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STATE OF WASHINGTON
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No. 39441-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

[Court of Appeals No. 32664-7-II and 35712-7-II;
Thurston County No. 04-2-02084-8 and 08-2-00885-9;
Personnel Resources Board: PRB Case No. R-RULE-07-001;
Personnel Appeals Board: PAB Case No. RULE-03-0008;
Department of Personnel Case HEU No. 4478]

BENJAPON SAKKARAPOPE, Appellant.

v.

WASHINGTON STATE UNIVERSITY, Respondent.

REPLY BRIEF OF APPELLANT

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PM 12/14/09

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The Abbreviations of References

The abbreviations of references in this Brief will be cited as follow:

- (1) The certified administrative records filed by the Personnel Appeals Board (PAB) in the trial court's original proceeding, Case No. 04-2-02084-8 is cited as "CR-I."
- (2) The certified administrative records filed by the Personnel Resources Board (PRB) in the trial court's on remanding proceeding, Case No. 08-2-00885-9 is cited as "CR-II."
- (3) The Supplemental Clerk's Paper filed in this Court on 9-23-2009 is cited as "CP-I." The Clerk's Paper filed in this Court on 7-24-2009 is cited as "CP-II."
- (4) The report of proceeding of the interlocutory decisions--Denying Summary Judgments, dated December 17 and November 12, 2004, in the original trial court Case No. 04-2-02084-8, is cited as "**RP-I.**"
- (5) The report of proceeding of the original trial court decision dated October 6, 2006, and the following presentment hearing dated December 1 and 22, 2006, in the original trial court Case No. 04-2-02084-8. is cited as "**RP-II.**"
- (6) The report of proceeding of the trial court decision on remand dated June 25, 2009, in the above case title is cited as "**RP-III.**"

A. OBJECTION

Appellant, Benjapon Sakkarapope, respectfully submits objections to Brief of Respondent, received November 16, 2009, on the following:

(1) Appellant objects to the statement, "[t]he only substantive issue properly before this courts the matter reviewed by the trial court in June 2009,....." (Brief of Respondent, ("Resp. Br.") at 6, 15):

(a) The term, "only," is prejudiced, misleading and legal conclusion. Sakkarapope did not waive his right pursuant to WAC 251-12-600. The PAB/PRB, the trial court and Respondent have no authority to change/divert the issues on appeal depriving Sakkarapope's due process right to review of the original items set forth in the Exceptions. All issues presented in his original Exceptions to the DOP's original Determination dated July 8, 2003, filed before the PAB remain intact regardless of the manipulation by the PRB/PAB, the trial court and Respondent. Sakkarapope repeatedly asked they be properly reviewed and objected to any omission of them.

(b) A review on merit on appeal by this Court is de novo. A de novo review by itself refers to a review of the original issues and the original administrative records of the original determination of July 8, 2003. Where any original items set forth in the Exceptions ignored by the PAB/PRB/the trial court, such issue remain as part of de novo. review

(c) RAP 12.9 provides that this court retains authority to recall a mandate of any earlier decision based on fraud and misrepresentation. A recall can be by this court own initiative or a party motion. A denial of discretionary review of a decision does not affect the right of a party to obtain later review of the Court of Appeals decision or the issues pertaining to that decision. RAP 13.5(d) Therefore, any previous interlocutory decision by the appellate courts directly related to the unfinished mater is allowed to be part of this review.

Therefore, Appellant respectfully asks this court retain the party's right and issues set forth in the original Exceptions to the DOP's Determination dated July 8, 2003, pursuant to WAC 251-12-600, and discard any matter manipulated and diverted in the lower proceedings.

(2) Appellant objects to the statement, "Mr. Sakkarapope asserted that WSU's internal policy defines a student to be any student that is enrolled for six credit hours or more...", is fraudulent, prejudiced, misleading and misrepresented. (Resp. Br. at 7).

Sakkarapope did not introduce the term, "WSU's internal policy;" it was fraudulently introduced by Ms. Stambaugh in the PAB's July 13, 2004 proceeding, (CR-I, 414), then adopted by the PAB and later repeatedly cited in WSU's pleadings, and was reversed by the trial court.

