



**STATE OF WASHINGTON  
OFFICE OF FINANCIAL MANAGEMENT**

STATE HUMAN RESOURCES DIVISION | DIRECTOR'S REVIEW PROGRAM  
P.O. Box 40911 · Olympia, WA 98504-0911 · (360) 902-9820 · FAX (360) 586-4694

May 21, 2013

TO: Gregory Rhodes, Younglove & Coker

FROM: Teresa Parsons, SPHR  
Director's Review Program Supervisor

SUBJECT: Jay Noonan v. Washington State Department of Transportation (WSDOT)  
Director's Review Request No. RULE-12-008

On December 7, 2012, the Director's Review Program received your request on behalf of Jay Noonan for a Director's review of an alleged rule violation by WSDOT and for remedial action. Specifically, you allege WSDOT violated WAC 357-19-365 with regard to several nonpermanent appointments in which Mr. Noonan worked as a Transportation Technician 2 and 3 from July 2007 to November 7, 2012 (Exhibit A-1).

On February 21, 2013, I conducted a preliminary telephone conference with you and WSDOT Labor Relations Manager Jeff Pelton. Human Resource Consultants Jennifer Shaffer and Rachel Barckley were also present during the conference. We subsequently scheduled a Director's review conference for April 5, 2013.

On March 28, 2013, Mr. Pelton sent an email to me with a copy to you and others, stating that in preparation for the April 5 conference he had just "uncovered" information that indicated Mr. Noonan's position had been covered by a collective bargaining agreement (Exhibit B-1). Specifically, as a result of a Public Employment Relations Commission (PERC) Order Clarifying Bargaining Unit, Mr. Noonan's non-permanent Transportation Technician 3 (TT 3) position was included in the bargaining unit of the Professional and Technical Employees, Local 17 (PTE), effective November 1, 2012 (Exhibits B-2 and B-3).

As a result of the new information, I canceled the April 5 Director's review conference and provided notice of potential dismissal in an email on April 2, 2013. I also gave the parties an opportunity to provide any additional responses (Exhibit C-3).

On April 25, 2013, you provided a response on behalf of Mr. Noonan. In your response, you question "whether the terms of a collective bargaining agreement preempt [Director's Review] jurisdiction" (Exhibit C-4). You further emphasize that Mr. Noonan was "unaware that he was represented."

I recognize PERC's decision placing Mr. Noonan's position in the PTE, Local 17 bargaining unit occurred one week prior to WSDOT's notification that terminated his non-permanent TT 3 position. Nevertheless, Mr. Noonan was covered by the provisions of a collective bargaining agreement at the time of WSDOT's notification and stated effective date of the action on November 15, 2012.

RCW 41.06.170(2) provides an employee's right to appeal, including alleged rule violations, and states, in part, the following:

. . . 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 . . .”

However, RCW 41.06.170 (5) then states that “[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 . . .”

The Director's review of an alleged rule violation is the first step in the appeal process (WAC 357-49-017).

Prior Personnel Resources Board (PRB) determinations support the Board's lack of jurisdiction to hear matters under RCW 41.06.170(2) when filed by employees subject to the provisions of a collective bargaining agreement. Harden v. Dep't of Corrections, PRB Case No. R-JUR-09-003 (2009); Petruzzelli v. Dep't of Labor and Industries, PRB Case No. R-JUR-09-004 (2009); Malia v. Eastern Washington University, PRB Case No. R-JUR-09-005 (2009); Scruggs v. Employment Security Department, PRB Case No. R-JUR-09-007 (2009).

Since Mr. Noonan was covered by the provisions of a collective bargaining agreement at the time of WSDOT's action, the right to file a rule violation appeal under Chapter 41.06 RCW and Title 357 WAC does not apply in his case. Therefore, the Director lacks jurisdiction.

### **Appeal Rights**

Either party may appeal the determination on jurisdiction to the Personnel Resources Board (board) by filing written exceptions to the Director's determination in accordance with Chapter 357-52 WAC.

WAC 357-52-015 states that an appeal must be received in writing at the office of the board within thirty (30) calendar days after service of the Director's determination. The mailing address for the Personnel Resources Board (PRB) is P.O. Box 40911, Olympia, Washington, 98504-0911. The PRB Office is located on the 4<sup>th</sup> floor of the Insurance Building, 302 Sid Snyder Avenue SW, Olympia, Washington. The main telephone number is (360) 902-9820, and the fax number is (360) 586-4694.

If no further action is taken, the Director's determination becomes final.

c: Jay Noonan  
Jeff Pelton, WSDOT  
Connie Goff, SHR

Enclosure: List of Exhibits

**JAY NOONAN v DOT**  
**RULE-12-008**

- A. Letter from Gregory Rhodes, Attorney at Law, requesting Director's Review on behalf of Jay Noonan received December 7, 2012 with exhibits:
1. November 7, 2012 letter of notification of non-permanent appointment ending November 15, 2012
  2. Position description prior to expansion of duties
  3. Position description following expansion of duties
  4. Reappointment letters:
    - June 21, 2007
    - December 24, 2007
    - March 20, 2008
    - April 30, 2008
    - October 24, 2008
    - March 24, 2009
    - October 20, 2009
    - February 26, 2010
    - January 12, 2012
- B. WSDOT Exhibits
1. March 28, 2013 email to Teresa Parsons, Director's Review Supervisor regarding jurisdiction of rule violation
  2. PERC Decision 11559-PSRA Order Clarifying Bargaining Unit
  3. Record of Service of PERC Decision November 1, 2012
- C. Case email correspondence
1. April 1, 2013 email from Greg Rhodes responding to Mr. Pelton's March 28 email regarding jurisdiction of rule violation
  2. April 1, 2013 email from Jeff Pelton providing Mr. Rhodes with applicable CBA
  3. April 2, 2013 email from Teresa Parsons notifying parties of potential dismissal, cancelling April 5 teleconference, and inviting responses by April 25, 2013
  4. April 25, 2013 letter from Mr. Rhodes responding to potential dismissal