

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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NO. 38041-2-II

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

KAREN N. ROGERS,

Appellant,

v.

TACOMA COMMUNITY COLLEGE,

Respondent.

RESPONSE BRIEF OF TACOMA COMMUNITY COLLEGE

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I. PROCEDURAL HISTORY

Appellant, a tenured instructor at Tacoma Community College (College), received a Reduction In Force (RIF) notice on April 3, 2007. AR 5. She timely appealed and a RIF Review Committee was formed pursuant to the Collective Bargaining Agreement (CBA). AR 194. A hearing was held on June 8, 2007. On June 12, 2007, the Review Committee found that a RIF was appropriate and made recommendations. Appellant timely appealed that decision to the Tacoma Community College Board of Trustees (Board). A hearing before the Board was held on June 22, 2007. The Board issued a decision upholding the RIF on July 9, 2007. AR 2–3.

Appellant timely filed for judicial review of the Board decision on August 3, 2007. CP 1–4. The administrative record was sent to the Superior Court on December 6, 2007, and a Motion to Correct the Record with the addition of a two-page document was filed on May 2, 2008. CP 110–116. The Order granting the Motion to Correct the Record was issued on May 30, 2008. CP 119–122.

Judicial Review of the College's administrative decision was held before the Honorable Vicki Hogan in Pierce County Superior Court on June 24, 2008, at which time the Petition for Review was denied. CP 95.

Appellant's Motion to Supplement the Record was also partially granted and partially denied on June 24, 2008. VRP at 21.

Appellant filed a Motion to Enter Findings of Fact on July 18, 2008, approximately one week after the Court directed Appellant to file said Motion. VRP at 44-47. The Motion was denied on August 1, 2008. CP 143-144.

Appellant timely filed a Notice of Appeal to the Court of Appeals on July 18, 2008, which is the matter now before the Court.

II. FACTUAL BACKGROUND

Appellant was hired for a tenure-track position to teach European and Western Civilization courses. She was granted tenure in 2001. Appellant was given written notification on March 29, 2007, that her position as a faculty member was identified as one that would be subject to a reduction in force due to a large budgetary shortfall. AR 4.

By letter dated April 3, 2007, Appellant was informed that the courses in the area that she was specifically hired to teach were not meeting minimal levels of enrollment and had been low for some time. AR 5. She was further informed that she was the least senior faculty member assigned to teach the courses that had not been meeting enrollment requirements. AR 5.

Appellant exercised her right to have the College's proposed action reviewed by the RIF Review Committee. Pursuant to the CBA, the Review Committee was comprised of three faculty members, one administrator, and one student. The Review Committee heard evidence at a recorded hearing on June 8, 2007. AR 12-71.

At the hearing, the Review Committee was informed that the college faced a \$1.2 million budget shortfall and had been dealing with declining enrollments since 2002. AR 22-25. The College reviewed all of its positions and programs across the board to determine where budget cuts could be made. AR 26-28. Multiple classified staff members, four exempt employees, and three faculty positions, including Appellant's, were eliminated as a result of the budget cuts. AR 28-29.

The position held by appellant and for which she was credentialed to teach was European History and Western Civilization. AR 30; AR 201-202. In Exhibit C1 to the hearing, a document entitled Criteria for Review of Instructional Positions for 2007-2008 Budget, noted that, "Western Civ enrollments have declined, largely because it is not a required graduation course for high schools" AR 72. The document goes on to note that, "[w]e do not need two FT faculty (Karen Rogers and Yi Li) to cover the World Civ sequence, as we are only filling about seven (or eight) sections per year." AR 74. It was noted that appellant: ". . .

was hired to specifically teach European History and Western Civilization . . . at a time when the department was growing and expanding. However, the changing of program requirements in the high schools and colleges has influenced what we can schedule.” AR 74–75.

By memo dated June 12, 2007, and after considering the evidence, the Review Committee made a recommendation to accept the reduction in force with the following findings:

1. That appellant was not credentialed to teach U.S. History as a full-time instructor and would not have been hired for that position.
2. That the college had made a good faith effort to provide appellant with a full-time teaching load.
3. That there was no evidence the college administration had violated any provision of the CBA. AR 10–11.

