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STATE OF WASHINGTON  
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IN THE COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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DEPARTMENT OF EMPLOYMENT SECURITY, ET AL

Respondent

v.

LINDA AMBLER, CAROL PEDEN,  
FRANCES TAGBO and CHERYL WATERS

Appellants

---

APPEAL FROM THE SUPERIOR COURT  
FOR THURSTON COUNTY

---

BRIEF OF APPELLANTS

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87-91-C 11/11/11 JRM/LS

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## I. ASSIGNMENT OF ERROR

### A. Assignments of Error

- 1) The trial court erred when it failed to find that the plaintiffs held a vested right in a determination of the classification of their general service positions.
- 2) The trial court erred when it failed to find that the employing administrative agency breached its duty to adopt procedural rules for the review of requests for reallocation by general service employees in its employ.
- 3) The trial court erred when it failed to find that the employing administrative agency had a duty to determine the proper classification of general service employees in its employ.
- 4) The trial court erred when it failed to find that the employing administrative agency had a duty to conduct a review of a request for reallocation within a reasonable time.
- 5) The trial court erred when it failed to find that an eighteen month delay in review of a request for reallocation by the employing administrative agency denied due process to the civil servant seeking review.
- 6) The trial court erred when it failed to find that the employing administrative agency denied due process to its employees when it breached its duty to adopt procedural rules for the review of a request for reallocation.
- 7) The trial court erred when it failed to grant relief to the plaintiffs for violation of their due process rights.

### B. Issues on Appeal pertaining to Errors

- 1) Whether a civil servant has a vested right in a reallocation determination by the employing agency.
- 2) Whether an employing agency charged with making determinations of valid classification of general service

employees has a duty to adopt procedural rules for the review of a request for reallocation by the civil service employees in its employ.

- 3) Whether the employing agency has a duty to determine the proper classification of general service employees.
- 4) Whether the employing agency has a duty to conduct a review of a request for reallocation within a reasonable time.
- 5) Whether the period of review that extended for eighteen months constituted an unreasonable delay that denied due process to the civil servant seeking review.
- 6) Whether the failure of an employing agency charged with making reallocation determinations violated the due process owed to its employees by failing to adopt procedural rules for the review of a request for reallocation.
- 7) What remedy exists for a civil service employee who has been denied due process because of undue delay by the employing agency or because of the failure of the employing agency to adopt procedural rules for review of reallocation requests.

## II. STATEMENT OF THE CASE

### A. Procedural Chronology:

Cheryl Waters, Carol Peden, Francis Tagbo and Linda Ambler were employed by the Department of Employment Security. Each person filed a request for review of the classification of their civil service positions in 2002.[CP 188] They all sought an upward reallocation from their Employment Security Program Coordinator 2 (ESPC 2) classification to Employment Security Program Coordinator 3 (ESPC 3) classification. [CP 71]

The Employment Security Department had been authorized to conduct evaluations of request for reallocation. The agency reviewed the requests and determined that no reallocation was needed because they were not engaged in tasks similar to those performed in Employment Security Program Coordinator 3 (ESPC 3) positions.[CP 150] The decision not to reallocate was rendered in September 2004. [CP 151]

The employees filed an appeal with the Director of the Department of Personnel. [CP 82] The Designee of the Director conducted an informal hearing for all parties and entered a determination on 26 May 2005. The Designee determined that the positions of the employees should have been reallocated to ESPC 3 positions. [CP 71-73]

The Agency appealed to the Personnel Appeals Board from the determination made by the Designee. [CP 83] A hearing was held on 16 December 2005 before that Board. [CP 83] On 24 March 2006, the Personnel Appeals Board ruled and upheld the determination made by the Designee of the Director. [CP 81-86]

The cause below was filed on 27 February 2007. [CP 7-29] The employees sought declaratory judgment, a writ of mandamus and relief under the Washington State Wage Law. The Honorable Richard D. Hicks considered a Motion for Summary Judgment filed by the agency and determined that the Motion should be granted. The Order on Summary

Judgment was entered on 2 November 2007. [CP 410-402] A motion for reconsideration was filed on 13 November 2007 [CP 403-404] and a written ruling was filed on 21 November 2007 denying the motion.[CP 423-425] This appeal was filed on 19 December 2007. [CP 426-430]

B. Fact Pertaining to Appeal:

Each of the employees of the Department of Employment Security had worked for the Department for several years. They were employed in general service positions classified as Employment Security Program Coordinator 2. [CP 159, 163, 165 & 169] Each of the employees filed a request for reallocation of the general service classified positions they held.<sup>1</sup> They filed the request with their supervisor in 2002. The supervisor delayed in submitting the requests for reallocation to the Human Resources unit until 17 March 2003, a period of approximately seven months. The Department of Employment Security had been delegated the authority to make reallocation decisions by the Department of Personnel.

The Department of Employment Security made a decision denying the request for reallocation for each employee in this appeal on 30

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<sup>1</sup> The following are the dates each employee in this appeal filed their request: Linda Ambler – 2 August 2002; Carol Peden – 31 July 2002; Francis Tagbo – 19 August 2002; and Cheryl Waters – 13 August 2002.

September 2004.<sup>2</sup> The agency asserted that the date the requests were received in the Human Resources section of the agency was 17 March 2003.

On the 30<sup>th</sup> of June 2004, the ESPC 2 positions held by the employees were subjected to a Reduction in Force and were eliminated by agency action. [CP 151] The employees exercised the options that were identified to them as a part of the RIF.

The employees filed a reallocation appeal with the Director of the Department of Personnel on 1 November 2004. The Designee of the Director, Paul Peterson, conducted a hearing for all parties on 11 April 2005 for the allocation review. On 26 May 2005, after considering the information provided by all parties, Mr. Peterson rendered a written determination reallocating the positions held by the employees to the classification of Employment Security Program Coordinator 3. [CP 71-73]

The agency filed an appeal from the determination of the Designee to the Personnel Appeals Board on 24 June 2005. [CP 74-78] The Board sent a notice of scheduling of hearing to the agency on 14 October 2005. [CP 83] The Notice set the hearing for the agency appeal for 16 December 2005. On that date, no person from the agency appeared. [CP 83] On 20 December 2005, the Board received a letter from Evelyn Rodriguez, the

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<sup>2</sup> Decision for Linda Ambler, Carol Peden, Francis Tagbo and Cheryl Waters. [CP 47-40; 55-48; 59-62 & 63-66]

Human Resources Manager for the agency seeking the Board's consideration of the appeal it had filed. [CP 83] On 24 March 2006, the Personnel Appeals Board entered Findings of Fact, Conclusions of Law and an Order of the Board confirming the determination of the Designee of the Director of the Department of Personnel. [CP 86] In its ruling, the Board held that there was sufficient basis for the Designee to make his determination and that the exceptions posited by the agency were not well taken.

