BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

TAMARA ROBERSON, Appellant, vs. TACOMA COMMUNITY COLLEGE, Respondent.	CASE NO. R-RULE-12-001 ORDER OF THE BOARD FOLLOWING CONSIDERATION OF EXCEPTIONS TO THE DETERMINATION OF THE DIRECTOR

Consideration of Exceptions. This appeal came before the Personnel Resources Board, DJ MARK, Chair; JOSEPH PINZONE, Vice Chair; and NANCY HOLLAND YOUNG, Member, on Appellant's exceptions to the director's determination dated August 1, 2012. This matter was considered based on the record and the written submissions of the parties.

Representation. Appellant Tamara Roberson represented herself. Respondent Tacoma Community College (TCC) was represented by Anne Shaw, Assistant Attorney General.

Background. Appellant was employed in an hourly Office Clerk 1 position in the TCC Student Programs Department. Appellant's original hire date was June 8, 2004. Effective September 18, 2006, she was appointed to a temporary Student Support Specialist position. The Student Support Specialist was an administrative/professional exempt position and had been approved for exemption in 2006. Appellant continued to be employed in the exempt Student Support Specialist position annually thereafter.

On April 24, 2012, Appellant filed a request for remedial action with the Office of the State Human Resources Director. In summary, Appellant asked that her temporary exempt position be converted to a classified position and made permanent.

By letter dated August 1, 2012, the director's designee determined that Appellant's position was:

> . . . exempt from civil service and not subject to the provisions of Chapter 41.06 RCW and Title 357 WAC generally and WAC 357-19-450(1) specifically. Because your position is exempt from the civil service law and rules, the Director's Review Program lacks jurisdiction to consider your request, and you are not afforded the right to request a Director's review under WAC 357-49-010(5).

On August 7, 2012, Appellant filed exceptions to director's determination. Appellant's exceptions are the subject of this proceeding.

The civil service laws for employees of the State of Washington and the laws establishing the Board's jurisdiction are found in Chapter 41.06 RCW. RCW 41.06.070(2)(b) provides:

> (2) The following classifications, positions, and employees of institutions of higher education and related boards are hereby exempted from coverage of this chapter:
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> . . . .
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> (b) The governing board of each institution, and related boards, may also exempt from this chapter classifications involving research activities, <u>counseling of students</u>, extension or continuing education activities, graphic arts or publications activities requiring prescribed academic preparation or special training as determined by the board: PROVIDED, That no nonacademic employee engaged in office, clerical, maintenance, or food and trade services may be exempted by the board under this provision;
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> (Emphasis added.)

RCW 41.06.170 provides appeal rights for employees who are subject to the jurisdiction of the Board. The RCW also provides limited appeal rights for employees in exempt positions. RCW 41.06.170(3) provides:

> Any employee whose position has been exempted after July 1, 1993, shall have the right to appeal . . . not later than thirty days after the effective date of such action to the Washington personnel board. . . .

Brief Summary of Appellant's Arguments. Appellant asserts that because her position was temporary, it was subject to the rules addressing temporary appointments for higher education institutions. Appellant contends that under the rules contained in Chapter 357-19 WAC, her position should be conferred permanent status. Appellant further argues that her position was improperly

identified as exempt, that her position is not considered a management position, and that her position does not meet the criteria for exemption under the Fair Labor Standards Act (FLSA).

Brief Summary of Respondent's Arguments. Respondent argues that Appellant's position is properly exempt from FLSA because her "primary duties involve academic administrative functions directly related to academic instruction or training." Respondent further argues that Appellant's position is properly exempt under RCW 41.06.070 because she interacts with and counsels students regarding program content and policies and recommends alternative courses of action. Respondent also argues that Appellant has been in her temporary exempt position since 2006 and an appeal on whether her position should be exempt is untimely.

Primary Issue. Whether the director's determination declining jurisdiction over Appellant's request for remedial action should be affirmed.

Decision of the Board. Appellant was in a temporary administrative/professional exempt position. The provisions of Chapter 357 WAC addressing remedial action for temporary employees of higher education institutions exempted under RCW 41.06.070(1)(l) do not apply to positions exempted under the provisions of RCW 41.06.070(2)(b). As concluded by the director's designee, Appellant does not have the right to request a director's review under WAC 357-49-010(5). Further, Appellant's challenge of whether her position was properly exempt was filed more than thirty days after the exemption of the position. Therefore, under the provisions of RCW 41.06.170(3) her appeal regarding the exemption of the position is untimely.

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal on exceptions by Tamara Roberson is denied and the director's determination dated August 1, 2012, is affirmed and adopted.

DATED this _____ day of _____, 2012.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Chair

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JOSEPH PINZONE, Vice Chair

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NANCY HOLLAND YOUNG, Member