Appellant then requested the College’s Board of Trustees to review the reduction-in-force recommendation, pursuant to the CBA. The hearing was held on June 22, 2007, and by letter dated July 9, 2007, the Board issued its unanimous decision upholding the reduction in force. AR 2–3. In making its decision, the Board found:

- a. The current financial status of the college required the reassignment and eventual RIF proceeding for a number of staff.
- b. The college followed all RIF procedures outlined in the contract. These procedures were followed properly and your position was correctly identified

under college procedures as most appropriate for elimination.

- c. Your credentials, as the incumbent of the position identified for elimination, were thoroughly reviewed by the college and there was no appropriate alternate position in which to place you.
- d. The procedures set forth in the faculty negotiated contract were properly followed throughout this process.

AR 2-3.

III. STANDARD OF REVIEW

Although it is not entirely clear, Appellant appears to be challenging the factual basis for the administrative action taken by the College. Review of an administrative action is not a trial de novo and shall be confined to consideration of the record of the hearing before the administrative agency. *Helland v. King County CSC*, 10 Wn. App. 683, 519 P.2d 258 (1974).

Findings of fact are subject to review under the “substantial evidence” standard. RCW 34.05.570(e); *Terry Bergeson v. Empl. Sec. Div.*, 82 Wn. App. 745, 748, 919, P.2d 111 (1996). Substantial evidence is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order. *Thurston Cy. v. Cooper Pt. Ass’n*, 148 Wn.2d 1, 57 P.3d 1156 (2002). Substantial evidence exists if the record contains evidence in sufficient quantum to persuade a fair-minded, rational

person of the truth of the declared premise. *In Re Welfare of Snyder*, 85 Wn.2d 182, 185, 532 P.2d 278 (1975). On appeal, the substantial evidence standard is deferential and requires the court to review the evidence and reasonable inferences in the light most favorable to the party who prevailed in the highest forum that exercised fact-finding authority. *Mansour v. King Cy.*, 131 Wn. App. 255, 262, 128 P.3d 1241 (2006).

The burden of proof is on the Appellant as the challenging party to show that the agency action is invalid. RCW 34.05.570; *Chancellor v. Dep't of Ret. Sys.*, 103 Wn. App. 336, 12 P.3d 164 (2000). And to the extent that any of Appellant's claims involve questions of law, the error of law standard is applied. RCW 34.05.570.

IV. STATEMENT OF ISSUES

Did the College breach the CBA?

Answer: No.

Were Appellant's due process rights violated?

Answer: No.

Was the College's decision to RIF Appellant Supported by Substantial Evidence?

Answer: Yes.

V. ARGUMENT

A. THE COLLEGE DID NOT BREACH THE CBA

All but one of Appellant's Assignments of Error and Statement of Issues revolve around her basic claim that there is some evidence which was created after the fact that implies that the college breached the CBA when Appellant became the subject of a RIF proceeding.

Appellant argues that supplemental documents should be admitted because they would support her claim that the College breached the CBA. Judicial review of disputed facts is conducted by the court and is confined to the agency record with very limited exceptions. RCW 34.05.558; *East Fork Hills Rural Ass'n v. Clark Cy.*, 92 Wn. App. 838, 965 P.2d 650 (1998).

1. The College Did Not Violate § 14.21 of the CBA.

Appellant argues that the College violated § 14.21 of the CBA because there was no lack of funds nor curtailment of work.¹ She then argues that "lack of actual Reduction in Force implies that the college breached the tenure contract." Rogers Br. at 11. This is simply not true. As mentioned earlier, there was an actual Reduction-In-Force which affected approximately 15 positions and people, including Appellant,

¹ Section 14.21 provides "A reduction-in-force is a dismissal of tenured academic employee without prejudice and for adequate cause, which shall include lack of funds and necessary curtailment of work."

within the college workforce. AR 3; AR 28-29. Moreover, the \$1.2 million shortfall is documented in the record.

Appellant claims that documents which did not exist at the time the Board made its decision would prove the violation of § 14.21 of the CBA and cites *Cunningham v. C. C. Dist. No. 3*, 79 Wn.2d 793, 489 P.2d 891 (1971) as authority for admission of those supplemental documents.