Thereafter, Commissioner Karen Lee issued a letter to the employees informing them of the amount of retroactive pay the agency would issue based upon the ruling by the Personnel Appeals Board.[CP 190] She asserted the period used for calculation of the retroactive pay was from 17 March 2003 through 30 June 2004. [CP 150] However, Cheryl Metcalf<sup>3</sup>, Unemployment Insurance Policy and Training Manager and Eddie Esparza<sup>4</sup>, the employee's supervisor, both acknowledged that the employees had submitted their requests as early as 12 August 2002<sup>5</sup> some seven months earlier.

The Department of Employment Security transferred payment to each of the employees on 20 April 2006. The Department computed the

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<sup>3</sup> CP 184-185.

<sup>4</sup> CP 182.

<sup>5</sup> Affidavit of Linda Ambler, Exhibits E & F, CP 182, 184-185.

gross pay owed to each of the employees for the period from 17 March 2003 to 30 June 2004, a period of 15 ½ months.

The employees through their legal counsel objected to the determination of retroactive pay made by the Commissioner for the agency. It was contended that the computation was incorrect and that it did not fully compensate the employees in a retroactive manner. The Commissioner was given Notice that if the correct level of retroactive reimbursement was not offered, a civil action would follow to recoup the unpaid sum.<sup>6</sup>

### III. SUMMARY OF ARGUMENT

The employees contend that the failure of the employing agency to review their requests for reallocation without undue delay deprived them of the process which was due to them. [CP 201] The employees had a vested right in their positions as incumbent general service employees working in state civil service. [CP 199] The rights and responsibilities they had were regulated by the Merit System Rules that prescribed the classification of the positions they held. Those rules required that each position be classified in a valid manner. [CP 187]

The Merit System Rules provided that where an employee believed they had been assigned additional or higher level duties beyond those

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<sup>6</sup> Affidavit of Kara Larsen, Exhibit 13, CP 89-91.

assigned in the classification in their incumbent position, the employee had a right to seek a reallocation.[CP 187] The regulatory scheme of the Merit System Rules for reallocation imposed a duty on the Department of Personnel or the employing agency (where the authority had been delegated) to review the request for reallocation and make a determination. [CP 187] The employees contend that the regulatory scheme required that such a review must take place without undue delay.

The Merit System Rules provide that where reallocation authority was delegated from the Department of Personnel to an employing agency, the agency had a duty to develop procedural rules to establish the means by which the agency review of a reallocation request would take place<sup>7</sup>. The employees assert that their employer did not comply with the duty imposed by the Merit System Rule to provide procedures for agency review. The employees contend that the breach of duty by the agency deprived the employees of the process which they were due.

Because the agency deprived the employees of due process through the 25 month delay in consideration of the request and the breach of duty to adopt procedure for review of reallocation requests, their vested right derived from their respective incumbent positions was lost. Between the date when the employee requests were received and the date when the

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<sup>7</sup> WAC 356-10-030(5).

decision denying reallocation was made by the agency, the agency implemented a Reduction in Force that affected all of the positions held by the employees. The implementation of the Reduction in Force was solely within the discretion and control of the agency.

The breach of duty and lack of due process injured the employees who sustained a loss in income, a loss in their position, a loss in their ability to receive options in the Reduction in Force process and ultimately a loss in their pension benefits. The agency failed to consider the requests in a reasonable scope of time and thereby deprived the employees of the vested rights they had as general service employees working under the Merit System Rules.

The employees seek a declaratory judgment that their vested rights were abridged by the conduct of their employer and its failure to abide by the Merit System Rules. The employees contend that a Writ of Mandamus should be entered to require the agency to perform its ministerial duty and assign an ESPC 3 position to each of the employees.

The employees have incurred attorney fees and costs that should be awarded to them in this appeal and at the trial court level.

#### IV. LEGAL ARGUMENT

- 1) Whether a civil servant has a vested right in a reallocation determination by the employing agency.

The employment rights of employees of the State of Washington are determined under the Washington State Civil Service Act, as amended, Chapter 41.06 RCW. That statute was initially enacted through the Initiative process in 1960. The purpose expressed in RCW 41.06.010 was to:

*to establish for the state a system of personnel administration based on merit principles and scientific methods governing the appointment, promotion, transfer, layoff, recruitment, retention, classification and pay plan, removal, discipline, training and career development, and welfare of its civil employees, and other incidents of state employment.*

In Washington, terms and conditions of public employment are controlled by statute, not by contract. Washington Federation of State Employees v. State, 101 Wn.2d 536, 682 P.2d 869 (1984). Civil service employment is controlled by the civil service statutes, subject to Article I, Section 23 of the Washington Constitution. Federation of State Employees, at 542; Riccobono v. Pierce County, 92 Wn.App. 254, 263, 966 P.2d 327 (1998).

Civil service employees are prevented by the civil service rules from contravening clear mandates of public policy, and the employees are protected by procedures that provide for the right to a public hearing. Reninger v. Department of Corrections, 79 Wn. App. 623, 633, 901 P.2d 325 (Div. II, 1995). Civil service employees have a “fundamental right”

to have the commission abide by its rules and regulations. Wilson v. Nord, 23 Wn. App. 366, 373, 597 P.2d 914 (Div. II, 1979). This standard applies to the classification of civil service jobs. Leonard v. Civil Service Commission, 25 Wn. App. 699, 702, 611 P.2d 1290 (Div. I, 1980).

A vested right is more than a mere expectation based upon an anticipated continuance of existing law, it must have become a title, legal or equitable, to the present or future enjoyment of a property, a demand, or a legal expectation from a demand by another. Caritas Services v. Department of Social and Health Services, 123 Wn.2d 391, 414, 869 P.2d 28 (1994).

Here, the vested right of an incumbent civil service employee is the protection of the procedures and civil service law. The Personnel Board was required to adopt rules consistent with RCW 41.06.010 for allocation and reallocation of positions within the classification plan. RCW 41.06.150(13). Thus, an incumbent employee is entitled to a present enjoyment of rules adopted for allocation and reallocation of his or her position.

- 2) Whether an employing agency charged with making determinations of valid classification of general service employees has a duty to adopt procedural rules for the review of a request for reallocation by the civil service employees in its employ.

The Washington Administrative Code, 356-10-030(5) provides, in pertinent part, that:

*“Agencies shall establish procedures for...requests for position review to provide proper maintenance of the classification plan. This procedure shall provide for individual employee requests for position review, based on duties and responsibilities through the agency personnel office to the director of personnel.”*

The word “shall” is mandatory when it is used to confer a right or benefit and operates to create a duty. Vehicle/Vessel LLC v. Whitman County, 122 Wn. App. 770, 780, 95 P.3d 394 (Div. III, 2004). Where the term “shall” is used in a regulation, “shall” is presumptively mandatory. Department of Labor and Industries v. Delozier, 100 Wn.App.73, 995 P.2d 1265 (Div. III, 2000).

Here, the regulation establishes a mandatory duty for the agency to establish a procedure for employee requests for position review.