WAC 251-19-120(7) stipulates that WSU has duty to develop

procedure for director approval for controlling and monitoring the exempt positions. Ms. Stambaugh reasonably knows that the definition of a student for employment purpose was proposed by WSU in accordance with WAC 251-19-120(7), originally approved by the director in 1990 specifying a seven credit or more, and published for reference in the BPPM 60.26.1. The change from seven to six credit was later made and concealed by WSU. The concealment of the director approval does not alter the original rule.

Where the six credit became an issue, the original seven credit definition remains lawfully effective. The definition enacted under WAC 251-19-120(7) became part of WAC 251; it was the rule that WSU/PAB/PRB/DOP is obligated to follow. This court should not allow Ms. Stambaugh put the word in Sakkarapope's mouth.

(3) Appellant objects to the Footnote #4. (Resp. Br. at 7). The footnote is misleading and frivolous. The Footnote of RCW 41.06.170 declares the Intent:

Appeals filed on or before June 30, 2005 -- 2002 c 354: "The transfer of the powers, duties, and functions of the personnel appeals board to the personnel resources board under RCW 41.06.111 and the transfer of jurisdiction for appeals filed under section 213, chapter 354, Laws of 2002 after June 30, 2005, ***shall not affect the right of an appellant to have an appeal filed on or before June 30, 2005, resolved by the personnel appeals board in accordance with the authorities, rules, and procedures that were established under chapter 41.64 RCW as it existed before July 1,***

2004." [2002 c 354 § 214.] [Emphasis added]

Ms. Stambaugh knows that Sakkarapope filed an appeal before the PAB in August, 2003, and the matter has been pending in the courts. It is obvious that the transfer of power of the PAB does not affect the right of Sakkarapope under the old laws. When the trial court remanded the matter to the DOP, the unfinished matter "must be completed under those rules." WAC 357-04-120

The trial court already explicitly ruled that since the court remand the matter to the DOP, Sakkarapope's right to appeal was preserved. Ms. Stambaugh did not take any exception to the trial court's ruling. Moreover, Ms. Stambaugh verbally asserted the same issue before Judge Tabor¹ and was instructed that the court did not entertain that issue and Respondent must bring the issue before the court for consideration in a proper proceeding. WSU, Ms. Stambaugh, did not bring a proper motion before either Judge Tabor or Judge McPhee. Ms. Stambaugh should reasonably understand that the jurisdictional issue affects the party's due process right; it must be accorded with a proper proceeding. A jurisdictional issue can be raised the first time on appeal, but not the second time and not in the footnote. WSU did not do so in the trial court

¹ The case was earlier assigned to Judge Tabor and then later re-assigned to Judge McPhee.

and its right is barred by the doctrine of invited error. Such footnote should be explicitly stricken by this court.

(4) Appellant objects to the misleading citation of the new rules, WAC 357, throughout the Brief of Respondent, including in the Argument Section V.B.3. on pages 27-30. Pursuant to WAC 357-04-120, the instant case is governed by the old rules, WAC 251 and 358. Such citation of the new rules, WAC 357, should be explicitly stricken by this court. Although some language are similar, they are not the same in the context, the intent and the circumstance of its application. Such citation is improper and misleading.

(5) Appellant objects to the statement that "Although not labeled as such, Section 4.3 in the Board's order contain a finding of fact...Based on the written documents before them the PRB's finding of fact regarding WSU's policy...." (Resp. Br. at 16). Such statement is misrepresented of the context of the PRB's decision. Ms. Stambaugh recognized that the Section IV is obviously labeled as "Decision," NOT a finding of fact. The conclusion that "WSU's Personnel Rules 60.26 was not submitted to or approved by the Director," is not by itself the same as the finding of fact, and cited no records supporting such conclusion

The five pages of the PRB's order contains NO finding of fact section. Such bluffing statement is improper and misleading, and should

be explicitly stricken by this court.

