

BEFORE THE PERSONNEL RESOURCES BOARD
STATE OF WASHINGTON

ALANNA GEHR & THE WASHINGTON
FEDERATION OF STATE EMPLOYEES,

Appellant,

vs.

SOUTH PUGET SOUND COMMUNITY
COLLEGE,

Respondent.

CASE NO. R-EXEM-07-001

ORDER OF THE BOARD

I. INTRODUCTION

1.1 **Hearing.** Pursuant to WAC 357-52-100(5), this appeal came on for hearing before the Personnel Resources Board, LAURA ANDERSON, Chair. The hearing was held on September 20, 2007, at the office of the Personnel Resources Board in Olympia, Washington. MARSHA TADANO LONG, Vice Chair, reviewed the record, including the file, exhibits, and the entire recorded proceedings, and participated in the decision in this matter.

At the request of the parties, the Board agreed to allow written closing arguments to be submitted by close of business on October 11, 2007.

1.2 **Appearances.** Appellants Alanna Gehr and the Washington Federation of State Employees were represented by Christopher Coker, Attorney at Law, Younglove Lyman and Coker, P.L.L.C. Franklin Plaistowe, Assistant Attorney General, represented Respondent South Puget Sound Community College (College).

1.3 **Nature of Appeal.** This is an appeal from the exemption of an Office Assistant 2 position from classified service.

II. PRELIMINARY MATTER

2.1 The position subject to this appeal was the clerical support position for the College Foundation Office. The position had been allocated to the Office Assistant 2 classification and was covered by the Collective Bargaining Agreement between the Washington Federation of State Employees (WFSE) and the College. Appellant Gehr was not the incumbent in the position nor was she an applicant for the position.

2.2 The position was vacant at the time that the College decided the position should be exempted as the principle assistant/confidential secretary to the Executive Director for the College Foundation. Exempting the position removed it from the WFSE Bargaining Unit.

2.3 On May 10, 2007, Appellants filed an appeal of the exemption of the vacant position.

2.4 At the outset of the hearing on the appeal, Respondent challenged Appellants' standing to seek review of the College's decision to exempt a vacant position. The Board heard the arguments of parties on the issue of standing and proceeded with the hearing on the merits of the appeal. The Board now issues this order and finds that the Board lacks jurisdiction to hear the appeal.

III. RELEVANT STATUTE AND RULE

3.1 RCW 41.06.170(3) states:

(3) Any employee whose position has been exempted after July 1, 1993, shall have the right to appeal, either individually or through his or her authorized representative, not later than thirty days after the effective date of such action to the personnel appeals board through June 30, 2005, and to the Washington personnel resources board after June 30, 2005.

3.2 WAC 357-52-010 (1)(d) states:

(1) Within WGS, the following actions may be appealed:

(d) An employee whose position has been exempted from chapter 41.06 RCW may appeal the exemption to the board.

IV. SUMMARY OF ARGUMENTS

4.1 Respondent argues that the appeal is not properly before the Board under the Board's legislative grant of authority or under the Board's rules. Respondent argues that the plain language of the statute and the applicable Board rule require an employee whose position has been exempted to appeal the decision. Respondent contends that because Appellant Gehr did not apply or express an interest in the position, she is an improper party before the Board. Respondent further contends that the employee who is now in the exempt position is a necessary participant in any appeal of the position but the employee has not appealed or participated in anyway in this appeal. Respondent argues that the appeal should be denied.

4.2 Appellants argue that WFSE has standing to challenge the exemption because WFSE is, and has been, the exclusive bargaining representative for position. Appellants contend that WFSE has standing to challenge the exemption because it represents the interests of its member and the employee who would potentially fill the position. Because the position was vacant at the time of the exemption, Appellants assert that they are the only real entities/parties that would have a vested interest in removal of the position from the Bargaining Unit. Therefore, Appellants argue that in order for WFSE to assert its right to challenge removal of a vacant position from the bargaining unit, its standing to bring the appeal must be recognized.

V. DISCUSSION

5.1 The overriding issue that must be decided in this case is whether the disputed position is removed from the bargaining unit. Respondent has declared the position exempt thereby removing from the bargaining unit. Disputes regarding bargaining units are outside of this Board's jurisdiction.

5.2 The Board lacks jurisdiction to hear this appeal and the appeal should be dismissed.

/ / / /

/ / / /

1 **VI. ORDER**

2 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Alanna Gehr and the
3 Washington Federation of State Employees is dismissed.

4
5 DATED this ____ day of _____, 2008.

6 WASHINGTON PERSONNEL RESOURCES BOARD

7
8 _____
9 LAURA ANDERSON, Chair

10
11 _____
12 MARSHA TADANO LONG, Vice Chair