The Department of Employment Security had no procedure adopted pursuant to WAC 356-10-030(5). This was true despite the fact that the agency was delegated the responsibility to review requests for reallocation by employees of the agency. The agency breached its duty by failing to adopt any procedure for requests for position review.

- 3) Whether the employing agency has a duty to determine the proper classification of general service employees.

Washington Administrative Code 356-10-030(3)<sup>8</sup> established the opportunity for an agency director to “approve or disapprove” the allocation or reallocation of positions when the agency has been delegated allocation authority. The next subsection, subsection (4) of the Classification Regulation provides that:

*“It shall be the duty of the appointing authority and/or personnel representative to report to the director of personnel any changes to duties, responsibilities or organization positions which may affect position allocation.”*

This is an affirmative duty, and where the authority to allocate has been delegated to the agency, the agency assumes the responsibility to ensure that the allocation of positions is correct in relation to the classification plan. This was a responsibility held by the Director of Personnel which, in this instance, was delegated to the Commissioner of Employment Security. The Civil Service Law required the Board to adopt rules related to allocation and reallocation of positions within the classification plan.<sup>9</sup> The Classification Plan was intended to be comprehensive for all positions in classified service.<sup>10</sup> The classification is tied to the salary to be paid for each position. RCW 41.06.152.

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<sup>8</sup> “Agency directors may request and the director of personnel may approve, the authorization of the agency director or designee to approve or disapprove the allocation or reallocation of positions for which the agency has been delegated allocation authority under the merit system rules and procedures approved by the director of personnel.”

<sup>9</sup> Formerly, RCW 41.06.150(16). Amended in 2002 to RCW 41.06.150(13).

<sup>10</sup> RCW 41.06.150(15).

Thus the employing agency that is delegated the authority to make allocation decisions is required to maintain valid classifications for general service employees because the salary to be paid is tied to an accurate classification of the position.

- 4) Whether the employing agency has a duty to conduct a review of a request for reallocation within a reasonable time.

Washington Administrative Code provision 356-10-030(5) which established the duty to adopt procedures for review of requests for reallocation also included the following language:

*“This procedure will not cause an undue delay in the director of personnel or designee reviewing the requested reclassification.”*  
[Emphasis Added]

This requirement is imposed on the employing agency when that agency has requested and has been delegated authority to make allocation and reallocation decisions along with the requirement to adopt procedures for processing requests for position review.

Although there are references to “undue delay” in the evidence rules<sup>11</sup> and the civil rules of procedure<sup>12</sup>, there is no definition of the term as it is used in the civil service rules. Since there is no legal definition of the term in the statute or the regulation, one must revert to use of the plain

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<sup>11</sup> ER 403 where evidence may be excluded if, in the discretion of the court, the probative value is outweighed by the what could be a waste of time for the trier of fact.

<sup>12</sup> CR 15, amendments cannot be made to the pleadings if there is undue delay in presenting the requested relief.

and ordinary meaning of the words or term. Garrison v. Washington State Nursing Board, 87 Wn.2d 195, 550 P.2d 7 (1976). In construing a regulation, the rules of statutory construction apply. Johnson v. Goodyear Tire & Rubber Company, 790 F. Supp. 1516 (1992); Mader v. Health Care Authority, 149 Wn. 2d 458, 70 P.3d 931 (2002). The interpretation of a statute and its implementing regulations is a question of law. In re Impoundment of Chevrolet Truck, ex. Rel., Registered/Legal Owner, 148 Wn. 2d 145, 60 P.3d 53 (2002). A regulation is ambiguous if it is susceptible to more than one reasonable interpretation. Seattle Filmworks, Inc. v. State Department of Revenue, 106 Wn.App. 448, 24 P.3d 460, review denied, 145 Wn.2d 1009, 40 P.3d 1176 (2001). The Court of Appeals gives undefined regulatory terms, like undefined statutory terms, their usual and ordinary meaning. Hertzke v. State Department of Retirement Systems, 104 Wn.App. 920, 18 P.3d 588 (Div II., 2001).

The term “undue delay” is ambiguous. A review of Black’s Law Dictionary, Sixth Edition, defines “undue” as “More than necessary, not proper, illegal.” The same Edition defines “delay” as “To retard; obstruct; put off; postpone; defer; procrastinate; prolong the time of or before...” When the common meanings of those two terms are combined, it would appear to require that there should be no “postponement, deferral or procrastination that is more than necessary that prolongs the time...”

This integrated definition when applied to the use of the term in the regulation would require that the determination of the review of the position requested by an employee not be “postponed, deferred or subjected to procrastination for a time more than necessary” to make the determination.

Since the agency was required to adopt procedures for processing position reviews in allocation or reallocation, and since the agency was directed to adopt a procedure that “will not cause undue delay in the review of the director of personnel or designee reviewing the requested reclassification”, the agency must show that it either adopted a procedure and acted in compliance with the procedure or demonstrate how its actions did not cause an “undue delay” in the review of the reclassification request by the Director or designee.

The intention of the regulation was, consistent with the purposes established in the civil service law, to provide for an orderly processing of such requests by an agency through its adopted regulations that would not delay a determination made by the Department of Personnel. The clear purpose was to ensure that such determinations were made in a timely fashion. It cannot be gainsaid that causing a 18 or 25 month delay at the agency level comports with the intention of timely consideration by the Department of Personnel.

Whether the court adopts the date when the employees first provided their request to their supervisor or whether the court adopts the date asserted by the agency when the requests arrived at the Human Resources unit of the agency, the length of time was either 25 months or 18 months, the agency cannot establish that their action was expedient or even reasonable.

By comparison, the period of elapsed time between the date of hearing<sup>13</sup> before the Designee of the Director of Personnel, Mr. Peterson, and his decision was approximately five (5) weeks. This comparison is significant because the hearing provided Mr. Peterson with all of the information he needed to make his determination. The agency had all of the information it needed to make the determination by the 17<sup>th</sup> of March 2003. [CP 82] This is because the agency had the requests and supporting material from the employees at that time and had access to and knowledge of the agency classified positions and classification plan. The employee information had been provided to their supervisor seven months earlier. It strains logic and common sense that the agency would need an additional 18 months to make its determination. The only conclusion that can be reached is that there was “undue delay” as that term is commonly known.

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<sup>13</sup> The hearing date was set some seven months after the determination made by the Human Resources Director of the Department of Employment Security. Thus, the total elapsed time from agency decision to decision by the Designee was eight months, a little less than ½ of the time taken by the agency. [CP 82]

Certainly by comparison, the two periods of time, 5 weeks versus 72 weeks do not show a “reasonable” elapsed time for consideration on the part of the agency. The most reasonable construction of the regulation in question is that the agency, once delegated the responsibility it had asked to have, had a requirement to adopt procedures and process any request for position review in a manner that was reasonable...a manner that did not cause “undue delay” for the Director or Designee.

- 5) Whether the period of review that extended for eighteen months constituted an unreasonable delay that denied due process to the civil servant seeking review.

