

1 provisions of the Collective Bargaining Agreement (CBA), the request for review was timely filed
2 on July 13, 2007. Appellant argues that the CBA preempts the WACs relied upon by the director.
3 Article 29 of the CBA addresses the Grievance Procedure. Appellant contends that Article 29.2C
4 applies to all timeframes addressed in the contract and that the language of this article prevails
5 when computing timelines for appeals. Article 41 of the CBA addresses Classification, including
6 position reviews. Appellant asserts that service of allocation review decisions is addressed in
7 Article 41.2C. Appellant contends that the intent of the various articles in the CBA is that appeals
8 must be filed within thirty days of an employee's receipt of the agency's decision.

9
10 **Summary of Respondent's Arguments.** Respondent argues that a position review is not subject to
11 the grievance process or the provisions of Article 29. Respondent further argues that the Article
12 41.2C states the number of days in which a request for review must be made, but does not define
13 what the timeline is for such a request. Respondent asserts that because the CBA does not define
14 the timeline, the WAC prevails. Respondent contends that the director properly applied WAC 357-
15 05-105 and correctly concluded that a review request must be filed within thirty days of the date the
16 agency's decision is served, i.e., place in the mail. Respondent contends that in this case, the
17 allocation decision was served on June 12, 2007 but the review request was not filed until July 13,
18 2007. Therefore, Respondent argues that the review request was untimely.

19 **Primary Issue.** Whether the director's determination that Appellant's request for review was
20 untimely should be affirmed.

21
22 **Relevant Laws and Civil Service Rules.**

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

25
26 RCW 41.06.170(4) provides, in relevant part, "[a]n employee incumbent in a position at the time
27 of its allocation or reallocation, or the agency utilizing the position, may appeal the allocation or
28
29

1 reallocation . . . to the personnel resources board . . . Notice of such appeal must be filed in
2 writing within thirty days of the action from which appeal is taken.”

3
4 Consistent with WAC 357-49-017, a director’s review is the initial step in the appeal process for
5 employee allocation or reallocation requests.

6
7 WAC 357-13-080(1) provides, “[a]n employee may request a director's review of the results of a
8 position review or reallocation of the employee's position The employee must request the
9 director's review within thirty calendar days of being provided the results of a position review or
10 the notice of reallocation.”

11
12 WAC 357-04-105 establishes to how notices are to be provided or served on job applicants, job
13 candidates, employees or employers. The rule provides, in relevant part, that service upon parties
14 “will be regarded as completed . . . upon deposit in the United States mail” This rule does
15 not apply to notices or papers that are to be filed with the director or the board.

16
17 WAC 357-49-023 provides, in relevant part, “[p]apers that must be filed with the director for
18 director’s review requests are considered to be filed only when the papers are actually received in
19 the director’s review office in Olympia, Washington.” The rule further provides, “filing of papers
20 for director’s review requests by electronic mail (“e-mail”) is not authorized without the express
21 prior approval of the director, and only under such circumstances as the director allows.”

22
23 **Decision of the Board.** The Board has decided this issue as it relates to director’s review requests
24 as well as appeals to the Board in several past decisions. See for example, Fadden v. Dept. of
25 Corrections, Case No. R-ALLO-08-005 (2008); Bello v. Dept. of Social and Health Services, Case
26 No. R-ALLO-08-003 (2008); Dept. of Corrections v. Aikman, Case No. R-ALLO-08-018 (2008).

Article 49.2 of the CBA provides that the Agreement preempts WAC 357 when the subject is addressed in whole or in part in the agreement. However, RCW 41.80.020(6) provides that when a provision of a CBA conflicts with the terms of a statute the provision of the CBA is invalid. Based on RCW 41.80.020(6) and consistent with our decisions in prior cases, we find that when determining the date of service of an agency's allocation decision or of a director's review determination, the statute and rules adopted thereunder prevail. Therefore, as provided in WAC 357-04-105, Appellant was served with DSHS's denial of her reallocation request on June 12, 2007.

On July 13, 2007, the director received Appellant's request for review of DSHS's decision. In accordance with WAC 357-49-023, Appellant's request was considered filed on July 13, 2007.

Appellant's review request was filed thirty-one days after service of Respondent's response to her reallocation request.

In a hearing on exceptions, the Appellant has the burden of proof. WAC 357-52-110. Appellant has failed to meet her burden of proof. Appellant's request for a director's review was untimely filed and the appeal should be denied.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Kay Doering is denied and the director's determination dated May 6, 2008, is affirmed and adopted.

DATED this ____ day of _____, 2008.

WASHINGTON PERSONNEL RESOURCES BOARD

JOSEPH PINZONE, Vice Chair

LAURA ANDERSON, Member