Appellant apparently believes *Cunningham* is controlling (a) it “involved contract language identical to section 14.21,” and (b) the “absence of proof regarding lack of funds is even more compelling in Appellant’s case” than that shown in *Cunningham*. Rogers Br. at 15. *Cunningham* is easily distinguishable for three reasons. First, there is sufficient evidence in Appellant’s case to demonstrate a lack of funds through the budgetary shortfall. Second, *Cunningham* had nothing to do with supplemental or additional evidence. *Cunningham* dealt only with the evidence presented at the original hearing. Third, and most significantly, the college district in *Cunningham* did not present any “definitive investigation or study . . . or expense or cash flow projections . . .” as evidence to support its decision to lay off workers. *Cunningham*, at 793. That court also noted that the evidence presented at the hearing indicated that the Board’s action “was based upon belief, feeling and impression that there would be an economic advantage to a contracted

service.” *Cunningham*, at 800. In other words, there was not much, if any, factual evidence or analysis presented to support the layoffs in *Cunningham*.

In Appellant’s case, the Review Committee and the Board reviewed a comprehensive study done across the College campus to determine how to weather the \$1.2 million budget shortfall. AR 22–26. The study is found in the Record as “A Criteria for Review of Instructional Positions for 2007.” AR 72–103. It was thorough in nature and encompassed actual and projected statistics for a three-year period. AR 26. Also provided at the hearings were a graph analysis of the World Civilization series of courses illustrating the decreasing enrollments over four years, and specific information regarding the actual and projected operating budget over a three-year period. AR 104–106. The College clearly demonstrated through its study and operating budget projections that there was a lack of funding evidenced by a projected \$1.2 million shortfall. Further, the study outlined the curtailment of work by explaining why certain courses were targeted, what positions were scheduled for a RIF, and why those positions were targeted. This was all done in order to fulfill the College’s fiscal responsibility to balance the budget while also responding to the projected budgetary shortfall. AR 20–21; AR 72–107. The recommendations of the Review Committee and the

decision of the Board were based upon the best information available in June 2007.²

In this case, Appellant wants this Court to supplement the record with documents which were not in existence when the Board made its decision. Documents that show what may or may not have happened in the future regarding enrollment status or other changes are not relevant to determine whether the Board's decision in 2007 is legally correct. These documents did not exist, and the information contained therein was unknown, at the time the Board made its decision. Therefore, these documents could not, and in fact, did not relate to the agency action at the time it was taken. The Board and the RIF Review Committee were obligated to consider and take action on the facts in existence at the time the decisions were made. That is exactly what happened. Indeed, the actions of both bodies were based upon the best facts available to them at the time the decisions were made.

Appellant's Motion to Supplement the Record with new evidence was correctly partially granted and partially denied by the Superior Court. The Court admitted documents that related to the decision at the time it was made and excluded "after the fact" evidence that did not exist at that

² It should be noted that every RIF decision, by its very nature and in keeping with the CBA, must be made with currently available information which projects into the future. AR 194.

time because it was not relevant to determine the validity of the Board's decision in 2007. VRP at 21. Further, the documents did not comply with APA requirement that new evidence must relate to the agency action at the time it was taken. RCW 34.05.562. (Emphasis added.)

2. The College Followed The Seniority System As Set Forth In The CBA.

Appellant next argues that the College disregarded the seniority system outlined in the CBA and bases a major part of her argument on the misleading premise that the College “stipulated that Rogers was qualified,” implicitly suggesting that she was qualified to teach any course in the History Department. Rogers Br. at 23. A brief glance at the Record clearly shows that the College did not stipulate to what Appellant implies. What Vice President of Academic and Student Affairs, Tim Stokes said was:

Karen [Rogers] is a good teacher. This has nothing to do with her abilities. It has nothing to do with competency. The issue around the U.S. History position has to do with credentialing and competency and credentialing are two very different things...

Appellant's misleading statement begs the question “For what is Rogers qualified?” Appellant is qualified, credentialed, and competent to teach Western Civilization courses. However, the College never

stipulated that she was qualified or credentialed to teach other courses offered by the History Department on a full-time basis.

Up through 2007, there were two full-time positions designated to teach European and Western Civilization courses. AR 30; AR 74. These positions were filled by two people credentialed and qualified specifically in this specialty. They were both held by tenured faculty. Of the two, Appellant was the least senior. AR 5; AR 30; AR 74–75.

Section 14.25 of the CBA provides that the “needs of the department or program shall be the primary basis for identifying the order of the RIF.” AR 193. The same section also notes “that seniority will be given first consideration provided that such consideration results in the retention of qualified academic employees.” (Emphasis added) AR 193. The Record clearly and consistently substantiates the fact that the enrollment for Western Civilization courses was shrinking at such a rate over the last few years that two full-time positions teaching those courses was no longer sustainable after June 2007. AR 30; AR 74; AR 105–106.