The agency had a duty to adopt procedures when it was granted the authority to make allocation determinations. It did not adopt any procedures for processing the requests for position review by its employees. This was a breach of an affirmative duty.

As civil service employees under the Merit System, the employees here had a vested right in seeking a review of their positions for purposes of a reallocation. While the employees can concede that seeking a reallocation does not thereby grant the determination that their position would be reclassified, they contend that the affirmative duty for the voluntary undertaking of the responsibility to process requests for position reviews by their employer vested in the employee a right to have their request processed in accord with the operating regulations related to the

classification of civil service positions in Chapter 356-10 WAC. This was a right afforded to them by the civil service law. Civil service employment is controlled by the civil service statutes, subject to Article I, Section 23 of the Washington Constitution. Federation of State Employees, supra; Riccobono, supra.

Any examination of the applicable administrative code provision, WAC 356-10-030 would reveal that the intention was to establish a procedure to be available to employees for processing their requests for review of the classification of their position. The procedure was to be a means used to insure that positions in the system were properly classified and that individuals in those positions were paid in a manner commensurate with their duties and responsibilities. Thus, the procedure was to be used to ensure that the property rights of the civil service employee were protected and enjoyed by the employee.

Because the agency had not adopted a procedure, it exercised unfettered discretion to take the time and pursue the methods it unilaterally decided to take. Due process requires “such procedural protections as the particular situation demands.” Matthews v. Eldridge, 424 U.S. 319, 334, 96 S.Ct. 893, 47 L.Ed. 2d 18 (1976). The state supreme court adopted the Matthews v. Eldridge test when determining what process was due in a particular situation. Kustura v. Labor and

Industries, 142 Wn.App. 655, 674, \_\_\_ P.3d \_\_\_ (2008). The elements of the test require weighing of the following factors: (1) the private interest at stake in the governmental action; (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and (3) the government interest, including additional burdens that added procedural safeguards would entail.

In the Kustura matter, the private interest was the right to benefits that all injured workers have under the Industrial Insurance Act. Here, the private interest is the vested interest that all civil service employees have in the proper classification of the position in which they serve. The civil service statute establishes this interest for civil service system employees. There is a risk of erroneous deprivation of the interest here because no procedures were implemented at all. Further, since the regulation imposed a duty to adopt procedures, it is recognized that there is value in having procedural safeguards to ensure that there is no “undue delay”. Finally, the regulation expresses the governmental interest is not impaired by the adoption of procedures or there would have been no duty to do so in the first instance.

The circumstances here demonstrate compliance with each of the factors of the Mathews v. Eldridge test to establish that due process was

not provided to the employees because the required procedures were not implemented. Since they were not adopted, the fact that each of the positions held by each of the employees was subjected to a Reduction in Force initiated by the agency between the date the agency asserts it received the requests for position review and the date the decision was made, demonstrated the risk of erroneous deprivation which was the second factor in the Mathews v. Eldridge test. The final determination by the Designee, confirmed by the Personnel Appeals Board, authorized the reclassification of the positions to ESPC 3 from ESPC 2.

The risk of erroneous deprivation is acknowledged in the regulatory scheme in WAC 356-10-060(8), which states: “*Whenever possible, agencies shall continue employee’s duties unchanged, pending an allocation decision.*” This is more than a suggestion. It is a recognition that if a request for position review is made, the employing agency should refrain from changing the duties of the position as it has the right to do. A change in the duties after a request for position review would require yet another position review and cause doubt about the validity of the basis of the initial request for review. This admonition is warnings not to exercise the discretion employing agencies have to modify the duties assigned to a given position. It would also raise questions of “bad faith” on the part of the employing agency.

The Kustura case considered whether an existing notice procedure constituted a denial of due process because the notice procedure did not require the notice to be in the language of the person to whom it was provided. The court held under the facts in Kustura that there was no denial of due process. Here, there is no agency procedure. Here, the delay period of 18 months encompassed a loss of position for each of the employees. There was an unreasonable delay that deprived the employees of their due process. There was no burden to the employing agency in adopting the procedures required by the regulation once it received the authorization it had sought to make allocation determinations.

- 6) Whether the failure of an employing agency charged with making reallocation determinations violated the due process owed to its employees by failing to adopt procedural rules for the review of a request for reallocation.

This issue seems subject to the axiomatic conclusion that if an administrative agency has an affirmative duty to adopt procedural rules for position reviews, and it does not, then it is in breach of the duty which was designed to provide procedural due process for the employees of the agency. If the agency is in breach of the duty, then it has violated the due process owed to its employees.

WAC 356-10-030(5) provides, in pertinent part: *“Agencies shall establish procedures for processing...requests for position review to*

*provide proper maintenance of the classification plan.*” The regulation does not require interpretation. The obligation is mandatory. The Department of Employment Security did not adopt any procedure for processing requests for position review. The compliance with the duty would have established the procedure due to an employee seeking a review of his or her position. The employees in this matter were denied the process they were due because the agency had no procedure established pursuant to the duty set forth in the cited administrative code provision.

- 7) What remedy exists for a civil service employee who has been denied due process because of undue delay by the employing agency or because of the failure of the employing agency to adopt procedural rules for review of reallocation requests.

- a. Declaratory Judgment:

Chapter 7.24 RCW establishes the authority of the court to render a judgment that declares the rights, status and other relations of parties whether or not further relief is or could be claimed.<sup>14</sup> This cause of action presents a justiciable controversy. Nostrand v. Little, 58 Wn.2d 111, 3600 P.2d 551 (1961). Each of the parties has existing and genuine rights or interests; the judgment of a court may effectively operate on the issues; any determination by the court will have the force and effect of a final

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<sup>14</sup> RCW 7.24.010

judgment in law or a decree in equity; and the parties are adverse to one another. State ex.rel. O'Connell v. Dubuque, 68 Wn.553, 413 P.2d 972 (1966). A declaratory judgment action may be used to construe a statute (or administrative code provision). Shelton Hotel Co. v. Bates, 4 Wn.2d 498, 104 P.2d 478 (1940). Parties whose financial interests will be affected by the outcome of a declaratory judgment action have standing. Yakima County Fire Protection District. No. 12, v. City of Yakima, 122 Wn.2d 371, 858 P.2d 245 (1993). When acting under the declaratory judgments act, courts have the power to determine questions of fact when necessary to a declaration of legal relations. Trinity Universal Insurance Co., v. Willrich, 13 Wn.2d 263, 124 P.2d 950 (1942).

The employees sought declaratory relief because the agency had failed in its affirmative duty to adopt a procedure for review of the requests for allocation of positions within the agency. The trial court did not rule on whether the agency had breached its duty to adopt procedures. Had procedures been adopted, the delay occasioned by the agency would likely have not occurred, nor would the employees' vested rights have been abridged.