(6) Appellant objects to the statement that "Mr. Sakkarapope continues to assert that WSU's policy should prevail over the WAC rule," (Resp. Br. at 20) is misrepresented. Nothing in the Brief and other pleadings suggests such statement. Sakkarapope repeatedly states that WSU has no authority to make its own policy imposed upon the temporary employment without director approval pursuant to WAC 251-19-120(7). Any rule/policy not approved by the director cannot be adopted and applied for employment purpose. Once it is approved, it becomes part of the WAC. This court should not allow Ms. Stambaugh put the word in Sakkarapope's mouth. Such statement should be stricken by this court.

B. GENERAL REPLY

Appellant respectfully submits that WSU did not answer directly to the issues presented in the Brief. Respondent did not argue the accuracy of those work hours presented therein. Respondent did not argue the facts that where the approved procedure pursuant to WAC 251-19-120(7) is properly adopted and applied, the four criteria for granting remedial action set forth in WAC 251-12-600(1) are fulfilled. It should be granted.

C. SPECIFIC REPLY

(1) Reply to Argument V.A.

(a) In the extent of the Objection Section A(1) and (5) above,

Respondent claimed that "[t]he PRB made its determination based on credible evidence that supported its conclusion....," but came short to provide the court of any reference to the "credible evidence."

The PRB simply entered a slam-dunk decision. Ms. Stambaugh should reasonably understand that the written documents are the pleadings of the parties, not considered as the material evidence of facts. It is not an affidavit. Nor is any administrative records. The statement of claim made by Ms. Stambaugh in WSU's pleading by itself is not either an administrative record or a material evidence of fact. The arbitrary adoption of Ms. Stambaugh's statement is not a finding of fact. The conclusions in the Section 4.3-4.5 were not supported by any DOP records.

WSU by Ms. Stambaugh obviously failed to show this court any material evidence of fact in the administrative records supporting that the text of the rules re-published/printed in BPPM 60.26 was not submitted to or approved by the Director. The absence of such record does not either prove the existence of the submission. The concealment of the records is not the basis of justifying such conclusion.

(b) Appellant respectfully submits that the entirety of the Argument V.A is frivolous. In the extent of the previous section regarding the misrepresentation of the fact, the compliance with the WAC is the duties of both WSU and the Director. WAC 251-19-120(7) is clearly

written that of WSU's duty to comply. The submissions of 1990 and 2005 are the material evidence of facts showing that WSU has been complying with the WAC in the same manner since on or before 1990.

In WSU's letter dated July 23, 1990, Lynda L. Brown, Director of Human Resource Service, clearly indicated that "[e]nclosed are the Washington State University procedures for controlling and monitoring temporary employees in accordance with WAC 251-19-120(7)," and identified Karen Kruse, who was later a WSU's HRS director, as a contact person. (*See Appx. Appt. Br. #2*).

At the bottom of page 3 of the enclosed document, it clearly indicated that "[t]his procedure is filed with the Higer Education Personnel Board (HEPB) in accordance with WAC 251-19-120(7) of the HEPB rules," where the HEPB rules refer to the WAC 251.

In the Section I.A, the definition of a student using seven credit enrollment or more was clearly written with a citation to WAC 251-04-040(2). Where there is no material evidence showing the approved change of credit enrollment from seven to six, the original 1990 procedure remains lawfully effective. the attempt to make differences between the 1990 procedure and the Personnel 60.26 that "[t]his procedure was not numbered nor was it entitled Business Policies and Procedures manual," (*Resp. br. at 17-18*) is frivolous and fraudulent. The text of the approved

procedure remains the effectively lawful rules binding WSU regardless of where and how it was re-printed or re-published.

Appellant respectfully submits that the statements are frivolous, misrepresented and error of law:

DOP approved those monitoring procedures in 1990 even though they contained a definition of a student that was not reflected in the remedial action rule. The Director properly noted in her decision that the procedure submitted were not consistent with the applicable WAC rule. (Resp. Br. at 18-9)

The application of WAC is not a selective adoption of particular provisions or phases of the languages in its favor upon its pleasure. The DOP, PRB/PAB and the courts are obligated to compile all applicable provisions of the WAC.