Appellant argues that she had seniority over another tenured faculty member, Bernard Comeau, who should have had his position eliminated first because they were both in the Social Sciences layoff unit.³ AR 39. This is simply not true. Appellant was hired as tenured faculty to

³ The Social Science layoff unit includes tenured faculty who teach psychology, political science, anthropology, history, and sociology.

teach in the narrowly defined area of European and Western Civilization. AR 201–201. Mr. Comeau was credentialed and qualified to teach in both social sciences and the humanities, which include U.S. History and Philosophy. AR 74. Indeed, Mr. Comeau was specifically hired to teach across disciplines. AR 74; AR 107. As Marlene Bosanko, Dean of Arts, Humanities and Social Sciences testified, Mr. Comeau’s position was not a history position, per se. AR 60. Further, the two part-time instructors who teach U. S. History courses are qualified and credentialed to teach U.S. History through their advanced degrees in U.S. History.⁴ AR 62. Appellant was neither qualified nor credentialed to teach courses outside her specific discipline on a full-time basis. AR 61–62; AR 201–202. In fact, while Western Civilization classes were shrinking in enrollment over the previous few years, Appellant was given the opportunity to occasionally teach other history courses and even reassigned time in the library to supplement her FTE. This was done in order to provide her alternatives as set forth in the CBA. AR 74; AR 60. Thus, in compliance with the relevant provisions of the CBA, the needs of the History Department were the primary basis for identifying the order of the RIF, and the College did give first consideration to seniority as defined in the CBA. This resulted in the “retention of qualified academic employees to

⁴ Neither part-time instructor teaches Western Civilization courses.

replace and perform the necessary duties of the personnel reduced.”

AR 193.

B. APPELLANT WAS NOT DENIED HER DUE PROCESS RIGHTS.

1. The Superior Court Afforded Appellant All Her Due Process Rights And Was Not Arbitrary and Capricious.

Appellant next appears to argue that the Superior Court was arbitrary and capricious and violated her due process rights by not enforcing Appellant’s rights on the basis of the existing record, and by not admitting supplemental evidence into the Record.

Appellant’s argument that the Superior Court did not enforce Appellant’s rights “on the basis of the existing record” is without merit. The existing Record now before the Court provided substantial evidence to demonstrate why and how the Board’s decision was made. The evidence included the testimony of Appellant, Vice President Tim Stokes, and Dean Marlene Bosanko. Also considered were Appellant’s documents, the Criteria for Review, the operating budget with actual and projected statistics over a three-year period, the job descriptions of various positions, and the CBA.

The above evidence was first considered by five people comprising the Review Committee and later reviewed by the five members of the Board on June 22, 2007. Substantial evidence is evidence

sufficient to persuade a reasonable person of the truth of the finding. *Mansour*, 131 Wn. App at 262. Moreover, the substantial evidence standard is “deferential and reviews the evidence and any reasonable inferences in the light most favorable to the party prevailing in the highest forum that exercises fact finding authority.” *Nagel v. Snohomish Cy.*, 129 Wn. App 703, 119 P.3d 914 (2005). Findings or conclusions of an administrative agency made after due consideration of evidence presented at a hearing are not arbitrary and capricious. *State ex rel. Perry v. City of Seattle*, 69 Wn.2d 816, 420 P.2d 704 (1966). When there is room for two opinions, the reviewing court will not find the agency action arbitrary and capricious, even if the reviewing court believes it is wrong. *State Dep’t of Ecology v. Theodoratus*, 135 Wn.2d 582 P.2d 1241 (1998).

Appellant then attempts to redefine her contract rights by flagrantly ignoring rights already spelled out in the CBA and APA. She does this by arguing that her rights occurred over an “interval” of time, which began at some vague point when the “college formed an intention to eliminate positions, delivered its formal notices, and supported its intention with forward-looking statements.” Rogers Br. at 25. Then she suggests that those rights should not end until the College can prove conclusively that it was right or wrong in whatever projections it made to support its actions. Rogers Br. at 25. The CBA has no such provisions.

Indeed, there are specific provisions in the CBA outlining the College's obligations, when the Appellant's rights are triggered, what process is used to protect those rights, and the timelines within which those rights shall be exercised. Appellant's argument suggests that the record in her case is not complete until the supplemental evidence (which did not exist and contained information not known at the time the Board made its decision) becomes part of the record. This is contrary to both the CBA (§§ 14.20– 14.30) and to established case law which holds that the presentation of additional evidence at the court level is not permitted in a judicial review where it is only asserted that the record is incomplete. *Lewis Cy. v. Pub. Empl. Relations Comm'n*, 31 Wn. App. 853, 861; 644 P.2d 1231 (1982); AR 191–199.