Here, the employees had sought a declaratory judgment that the operation of the civil service law in effect at the time they made the request for reallocation of their positions remained in effect during the

period when their allocation request was being processed. At a minimum, the application of the civil service law and rules should have been viable through the period when the Director's Designee, Mr. Peterson made his ruling on 26 May 2005.

Further, since it was the agency that filed the appeal from the determination on the 24<sup>th</sup> of June 2005 and the agency lost its appeal, the legal status of the appellants should have been declared to return to the *status quo ante*. Their rights in the RIF should have been determined from their legal status on 26 May 2005 and not on the date of the ruling by the Personnel Appeals Board, 26 March 2006. The vested right they possessed was based upon the incumbent positions they held. When the Designee of the Director ruled in May 2005, their right to be classified as an ESPC 3 was confirmed and their incumbent positions became elevated retroactively from the Two level to the Three level. The fact that the agency filed an appeal did not extinguish the administrative determination. It merely placed it in suspense, pending appeal just as the ruling by Judge Hicks has been placed in suspense pending the ruling by the Appellate Court in this matter.

b. Mandamus:

Mandamus is sought to compel action, not to review it. Luellen v. Aberdeen, 20 Wn.2d 594, 148 P.2d 849 (1944). Mandamus is allowed as

a remedy for enforcement of a judgment. State ex. rel. Ledger Publication Co. v. Gloyd, 14 Wash. 5, 44 P. 103 (1896). Mandamus may issue to require an elected official to exercise the discretion which it is his duty to exercise under the law. State ex rel. Klappsa v. Enumclaw, 73 Wn.2d 451, 439 P.2d 246 (1968). A writ of mandamus will not issue where there is a plain, speedy and adequate remedy at law.<sup>15</sup> Paul v. McGraw, 3 Wash. 296, 28 P. 532 (1891). Where an administrative official acts arbitrarily or refuses to exercise its discretion in fixing salary of a public employee, mandamus will lie as a remedy by appeal is inadequate. State ex rel. Yeargin v. Mashcke, 90 Wash 249, 155 P. 1064 (1916).

The employees sought a Writ to require the agency to reinstate their positions to the *status quo ante* before the Reduction in Force after a declaratory ruling that they were incumbent in ESPC 3 positions prior to the Reduction in Force on 1 July 2004. Here, the agency engaged in two discretionary determinations for what should have been ministerial acts. The agency decided that the date of reimbursement should be the date the requests were received by its Human Resources Unit and not the date when the supervisor of the employees received each respective request for review. And, the agency unilaterally determined that the effective date of

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<sup>15</sup> RCW 7.16.170

conclusion of the ESPC 3 status was the date it decided the Reduction in Force would be effective (the 30<sup>th</sup> of June 2004).<sup>16</sup>

The remedy sought through mandamus is to require the employer to grant to the Plaintiffs the options they would have received, but for the imposition of the RIF in June 2004. The position of the Plaintiffs is that the ruling by Mr. Peterson became an obligation that was ministerial in nature. Ministerial duties may be compelled by mandamus. American Bridge Co. v. Wheeler, 35 Wash. 40, 76 P.2d 534 (1904). The agency had no discretion to avoid upgrading the classifications for the positions held by the Plaintiffs. Mandamus may be used to require that discretion be exercised although it may not be used to prescribe a special decision or course of conduct. Bullock v. Roberts, 84 Wn.2d 101, 524 P.2d 385 (1974).

The employees agree that the agency should not be required to redo the entire Reduction in Force that it imposed on 1 July 2004. But, upon a declaration that the positions held by the employees was judged by

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<sup>16</sup> It is anticipated that the agency will argue that the RIF affected far more employees than just the original six persons who were involved in this appeal process. It is true that the RIF applied to many more employees of the agency, but none of the rest of the affected employees were involved in a review of the classification of their positions and, more importantly, none of the other employees had received validation that their positions should be elevated to a higher classification. The remaining employees affected by the RIF were assigned options based upon the classification of their incumbent position. Here, the employees in this appeal were authorized to a higher level, but that change was suspended because of the affirmative act by the agency when it filed the appeal to the Personnel Appeals Board.

the Designee of the Director of Personnel to have been elevated to ESPC 3 positions on the 26<sup>th</sup> of May 2005, the Court should enter a Writ mandating that each of the employees positions should be elevated to the Three level. In the alternative, the wage level for each employee should be retroactively reset to the ESPC 3 level and continued until their voluntary transfer, promotion or the end of their employment through retirement or voluntary termination. The additional salary and benefits should be awarded to each employee and their pensions should be reset in concert with the retroactive application of the ruling by the Designee of the Director of Personnel, confirmed by the Personnel Appeals Board.

It was the agency that filed the appeal that held the retroactive application of the determination of the Designee in suspension until the decision was made by the Personnel Appeals Board. Because of the agency's intentional actions<sup>17</sup>, the employees were denied by their employer the right which had become vested. It should be noted that the reason why the incumbent positions were reallocated upward upon review was because the agency had assigned higher level work to each of the employees in this appeal.

This result should occur because the underlying purpose of the civil service act was to “...*to establish for the state a system of personnel*

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<sup>17</sup> Filing the Appeal and imposing the Reduction in Force.

*administration based on merit principles and scientific methods governing ...classification [for] ...its civil employees.”*

The trial court noted that he believed the state was right on the law and that if there is to be a change in the determination it would have to be in the Court of Appeals.<sup>18</sup>

The Honorable Judge Hicks opined that he thought “...the result stinks, to use a nonlegal term...”<sup>19</sup> He noted that the delay caused by the agency was the incipient cause of the lack of bump options identified to the employees when the RIF became effective.<sup>20</sup> He was further concerned about the award of damages because of the speculative about what bump options would have been provided had the agency treated the employee positions at the ESPC 3 instead of the ESPC 2 level.<sup>21</sup>

However, the Court could have simply ordered the agency to elevate the employees to ESPC 3 positions<sup>22</sup> wherever they were employed or increased their wages and benefits to those commensurate with an ESPC 3 classification through use of what was known as a “Y-rate” process applicable under the Merit System Rules in effect when their

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<sup>18</sup> RP, page 3, lines 11-13, 2 November 2007.

<sup>19</sup> Ibid, lines 13-14.

<sup>20</sup> Ibid, lines 14-24.

<sup>21</sup> RP, page 4, lines 2-13, 2 November 2007.

<sup>22</sup> WAC 358-30-180 provides: "Any employee, when fully reinstated after appeal, shall be guaranteed all employee rights and benefits, including back pay, sick leave, vacation accrual, retirement, and OASDI credits as provided for in RCW 41.06.220."

requests for review were made.<sup>23</sup> A “Y-rate” is a “salary amount which...exceeds the maximum step for the salary range of an employee’s class...” WAC 356-05-505. After the Reduction in Force, each of the employees were provided with options that either maintained their employment at an ESPC 2 level or at a lower level. [CP 153] The use of the “Y-rate” would enable the payment of the salary of an ESPC 3 even though the individual employee was incumbent in a position at a lower level.