RCW 41.06.070 (1) stipulates that the inmate, student, part-time, or temporary employees, and part-time professional consultants, are exempt as defined by the Washington personnel resources board. The PRB defines the exempt positions in accordance with RCW 41.06.070 (1) in WAC 251-04-040, and the procedure for controlling and monitoring in WAC 251-19-120(7).

WAC 251-12-600(1)(a) stipulates the condition that "[t]he hiring institution has made an appointment that does not comply with higher education personnel rules." Ms. Parsons and Stambaugh should

reasonably understand that the term, "higher education personnel rules," refers to all applicable provisions of WAC 251, including any rules enacted in compliance with WAC 251-19-120(7). Therefore, the statement that "...the 1990 procedures that were approved, is not encompassed in the remedial action WAC," (Resp. Br. at 19) is frivolous, misleading and misrepresented of the applicable rules.

Moreover, the statement that "[t]hese attached samples are not included with the BPPM," (Resp. Br. at 19) is not true, a fraud, not supported by the facts. While the BPPM 60.26 contains the text of the applicable rules, the BPPM 60.27 contains the procedures to comply, including all applicable forms. The sample attachment #1 and #3 are included in the BPPM 60.27.1 and 60.27.4-.15 with specific instructions to follow. (*See* Appx. App. Br. #3) The sample attachment #4 (Conditions for Temporary Employment) is the same as Exhibit 6 (CR-I, 268-9)

(2) Reply to Argument V.B.1.

(a) In the extent of the Objection Section A(2) above, the so-called "WSU's policy," is misleading. The same term is used for other purpose is not relevant to the instant case, it is WSU's choice to adopt the same definition for both employment and the others. Whatever WSU came up for employment purpose and approved by the Director in compliance with WAC 251-19-120(7), it became part of the WAC rules.

The citations of *Patrick Tabak v. Eastern Washington University*, HEPB No. 3726 (1992) and *Clarence Hill v. Eastern Washington University*, HEPB No. 1840 (1984) are misleading. Of course, WAC 251-04-040(2) does not stipulate the amount of credits a student must be taking or earning to be considered enrolled as a student, it only specifies that the individual must be enrolled," (Resp. Br. at 22) since WAC 251-04-040 simply defines which positions under RCW 41.06.070 (1) are exempt from the Chapter. Respondent overlooks WAC 251-19-120(7) stipulates the procedures for controlling and monitoring the temporary employment for each higher institution.

The procedure for EWU is not the same for WSU. Where a definition of a student for employment purpose for WSU was established and approved by the Director, it must be followed regardless of the practice at EWU. The implication suggested by Respondent is simply misplaced.

In *Patrick Tabak* (at 8), the Director also spelled out that:

The respondent may have *institutional or academic policies* which govern student employment and *specify how many credits students must take or earn to be considered a full-time student*; these policies are created and administered at the discretion of the institution and are not at issue in this appeal, [Emphasis added]

which is different from the procedure under WAC 251-19-120(7) that specify how many credits students must take or earn to have the work-

hours considered exempt as a student under the WAC. This is NOT an institutional or academic policy, but a procedure governs the temporary employment at the institution, as approved by the Director. Where the 1990 procedure stipulates seven credit or more to have the work hours considered exempt for WSU, it must be followed. Any work hours while the credit enrollment does not meet that definition must be considered as non-exempt hours counting toward the 1050 threshold.

The citation of *Clarence Hill* is misleading. Where WAC 251-19-120(7) defines a definition of "a student" for employment purpose, it must be adopted and applied accordingly. Where a specific definition exists and is lawfully created, the *Clarence Hill* does not apply here. Also, a definition of a student in the dictionary is a general meaning of a student attending at an educational institution; it is not a specific meaning of a student for employment purpose under the WAC. Such general definition does not apply and is not relevant in the issue at hand.

