-52-215 and WAC 357-51-220.

12
13 WAC 357-52-215 provides, “[t]he Board may dismiss an appeal on its own motion when . . . An
14 appeal is not filed on time. . . .”

15
16 Ms. Harris requested a director’s review of the allocation of her position. On July 8, 2008, the
17 director’s designee served the parties with a copy of the director’s determination. The determination
18 notified Ms. Harris and her representative, Jennifer Mason of the Washington Federation of State
19 Employees (WFSE), of the results of Ms. Harris’s allocation review request. On behalf of Ms.
20 Harris, Ms. Mason filed exceptions to the director’s determination on August 8, 2008.

21 After an initial review of the appeal, on August 19, 2008, Personnel Resources Board staff notified
22 the parties that the appeal was received thirty-one (31) days after the date of the determination.
23 Therefore, it appeared that the appeal was untimely. Pursuant to WAC 357-52-045, Board staff
24 directed the parties to submit affidavits and/or written argument addressing the timeliness of the
25 appeal within twenty-one (21) calendar days of the date of the letter.

1
2 On September 5, 2008, Ms. Mason submitted written argument asserting that the director's
3 determination was received by WFSE on July 9, 2008. Ms. Mason argued that consistent with
4 Articles 40.2A4, 28.2C and 48.2, of the Collective Bargaining Agreement between The State of
5 Washington and Washington Federation of State Employees Higher Education, the appeal was
6 timely filed.

7 Respondent did not provide a response to the issue of timeliness.

8
9 RCW 41.80.020(6) provides, in relevant part, "[a] provision of the collective bargaining agreement
10 that conflicts with the terms of a statute is invalid and unenforceable."

11
12 RCW 41.06.170(4) provides, in relevant part, "[a]n employee incumbent in a position at the time of
13 its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or
14 reallocation . . . to the personnel resources board . . . Notice of such appeal must be filed in writing
15 within thirty days of the action from which appeal is taken."

16 WAC 357-52-015 provides, in relevant part, "[i]n order to be considered timely, an appeal must be
17 received in writing at the office of the board within thirty calendar days after . . . Service of the
18 director's determination"

19
20 WAC 357-04-105 provides, in relevant part, that service upon parties "will be regarded as completed
21 . . . upon deposit in the United States mail"

22 Because the appeal appeared untimely, on September 16, 2008, the parties were given notice of
23 potential dismissal. Appellant and Respondent were served with a copy of the notice by mail.
24
25

1 The notice stated that the appeal would be dismissed unless, within fifteen days following the date of
2 service of the notice, the Board received a written request showing good cause why the appeal
3 should be continued as a pending case.

4 On September 30, 2008, Ms. Mason submitted a response to the notice of potential dismissal. Ms.
5 Mason argued that this case differs from prior Board decisions by a number of days. Ms. Mason
6 asserted that the issue is whether or not the Board will dismiss a case based on one day. Ms. Mason
7 further asserted that the thirty-day timeline for filing an appeal starts on the date of receipt, not from
8 the date of the letter.

9
10 Respondent did not provide a response to the notice of potential dismissal.

11
12 The Board has addressed the issue of timeliness in a number of previous cases. For example, in Bello
13 v. Dept. of Social and Health Services, PRB Case No. R-ALLO-08-003 (2008), the employee filed
14 exceptions to a director's determination. The employee argued that the appeal was filed consistent
15 with Article 41.2D of the collective bargaining agreement between the State of Washington and
16 WFSE and was timely. However, the Board determined that consistent with RCW 41.80.020(6),
17 RCW 41.06.170 prevailed. The Board concluded that under the provisions of the statute, the appeal,
18 which was filed thirty-four days after service of the director's determination, was untimely and
19 dismissed the appeal.

20 Pursuant to WAC 357-49-017, a director's review in the initial step of the allocation review appeal
21 process.

22 In Doering v. Dept. of Social and Health Services, PRB Case No. R-ALLO-08-014 (2008), the
23 director determined that the employee's request for a director's review was untimely. The employee
24 filed exceptions to the Board. The employee argued that her request for a director's review was filed
25 consistent with Articles 29 and 41 of the collective bargaining agreement between the State of

1 Washington and WFSE and was timely. However, the Board determined that consistent with RCW
2 41.80.020(6), RCW 41.06.170 prevailed. The Board concluded that under the provisions of the
3 statute, the request for review, which was filed thirty-one days after service of the agency's
4 determination, was untimely and denied the appeal.

5 In Yialelis v. Dept. of Transportation, PRB Case No. R-ALLO-08-016 (2008), the director
6 determined that the employee's request for a director's review was untimely. The employee filed
7 exceptions to the Board. The employee argued that his thirty-day filing period to request a director's
8 review should start from the date that he received the letter, not from the date that DOT allegedly placed
9 the letter in the mail. The employee further argued that the Board should apply the same standard of
10 service for both employers and employees and that the Board should hold that service of his request for
11 review was completed when he placed his request for review in the mail rather than when it was received
12 by the director. However, the Board determined that RCW 41.06.170 and the civil service rules
13 prevailed. The Board concluded that under the provisions of the statute and the rules, the request for
14 review, which was filed thirty-one days after service of the agency's determination, was untimely and
15 denied the appeal.

16 In the present case, consistent with our prior decisions, the provisions of the statute prevail. The
17 director's determination was served on July 8, 2008. On August 8, 2008, Appellant filed an appeal of
18 the director's determination. Appellant's appeal was filed thirty-one days after service of the
19 director's determination. Therefore, the appeal is untimely and should be dismissed.

20 The Board having reviewed the file and records herein, being fully advised in the premises, now
21 enters the following:

22 / / / / /

23 / / / / /

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Nancy Harris was untimely filed and the appeal is dismissed.

DATED AND MAILED this _____ day of _____, 2008.

WASHINGTON PERSONNEL RESOURCES BOARD

MARSHA TADANO LONG, Chair

JOSEPH PINZONE, Vice Chair

LAURA J. ANDERSON, Member