The employees also seek application of the Washington State Wage Act (Chapters 49.48 and 49.52 RCW) penalties for willful denial of the pay and benefits to which they were entitled. This element of the damages was not briefed in the agency’s motion or memorandum in support of its Summary Judgment request. Employees reserve this issue in the event this matter is remanded to the trial court.

#### V. STANDARD OF REVIEW

On review of an order for summary judgment, the Court of Appeals performs the same inquiry as the trial court. Hisle v. Todd Pac. Shipyards Corp., 151 Wn.2d 853, 860, 93 P.3d 108 (2004). Thus, the standard of review is *de novo*. Summary judgment is appropriate only if

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<sup>23</sup> WAC 356-14-075 – Y-Rate- enabled an employing agency to reset the salary of a permanent civil service employee to a level different from the position to which they had been assigned. The text of the administrative code provision is attached as an Appendix to this Brief, Appendix A.

"the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). Summary judgment is granted only if reasonable persons could reach but one conclusion from all the evidence. Vallandigham v. Clover Park Sch. Dist. No. 400, 154 Wn.2d 16, 26, 109 P.3d 805 (2005).

In ruling on the motion, the court must construe all facts and reasonable inferences in the light most favorable to the non-moving party. Yakima Fruit & Cold Storage Co. v. Central Heating and Plumbing Co., 81 Wn.2d 528, 530, 503 P.2d 108 (1972). A material fact is one upon which the outcome of the litigation depends. Eriks v. Denver, 118 Wn.2d 451, 456, 824 P.2d 307 (1986). The moving party has the burden of showing the absence of any issue of material fact. Baldwin v. Sisters of Providence, 112 Wn.2d 127, 132, 769 P.2d 298 (1989). Affidavits and other testimonial documents of party moving for summary judgment must be scrutinized with care and all reasonable inferences from the evidence must be resolved against the moving party, while affidavits of nonmoving party are to be afforded leniency. State ex rel. Murray v. Shanks, 27 Wn.App. 363, 618 P.2d 102 (1980).

The non-moving party in this litigation is the employees who sought reallocation of their positions. The court is required to construe all facts in a light most favorable to the non-moving parties in this *de novo* review of the ruling by Judge Hicks.

#### VI. ATTORNEY FEES AND COSTS

The Appellants here request that the Court award attorney fees under RAP 18.1. The rule provides that the prevailing party can recover costs incurred on appeal, including but not limited to reasonable attorney fees. RAP 14.2, 14.3. The Appellants now request an award of attorney fees and an award of costs if they succeed on appeal. If the Appellants prevail on the appeal of this adverse summary judgment ruling and the Court remands the matter to the trial court; it remains to be determined if they will prevail on the trial in this matter. McClarty v. Totem Electric, 119 Wn. App. 453, 472, 81 P. 3<sup>rd</sup> 901 (2003). The rule in McClarty, which has been confirmed in the high court's decision in Riehl v. Foodmaker, Inc., 152 Wn.2d 138 94 P.3d 930 (2004), would require the trial court to make the determination. Consequently, the Appellants request that the Court reserve the matter of attorney fees and costs for the trial court if remand occurs.

However, if the Court determines that the Appeal should be granted and the declaratory relief sought by the employees should be determined in their favor and a Writ should be issued, then the employees seek an award of reasonable

attorney fees on appeal pursuant to the cited rules based upon the Affidavit of Michael Hanbey filed in support of this request.

## VII. CONCLUSION

The employees, Cheryl Waters, Francis Tagbo, Carol Peden and Linda Ambler, all seek a declaration of the vested right they possessed as civil service employees of the State of Washington. They have brought this action to achieve a declaratory judgment that their right to reclassification was denied to them because of a lack of due process. It is their contention that the “undue delay” employed official at the Department of Employment Security denied to them the rights they possessed as permanent employees incumbent in positions where additional, higher level duties had been imposed by the same employer.

Further, they contend that the failure of the agency to meet its affirmative duty to adopt procedures for conducting the review of requests for reallocation enabled the agency to engage in the “undue delay” without sanctions. The agency had sought the authority to make reallocation decisions and then abused the authority they received because the use of that authority was predicated upon compliance with the affirmative duty to adopt procedures.

The underlying principles of the merit system rules were to adopt and enforce a systematic merit system. Chief among the application of those principles was the classification system designed to ensure that civil service

employees were properly paid for the work they were assigned and accomplished in a manner consistent with the salary schedules adopted by the Personnel Board.

The Court is authorized to interpret the statute and regulations to accomplish the ends sought by the regulatory scheme even if the administrative agency failed to do so. Since the employees contend that they had a vested right to proper compensation for the work they had been doing, and since the objective review by the Designee of the Director as confirmed by the Personnel Appeals Board awarded them the ESPC 3 classification, they should receive the benefits attendant with that reclassification.

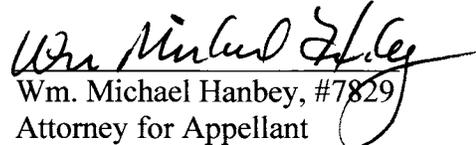
The rights they possessed grew from their incumbency. The fact that the agency engaged in “undue delay” past the date when the agency imposed a RIF, and then sought an appeal after the determination was adverse, does not diminish the conclusion that they had been performing as ESPC 3s from before when they made their request for review in 2002. The determination by the Designee constituted a retroactive determination confirming their actual status as opposed to their figurative status. Hence, their right to the classification retroactively preceded the RIF.

The result of declaration of this vested right enables the Court to fashion a remedy consistent with the regulatory scheme. The employees contend that scheme imposes the relief of full reinstatement to the benefits of the position determined on appeal. The options that exist are to assign the classification of

ESPC 3 with a concomitant wage and benefits to the individual who had sought the review or to require the agency to assign as a "Y-rate" the salary that is consistent with the ESPC 3 classification to each individual and require that the concomitant benefits (including pension) be awarded to each individual for the period of their employment since the date of their request for review.

The employees also request the Court award attorney fees and costs for this appeal as set forth above.

RESPECTFULLY SUBMITTED THIS 15<sup>th</sup> DAY OF MAY 2008.

  
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Attorney for Appellant  
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**CERTIFICATE OF SERVICE:**

I, Kelsy Vincent, hereby certify that I caused the foregoing document to be filed with the Court and served on all parties or their counsel of record as follows:

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BY \_\_\_\_\_  
DEPUTY

I certify under the penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct.

Dated this 15<sup>th</sup> day of May, 2008

  
Kelsy Vincent  
Kelsy Vincent  
Legal Assistant to Michael Hanbey

# APPENDIX

## A

requests and justifications must be submitted to the board in writing within 15 calendar days from the effective date of the action from which the request originates.

[Statutory Authority: RCW 41.06.150.00-16-004, § 356-14-070, filed 7/20/00, effective 9/1/00; 98-19-034, § 356-14-070, filed 9/10/98, effective 10/12/98; Order 96, § 356-14-070, filed 12/10/76, effective 1/12/77; Order 36, § 356-14-070, filed 7/1/71, effective 8/1/71. Formerly WAC 356-08-130.]