(b) Appellant respectfully submits that the entirety of the arguments on page 24-25 of the Resp.Br. is misleading, and misrepresented. The assertion that "Mr. Sakkarapope apparently and mistakenly believes that WSU's BPPM is a published document carrying the weight of law," (Resp. Br. at 24) is misrepresented. Sakkarapope repeatedly states that the text of the BPPM 60.26 is a re-printed/re-

published of the approved procedure pursuant to WAC 251-19-120(7). The statement that “those internal policies and guidelines are typically not required to go through the formal rulemaking process outlined under the APA and they are not published in WAC 504,” is frivolous and misrepresented. (Resp. Br. at 24) The personnel rule has nothing to do with the APA. All employment at WSU is governed by RCW 41.06, not RCW 34.05. WAC 504 is for other WSU’s business, not for civil service rules. The PRB is authorized by RCW 41.06 to develop state personnel rules. RCW 41.06.070(l) delegates authority to the PRB to define the exempt positions for inmate, student, part-time, or temporary employees, where the PRB published such positions in WAC 251-04-040 and the PRB delegates its authority further to each institution, including WSU to develop its personal rules and procedures for approval to monitor and control the exempt positions as published in WAC 251-19-120(7).

The WSU’s original rule and procedure regarding temporary employment was approved in 1990 and published in the BPPM under the so-called section, “Personnel Rule 60.26.” In the 1990 documents, it was clearly indicated that the enclosed procedure was submitted in accordance with WAC 251-19-120(7). The BPPM 60.26 revision of 12-93 simply restated the approved rules for temporary employment using the definition of a student for employment purpose of “seven or more credit hours” to

determine whether the work hour is exempt. The BPPM 60.27 describes the procedures to make such temporary appointment. Throughout the text of the BPPM 60.26 and .27, the authority of WAC 251 was explicitly cited. In 1999-2000, WSU had revised the rule defining a student for employment purpose using “six or more credit hours.” (*See, Appx. App. Br. #2-#6*)

In 2005, WSU submitted a revision of its procedure in accordance with WAC 357-19-440, which is under the new rules. The submitted document is in the same format as the 1990 submission. Throughout the text of the BPPM 60.26 and .27, the authority of WAC 357 was explicitly cited. (*See, Appx. App. Br. # 7*)

On the back of the Temporary Employment Appointment forms, it indicates that “Limitations on temporary employment are stipulated in the Washington Administrative Code, Chapter 251 and in the *Business Policies and Procedure* Manual 60.26,” and that “if...the conditions of your employment meet the criteria for permanent employment, you may have the right to appeal to the Personnel Appeals Board in accordance with WAC 251-12-600, Remedial Action.” (*See, Appx. App. Br. #8*) Hence, the BPPM 60.26 is part of the employment contract; it should be in full force.

Indeed, the BPPM 60.26 is part of the compliance by WSU with

WAC 251-19-120(7) under the old rule and WAC 357-19-440 under the new rules. The insertions that the heading is not the same and the text is similar are frivolous. The rule is the rule regardless of where and how it is published. The PRB's determination was not based on the material facts in the whole records, but arbitrary, conspired and speculated. The absence of the submitted document does not justify whether or not it was actually submitted and approved by the director. The document for approval is believed to be withheld as part of the conspiracy and use as the basis of not honoring the rule as part of the compliance. The simple word of the absence by WSU is not an evidence to show whether the approval was not actually occurred.

The Director's Determination that "WSU's policy for monitoring student employment hours is inconsistent with WAC 251-04-035, which does not apply enrollment credits to a student's status," is an error of law. Such determination is not supported by the material facts in the records and the facts of laws. WAC 251-04-035 did not exist at the time of the employment appointments made. Ms. Parsons arbitrarily, capriciously and frivolously applied a selected rule and manipulative interpretation, and ignored the rest of other applicable rules. In fact, WAC 251-04-035 or -040 is the rule identifying the positions to which are exempt per RCW 41.06.070(1), and the procedure for monitoring and controlling is governed

by WAC 251-19-120(7), where the definition of a student for employment purpose is defined and re-printed in the so-called BPPM 60.26. A general meaning of a student cannot be legally used for employment purpose in compliance with WAC 251.