The vague concepts Appellant puts forth related to “intervals” of time and “conditions subsequent” are neither implied nor provided for in the CBA that governs the RIF process in this case. The College followed the RIF process set forth in the CBA. AR 191–199.

2. The College Did Not Misrepresent Facts At The RIF Hearing.

Appellant argues that she was deprived of her due process rights because the College misrepresented the facts regarding future cutbacks

and supplemental evidence would support her claim. Rogers Br. at 34.

The College did not misrepresent any facts.

The College conducted a comprehensive study in anticipation of the \$1.2 million shortfall to determine how the needs of the College could best be met. It was a study done in good faith to anticipate and prepare for the future needs of the College.⁵ No one can absolutely guarantee or predict the future. However, planning for the future with projected analysis based on past and present knowledge is good business practice and essential for fiscal integrity. The College acted to deal with the projected shortfall as reasonably and conscientiously as possible. To do otherwise would have placed the College in an untenable, inexcusable position. The College had a duty to the state and its taxpayers to deal with the \$1.2 million shortfall documented in the Record. AR 106. In the first six months of 2007, the College acted on the best evidence and information in existence to it at the time. What may or may not have occurred “after the fact” is irrelevant for purposes of determining whether the Board had sufficient and substantial evidence to make a reasonable decision in 2007.

⁵ Further, Appellant has never argued or raised the claim that the study was a sham or fraudulently performed.

3. The Due Process Balancing Test Does Not Weigh In Appellant's Favor.

Appellant rightly states that three criteria must be considered and balanced for purposes of determining whether due process rights have been violated. These criteria are a) the private interest involved, b) the risk of erroneous deprivation, and c) the government interest involved. *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893 (1976).

First, the College agrees with Appellant that tenure is a valuable individual property right. However, it is not an absolute right that automatically outweighs other rights or obligations. As the CBA states, in Section 9.10, "seniority is recognized as an important factor," but it is still one of several factors that is considered in RIF proceedings in varying degrees.

Second, Appellant argues that the risk of erroneous deprivation is too great not to change the process and/or system. She bolsters this claim by mixing and matching processes. Basically, she compares and references processes that are available in a civil action with those available through the administrative process. For example, Appellant argues that she would have had six years to gather evidence in a civil action and was implicitly deprived of her due process rights because she had less time in the administrative process. However, Appellant fails to acknowledge that

rights and remedies available under the CBA and the APA are just as protective of individual rights as those available in a civil action. In attempting to mix and match the processes in two different systems to suit her own purposes, she does justice to neither, and ignores the statutory provision which states that the APA “establishes the exclusive means of judicial review of agency action.” RCW 34.05.510.

Appellant’s desire to mix and match APA, CBA, and civil rule rights is further illustrated by her complaint regarding the notice of hearing. Appellant complains that she only had 64 days after receiving notice of the discharge to prepare for the hearing. However, she fails to acknowledge that the time frame for this type of hearing is specifically spelled out in the CBA, AR 8–9; AR 194–199, which was negotiated by her union and the College precisely to protect Appellant’s rights and avoid delay. Indeed, the College would have violated the CBA had the Appellant’s hearing not taken place during the time frame designated.

Appellant suggests that the above are examples of deprivation of her due process rights. However, it is not up to her to dictate the specific parameters in which those rights are exercised, but rather to demonstrate that those rights actually have been deprived. In short, Appellant raises illusory claims regarding the risk of deprivation. There is little to no risk of erroneous deprivation of Appellant’s due process rights because those

rights were thoroughly addressed and covered through the CBA and the APA.

Third, the governmental interest in protecting and validating the process used in this matter is great. The College has abided by the procedures and process set forth in the CBA as negotiated by the College and union. The College has a strong interest in insuring the CBA is not violated because it insures a necessary measure of stability in employment relations.⁶ The process for judicial review is likewise dictated by the APA. To permit Appellant to mix and match CBA and APA rights with civil rules provisions to suit her purposes and ignore those that do not favor Appellant would have state government-wide implications and create an illogical and unfair process. Additionally, if the College, or any other state agency, is not permitted to gather and act on reliable information to make reasonable fiscal projections into the future, much greater problems will almost assuredly result in upcoming years.