**WAC 356-14-075 Y-rate—Administration.** (1) A Y-rate is a dollar amount that is treated as the basic salary for an employee.

(2) A Y-rate is set by the director of personnel or other provisions of the merit system rules at an amount other than that which would be paid if such action were not taken.

(3) A Y-rate will remain in effect until one of the following occurs:

(a) A specific date established by the director of personnel is reached; or

(b) The employee voluntarily leaves the position occupied when the Y-rate was approved except for transfers due to reduction-in-force; or

(c) The range for the employee's present class is increased to include the Y-rate amount which formerly exceeded the top of the range. At that time, the employee's basic salary shall become the maximum step of the salary range for the class; or

(d) The range for the employee's present class is increased, but had already encompassed the employee's Y-rate, which was between normal steps. At that time, the employee's basic salary shall advance to the normal step of the range which provides the closest to, but not greater than, the increase in the range; or

(e) The employee's salary is reduced pursuant to WAC 356-34-020; or

(f) The Y-rate is subsequently modified by the director of personnel.

(4) A Y-rate will not cause the employee's periodic increment date to change.

(5) Salary increases approved by the legislature shall not move the basic salary of a Y-rated employee higher than the top step of the salary range assigned to that employee's classification, unless the salary appropriations act specifically provides for increases above the top step for Y-rated employees.

(6) The director of personnel shall keep records of all Y-rate approvals.

[Statutory Authority: RCW 41.06.150.01-07-057, § 356-14-075, filed 3/19/01, effective 5/1/01. Statutory Authority: RCW 41.06.040 and 41.06.150.93-12-087 (Order 420), § 356-14-075, filed 5/28/93, effective 7/1/93. Statutory Authority: RCW 41.06.150.86-17-038 (Order 256), § 356-14-075, filed 8/15/86, effective 10/1/86; 85-09-030 (Order 221), § 356-14-075, filed 4/12/85; Order 109, § 356-14-075, filed 9/7/77; Order 96, § 356-14-075, filed 12/10/76, effective 1/12/77; Order 92, § 356-14-075, filed 10/5/76, effective 11/5/76.]

**WAC 356-14-080 Salary—Entrance.** The entrance salary for an employee shall be the minimum salary step of the range unless the prospective employing agency has authorized a higher entrance salary step.

[Order 75, § 356-14-080, filed 3/24/75; Order 36, § 356-14-080, filed 7/1/71, effective 8/1/71. Formerly WAC 356-08-131.]

[Title 356 WAC—p. 32]

**WAC 356-14-085 Salaries—Reduction in force register appointment.** When an eligible is appointed from a certification off of a reduction in force register, his/her salary will be set as follows:

(1) If the employee was demoted due to a reduction in force action or the reallocation of a position downward, the salary will be the basic dollar amount the employee was being paid at the time he/she left the range to which he/she is being appointed, plus, whatever the periodic increases and the salary adjustments that would have been made had the employee remained in that classification and range. If the employee was separated from state service due to a reduction in force action, the separation will not be regarded as a break in service. An eligible still employed by the state will not be entitled to further increases in salary based on promotion as prescribed in WAC 356-14-140.

(2) Such increases above the basic dollar amount in (1) above shall not place the employee higher than the maximum salary for the range, except general salary increase specifically granted to Y rated employees.

[Statutory Authority: RCW 41.06.150.01-07-057, § 356-14-085, filed 3/19/01, effective 5/1/01; 83-06-005 (Order 180), § 356-14-085, filed 2/18/83. Statutory Authority: RCW 41.06.150(17). 81-11-032 (Order 154), § 356-14-085, filed 5/19/81; 81-01-054 (Order 150), § 356-14-085, filed 12/12/80.]

**WAC 356-14-090 Salary—Reemployment.** An employee appointed from the reemployment register as provided in these rules shall be compensated at the same salary step when last permanently employed in the classification to which he/she is being reemployed unless the agency authorizes a higher salary as provided in WAC 356-14-080.

[Statutory Authority: RCW 41.06.150.82-11-061 (Order 170), § 356-14-090, filed 5/14/82; Order 75, § 356-14-090, filed 3/24/75; Order 36, § 356-14-090, filed 7/1/71, effective 8/1/71.]

**WAC 356-14-100 Reporting of appointments above the minimum.** The employing agencies shall retain records of all appointments above the minimum and shall furnish such records to the director upon request.

[Order 75, § 356-14-100, filed 3/24/75; Order 36, § 356-14-100, filed 7/1/71, effective 8/1/71. Formerly WAC 356-08-132.]

**WAC 356-14-110 Salary—Periodic increment dates—Original—Subsequent.** (1) The periodic increment date (PID) is the date on which an employee automatically advances to a higher dollar amount in the range to which the employee's position is classified; provided

(a) The employee's basic salary is not already at or above the maximum step of the assigned range, or

(b) The employee's standards of performance are such as to permit retention in a job status.

(2) The dollar amount of the increase will be two salary schedule increments; except

(a) The amount shall be one salary schedule increment when a two-increment increase will place the employee's basic salary above the maximum of the range of the employee's classification, or

(b) A fractional part of an increment amount shall be regarded as a full increment advance, when the employee's

(2003 Ed.)

EXHIBIT A

**WAC 356-05-493 Workforce diversity.** Diversity is the condition of being different and having differences. Applied to the workforce, it means that an increasing number of employees with a greater range of distinctions are, and will be, present within the workplace. This includes persons with diverse racial, ethnic, cultural, economic and geographic backgrounds as well as people with disabilities, different ages, physical characteristics and gender, veterans status, and members of varying forms of family structures, religious preferences, and sexual orientations.

[Statutory Authority: RCW 41.06.040 and 41.06.150. 91-20-032 (Order 386), § 356-05-493, filed 9/23/91, effective 11/1/91.]

**WAC 356-05-495 Workshift.** Scheduled working hours within the workday.

[Statutory Authority: RCW 41.06.150, 41.06.175, 41.06.185, 41.06.195 and 41.06.205. 84-17-042 (Order 209), § 356-05-495, filed 8/10/84.]

**WAC 356-05-500 Workweek.** A regular recurring period of 168 hours beginning at a time determined by the appointing authority and continuing for seven consecutive 24-hour periods.

[Statutory Authority: RCW 41.06.150. 87-10-037 (Order 274), § 356-05-500, filed 5/1/87, effective 6/1/87. Statutory Authority: RCW 41.06.150, 41.06.175, 41.06.185, 41.06.195 and 41.06.205. 84-17-042 (Order 209), § 356-05-500, filed 8/10/84.]

**WAC 356-05-505 Y-rate.** A salary amount which either exceeds the maximum step for the salary range of an employee's class or a salary amount that falls between the steps of a salary range of an employee's class.