Therefore, the statement that "WSU's BPPM 60.26 is an internal policy," (Resp. Br. at 25) is misleading. Where the text approved by the Director pursuant to WAC 251-19-120(7) re-printed in the BPPM 60.26 it became part of the WAC for employment purpose. Such text/statement have the force of law regardless where and how it was re-printed/re-published. The DOP and the PAB/PRB must adopt and apply it in determining whether the student hours should be included. Where it was arbitrarily ignored/excluded from its consideration, an error of law was committed; this warrants a reversal by this court.

(3) Reply to Argument V.B.2 and C

The citation of *Taylor Scott Kelsey v. Western Washington University*, HEU No, 4279 (2000) and *Daniel Watkins v. WSU*, HEU No. 3989 (1995) is misleading of the meaning of administrative discretion. Ms. Stambaugh cited *Louis E. Cobet v. Director, Higher Education Personnel Board*, HEPB No. 374 (1976), but came far short to articulate the term, "appropriateness of granting remedial relief." The PAB already narrowly set a standard of appropriateness for exercising discretionary authority of

remedial action pursuant to WAC 251-12-600 at the July 13, 2004, proceeding that:

“...the underlying basis is really not relevant unless I determine that you crossed the 1050 hour threshold....Because if I determine that you worked more than 1050 qualifying hours, the bottom line is the termination would be *inappropriate regardless of any other reason...* (CR-I at 405, PAB Tr. at 90) [Emphasis added]

This ruling is consistent with the DOP’s precedents that temporary employment termination must be made prior to the 1050 hour threshold. Ms. Stambaugh did not object to such discretionary standard; and WSU shall be binding to that ruling. WAC 357-04-120 demands the DOP/Ms. Parsons, the PRB, and WSU/Ms. Stambaugh honor the PAB’s ruling and the DOP’s precedents, where WSU did not object and request for review.

In the instant case, the work hour was first crossed the threshold on January 12, 1996; this was not known prior because of WSU’s miscoding the hours. Also, in the last 12 month period, the work hour was obviously crossed the threshold in January 2003, but wrongly manipulated by WSU, the DOP and the PRB/PAB. Thus, the February 24, 2003 termination of Sakkarapope employment was not appropriate. The use of immigration status as a basis of denying remedial action by Ms. Parsons is indeed *inappropriate*; a denying of promotion, wage and benefit provided by the state law.

Appellant respectfully submits that the conduct of the Director’s

Review Program by Ms. Teresa Parsons and WSU by Ms. Stambaugh is prohibited as the employment decision violates the public policy against employment discrimination. The letter of employment termination dated February 24, 2003, indicated that:

...my actions in your employment termination do not in any way reflect my confidence and in your ability to perform the duties associated with your employment with me. I also would like to thank you for your excellent work during these last four years that we have worked together....(Excerpt II, #12)

Where the word, “may,” is not explicitly defined, a common understood meaning as defined in the dictionaries shall be governed. The word, “may,” when used in law, has the meaning is “must.” WAC 251-12-600 prescribes the four conditions for granting remedial action; the Director has duty to fairly exercise its discretion according to the administrative standard set forth therein.

The DOP’s decision denying remedial action—employment decision is *inappropriate*, not proper, and unlawful. Such decision was not based on employee’s performance and qualification, but is arbitrary, capricious, and abused of discretion.

(4) Reply to Argument V.B.3.

In the extent of the Objection Section A(4) above, Appellant respectfully submits that the entirety of the Argument V.B.3 is misleading

and frivolous. The instant case is governed by the old merit system. The PRB's authority under the new rules, WAC 357, does not apply to the case at hand. The PRB must act and operate as the PAB under the old rules, WAC 251 and 358. By refusing to honor the old rules, the PRB violated WAC 357-04-120. The WAC 357-49-010, WAC 357-52-010 and -207 cited by Respondent are not applicable, and not relevant to the case. Yet, Ms. Stambaugh provided no argument and authority to supersede WAC 357-04-120. Thus, the PRB's procedure was not proper.