Appellant's attempts to mix rights available through civil actions and those available in administrative actions through the APA and judicial review process are incorrect and without merit. Each protects the due

⁶ The Union that represented Appellant should also have an interest in insuring the CBA is followed. Ironically, in another section of her brief, Appellant argues that violations of the CBA "may contribute to the erosion of a collective sense of security held by the remaining members of the faculty." Rogers Br. at 12.

process rights of individuals. Appellant has not shown that she has been deprived of any due process rights.

C. APPELLANT IS NOT ENTITLED TO ATTORNEY'S FEES

Finally, Appellant requests attorney's fees under the Equal Access to Justice Act (EAJA), RCW 4.84.340-360. If this Court were to reverse the Board's decision, the questions and issues related to attorney's fees should be remanded back to Superior Court to determine in the first instance.⁷

However, if this Court were to reverse the Board decision and if this Court believes it appropriate to address attorney's fees, such fees should not be awarded because the Board's action was substantially justified. A statutory award of attorney's fees against the state must be strictly construed because it constitutes a waiver of sovereign immunity and an abrogation of the American Rule on attorney's fees. *Rettkowski v. Dep't Of Ecology*, 76 Wn. App. 384, 389, 885 P.2d 852 (1994), *aff'd in part, rev'd on other grounds in part*, 128 Wn.2d 508, 910 P.2d 462 (1996). Under the EAJA, attorney's fees may be awarded to an eligible

⁷ The Court of Appeals uses the "abuse of discretion" standard in reviewing the superior court's decision on attorney's fees under EAJA. *Alpine Lakes Prot. Soc'y v. Dep't of Natural Res.*, 102 Wn. App. 1, 19, 979 P.2d 929 (1999). However, in the instant case there is no superior court decision for this Court to review, since the court upheld the Board's decision. Further, there are several issues that would have to be addressed before fees could be awarded under RCW 4.84.340(5). Therefore, the EAJA issues would be more appropriately addressed in the first instance by the reviewing court below.

“party that prevails” only if the court finds that the agency action was not substantially justified. RCW 4.84.350(1). “Substantially justified” means justified to a degree that would satisfy a reasonable person. *Pierce v. Underwood*, 487 U.S. 552, 565, 108 S. Ct. 2541 (1988); *Plum Creek Timber Co. LP v. Washington State Forest Practices*, 99 Wn. App. 579, 595, 993 P.2d 287 (2000). The Board’s action was clearly justified given the evidence that existed at the time it made its decision. Courts should “refrain from treating every reversal of agency action as the functional equivalent of an “unreasonable position” under the EAJA.⁸ *Spawn v. Western Bank–Westheimer*, 989 F.2d 830 (5th Cir. 1993).

Appellant gives no reason why she is entitled to attorney’s fees. Rather, she simply states that she “qualified under the statute and will verify her qualifications at the appropriate time.” Rogers Br. at 37. Appellant should not receive attorney’s fees for two reasons. First, she has not demonstrated that she is qualified under the statute. Second, the Board’s action was reasonable and substantially justified, given the facts available at the time the decision was made, and is supported by substantial evidence.

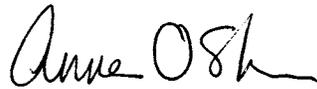
⁸ Federal decisions are considered persuasive authority in construing state acts which are similar to federal acts. *Inland Empire Distrib. Syst., Inc. v. Util. and Transp. Comm’n*, 112 Wn.2d 278, 283, 770 P.2d 624 (1989).

VI. CONCLUSION

Given the above, it is clear that substantial evidence supports the Board's decision, the CBA was followed, and Appellant was not deprived of her due process rights. Therefore, Tacoma Community College respectfully requests that the Court enter an Order upholding the agency action.

RESPECTFULLY SUBMITTED this 7th day of January, 2009.

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FILED
COURT OF APPEALS
DIVISION II

NO. 38041-2-II

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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON
BY DEPUTY

Karen N. Rogers,
Appellant,
v.
Tacoma Community College,
Respondent.

CERTIFICATE OF
SERVICE

I certify that I mailed, via Consolidated Mail Service, postage prepaid, a copy of the foregoing Response Brief of Tacoma Community College to Thomas Cline, Attorney for Appellant, at 2502 N. 50th Street, Seattle, WA, 98103-6976, on January 7, 2009.


ROSE WULF