[Statutory Authority: RCW 41.06.150, 41.06.175, 41.06.185, 41.06.195 and 41.06.205. 84-17-042 (Order 209), § 356-05-505, filed 8/10/84.]

**Chapter 356-06 WAC  
GENERAL PROVISIONS**

**WAC**

- 356-06-001 Declaration of purpose.
- 356-06-002 Scope and construction of terms.
- 356-06-003 Scope.
- 356-06-030 Personnel services—Governmental agencies.
- 356-06-040 Classified service.
- 356-06-045 Movement between Washington general service and Washington management service positions.
- 356-06-050 Exempt service.
- 356-06-055 Exempt—Classified service—Movement between.
- 356-06-065 Incumbent status for positions converted by the board from exempt to classified.
- 356-06-080 Powers—Duties of the board.
- 356-06-100 Director—Powers—Duties.
- 356-06-110 Federal preemption—Fair Labor Standards Act.
- 356-06-120 Americans with Disabilities Act of 1990—Federal and state preemption.

**DISPOSITION OF SECTIONS FORMERLY  
CODIFIED IN THIS CHAPTER**

- 356-06-010 Definitions. [Statutory Authority: RCW 41.06.150. 84-14-006 (Order 207), § 356-06-010, filed 6/22/84; 84-12-079 (Order 206), § 356-06-010, filed 6/6/84; 84-11-003 (Order 203), § 356-06-010, filed 5/4/84; 84-02-030 (Order 194), § 356-06-010, filed 12/30/83; 83-01-115 (Order 179), § 356-06-010, filed 12/22/82. Statutory Authority: RCW 41.06.150(17). 82-19-092 (Order 175), § 356-06-010, filed 9/22/82; 82-09-022 (Order 169), § 356-06-010, filed 4/12/82; 82-03-030 (Order 165), § 356-06-010, filed 1/18/82; 81-23-031 (Order

163), § 356-06-010, filed 11/16/81; 80-13-047 (147), § 356-06-010, filed 9/16/80; 80-09-010 (145), § 356-06-010, filed 7/8/80; 78-02-049 (116), § 356-06-010, filed 1/19/78; Order 113, § 356-010, filed 11/30/77; Order 112, § 356-06-010, 11/7/77; Order-109, § 356-06-010, filed 9/7/77; C 100, § 356-06-010, filed 3/30/77; Order 98, § 356-010, filed 1/13/77, effective 2/13/77; Order 94, § 356-06-010, filed 11/2/76, effective 1/1/77; Order 92, § 356-06-010, filed 10/5/76, effective 11/5/76; Order 8 356-06-010, filed 6/30/76, effective 7/31/76; Order § 356-06-010, filed 5/4/76; Order 82, § 356-06-010, filed 9/26/75; Order 80, § 356-06-010, filed 7/16/75; Order 78, § 356-06-010, filed 5/19/75, effective 7/1/75; Order 77, § 356-06-010, filed 5/7/75; Order 74, § 356-06-010, filed 3/7/75; Order 71, § 356-06-010, filed 12/30/74; Order 69, § 356-06-010, filed 9/30/74; Order 63, § 356-06-010, filed 2/26/74; Order 58, § 356-010, filed 9/10/73; Order 57, § 356-06-010, filed 7/31/73; Order 51, § 356-06-010, filed 12/19/72; Order 47, § 356-06-010, filed 6/14/72; Order 42, § 356-010, filed 1/11/72; Permanent and Emergency Order 3 § 356-06-010, filed 9/15/71; Order 36, § 356-06-010, filed 7/1/71, effective 8/1/71. Formerly WAC 356-010.] Repealed by 84-17-042 (Order 209), filed 8/10/84. Statutory Authority: RCW 41.06.150, 41.06.175, 41.06.185, 41.06.195 and 41.06.205. Later promulgation, see chapter 356-05 WAC.

356-06-020 Exemptions. [Statutory Authority: RCW 41.06.150. 98-19-034, § 356-06-020, filed 9/10/98, effective 10/12/98 95-19-054, § 356-06-020, filed 9/15/95, effective 10/16/95. Statutory Authority: RCW 41.06.040 and 41.06.150. 90-12-027 (Order 353), § 356-06-020, filed 5/30/90, effective 6/30/90. Statutory Authority: RCW 41.06.150. 87-24-028 (Order 287), § 356-06-020, filed 11/24/87, effective 1/1/88; 85-21-113 (Order 237), § 356-06-020, filed 10/23/85, effective 12/1/85; 85-19-078 (Order 230), § 356-06-020, filed 9/18/85. Statutory Authority: RCW 41.06.150, 41.06.169, 41.06.175, 41.06.185, 41.06.195 and 41.06.205. 84-17-042 (Order 209), § 356-06-020, filed 8/10/84. Statutory Authority: RCW 41.06.150(17). 80-06-032 (Order 143), § 356-06-020, filed 5/9/80, effective 6/12/80; 79-12-012 (Order 137), § 356-06-020, filed 11/13/79; 78-05-025 (Order 119), § 356-06-020, filed 4/14/78; Order 63, § 356-06-020, filed 2/26/74; Order 37, § 356-06-020, filed 8/17/71, effective 9/17/71; Order 36, § 356-06-020, filed 7/1/71, effective 8/1/71. Formerly WAC 356-04-020.] Repealed by 02-15-050, filed 7/11/02, effective 9/1/02. Statutory Authority: RCW 41.06.150. Later promulgation, see WAC 356-03-010.

356-06-060 Personnel board—Composition—Appointment. [Statutory Authority: RCW 41.06.150(17). 78-05-025 (Order 119), § 356-06-060, filed 4/14/78; Order 36, § 356-06-060, filed 7/1/71, effective 8/1/71. Formerly WAC 356-04-090.] Repealed by 98-19-034, filed 9/10/98, effective 10/12/98. Statutory Authority: RCW 41.06.150.

356-06-070 Personnel board—Procedure—Quorum. [Statutory Authority: RCW 41.06.150(17). 78-05-025 (Order 119), § 356-06-070, filed 4/14/78; Order 36, § 356-06-070, filed 7/1/71, effective 8/1/71. Formerly WAC 356-04-100.] Repealed by 98-19-034, filed 9/10/98, effective 10/12/98. Statutory Authority: RCW 41.06.150.

356-06-090 Director—Appointment—Removal. [Order 36, § 356-06-090, filed 7/1/71, effective 8/1/71. Formerly WAC 356-04-120.] Repealed by 98-19-034, filed 9/10/98, effective 10/12/98. Statutory Authority: RCW 41.06.150.

**WAC 356-06-001 Declaration of purpose.** The general purpose of these rules is to establish for the state a system of personnel administration based on merit principles, including affirmative action, and scientific methods of governing the appointment, promotion, transfer, layoff, recruitment, retention, classification and pay plan, removal, discipline and welfare of its civil employees, and other incidents of state employment. All appointments and promotions to positions, and the retention therein, in the state service shall be made on the basis of policies hereinafter specified.