(5) Reply to Argument D

(a) WAC 251-12-600(4) demands that the PAB “will review the exceptions” and may hold a hearing prior to modifying or affirming the director's order. Ms. Stambaugh and the PAB not only refused to review the specific items of the order to which exception is taken set forth in the Exceptions, but also arbitrarily tossed out the original exceptions and then conducted a de novo hearing to manipulate the facts and laws. Yet, the Exceptions were excluded and have never been reviewed by the PAB.

When the court remanded the matter back to the original proceeding, the DOP and the PRB refused to honor the old rules, not be bound by WAC 357-04-120. The PRB also denied Sakkarapope’s request to fulfill the PAB’s unfinished matter in reviewing the original exceptions.

In knowing that this instant case was brought before the DOP, the

PAB/PRB and this court per WAC 251-12-600, WAC 357-49-010 provides the Director's Review only on the case per WAC 357-19-430 or -450, and WAC 357-52-207 provides the PRB to review the decision of the Director's Review per WAC 357-49-010. Indeed, the Director's Review and the PRB do not have jurisdiction over this instant case per WAC 357. The DOP and the PRB have no authority to exercise its discretion under WAC 357-49-010 or 357-52-207 upon this case.

However, the DOP and PRB have jurisdiction over the instant case under the old merit system. The PRB must act in the name of the PAB on an unfinished matter. This does not need any further legal interpretation; the language is explicit. The Director's Review Program by Ms. Teresa Parsons has no jurisdiction over the remand matter; it should be returned to the original proceeding as the trial court remanded to, which was under Ms. Teri Thompson who entered the original Director's Determination of July 8, 2003. Ms. Parsons violates Sakkarapope's due process right. The PRB violated Sakkarapope's due process right pursuant to WAC 251-12-600 and WAC 357-04-120.

Yet, the demand of WAC 251-12-600(4) has not yet been fulfilled. Thus, the DOP's and the PRB's decisions are affected by the error of law and unlawful procedure. The refusal to review the specific items of the order to which exception is taken set forth in the Exceptions, and to honor

the old rules indeed violated the party's due process right; the proceedings were fundamentally flawed on its face.

The refusal to review the specific items set forth in the Exceptions and discarding it, then conduct a new proceeding on appeal admitted selected administrative records and took witness testimony despite Sakkarapope's objection. The assertion that the PAB conducted a full evidentiary hearing is misleading, arbitrary and frivolous. The fact speaks for itself. The PAB violated Sakkarapope's due process right pursuant to WAC 251-12-600.

Therefore, the statements that "Mr. Sakkarapope was heard four separate times by two separate and distinct state agencies with authority to review his situation. There is no indication that those proceedings were flawed or in some way failed to provide the necessary due process protections," (Resp. Br. at 32) are contrary to the fact. What kind of due process of law that the PRB, the PAB and Ms. Parsons provided to Sakkarapope? Appellant respectfully submits that these state agencies violate the due process right protected under the constitutions.

(2) The trial court explicitly ruled at the proceeding of December 17, 2004, that the immigration issue was not part of the proceeding. (RP-1) The PAB ruled at the July 13, 2004 proceeding that it will not "make a determination as to the underlying basis for the termination other than the

1050 hours. It's the only issue" before the PAB. (CR-I at 405, PAB Tr. p. 90) In the original decision of July 8, 2003, DOP concluded that "Respondent not complying with its institutional procedures including employing a non-U.S. citizen to a specialty occupation, cannot be reconciled through the remedial action appeal process." (Order July 8, 2003, at p. 16)

Nonetheless, Ms. Stambaugh repeatedly brought in the immigration issues throughout the proceedings. Ms. Stambaugh coached Mr. Cassleman to misleadingly testify before the PAB, and then cited his testimony to misleadingly and wrongly suggested Sakkarapope's immigration status as the appropriate basis of denying a remedial action, regardless of the fulfillment of the four conditions for granting a remedial action set forth in WAC 251-12-600(1). (CR-I 417, PAB Tr. at p. 102) The DOP by Ms. Parsons adopted such suggestion as the basis of denying a remedial action. (Order (July 26, 2007) at p. 4)

A remedial action by itself is the matter dealing with the employment performed from March 21, 1995 to February 24, 2003. The employment authorization verification was conducted in compliance with the regulation, INA. A request for remedy from the work legally performed is NOT the matter of new hiring; a conversion of the temporary position—student temporary employment to a permanent, full-time

position is a change in employment status, including proper promotion, wages and benefit/compensation. It is NOT to re-instating a student employment status on the temporary appointment, but conferring a permanent employment status. The student enrollment status is no longer applicable; it is not a requirement to hold a permanent position at WSU. The rationale that the student immigration status is relevant is misplaced; it is not relevant for maintaining a full-time permanent position at WSU. The immigration status is the matter of adjustment of status accordingly; not part of WAC 251-12-600(1).

To be employed at WSU, a student enrollment is not required, but when enrolled 7 credits or more during fall/spring semester by the approved definition for employment purpose, the work hour is exempt. The immigration status shall not be part of the basis of the employment decision.

Appellant respectfully submits that the use of such immigration status as the basis to refuse to hire any person, to discharge or bar any person from employment, and/or to discriminate against any person in compensation or in other terms or conditions of employment is unfair practices. RCW 49.60.180 Such action violates the public policy against employment discrimination, i.e., the Title VII of the Civil Rights Act of 1964 and INA Sec. 274B[8 U.S.C. 1324b]. Further, WSU, the DOP, and

the PAB/PRB, state agencies, shall not discriminate against on the basis of national origin in the operation of public employment. RCW 49.60.400.

(6) Reply to Argument E

In the extent of the Objection A(1) above, Appellant respectfully submits that all issues presented before this court were fully presented before the PAB/PRB and the trial court. The original issues pursuant to WAC 251-12-600(1) were arbitrarily ignored and fraudulently manipulated. Sakkarapope did not waive his right to have a proper review of the specific items set forth in the Exception to the Director's decision of July 8, 2003, filed with the PAB. Thus, all unfinished issues in the lower proceedings are properly before this court as a de novo review based on the original proceeding and the administrative records of the DOP.

Where the trial court remanded the matter back to the DOP, the trial court decision of the matter is not a final decision of the case. The suggestion that "[s]ince no appeal of that prior ruling was taken, the superior court's determination of those issues is final," is frivolous. A piece meal litigation is prohibited. At the proceeding, Sakkarapope orally expressed his disagreement with the trial court's decisions, and thus the exceptions to those oral decisions were made in the open court. Sakkarapope preserved his rights to appeal. Any related decisions of the trial court prior to its final decision of the case are part of the case on

appeal, including those two previous summary judgment decisions.

(7) Reply to Argument F

Appellant respectfully submits that the entire case was based on the fraud and misrepresentation of the facts and laws by Ms. Stambaugh, WSU, the PRB/PAB and the DOP as presented in the Brief. The litigation has been dealing with the fraud and misrepresentation in the courts since October 2004. It has been over 5 years and creates unreasonable cost in the litigation. Appellant respectfully submits that the authorities presented therein warrants sanctions and an award of reasonable costs, fees and expenses since October 2004.

D. CONCLUSION

Based on the facts and authorities presented, Appellant respectfully submits that the DOP/PRB/PAB's and the trial court's decisions should be reversed, a remedial action should be granted; the original Director's Determination, should be modified accordingly. Further, reasonable cost, expense and attorney fee incurred since October 2004 should be awarded.

DATED this 14th of December, 2009.

Respectfully submitted,



Appellant

CERTIFICATE OF SERVICE

I certify that one copy of REPLY BRIEF OF APPELLANT has been served upon Respondent by first class mail, pre-postage, on this 14th day of December, 2009, to the address:

AAG Donna Stambaugh,
The Office of Attorney General,
1116 W. Riverside Ave.
Spokane, WA 99201-1194



Benjapon Sakkarapope

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