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COURT OF APPEAL OF THE STATE OF WASHINGTON

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WAYNE GODING,

Respondent/Cross-Appellant,

v.

CIVIL SERVICE COMMISSION of King County; KING COUNTY,  
a municipal corporation; KING COUNTY SHERIFF'S OFFICE,  
a department of King County,

Appellants/Cross-Respondents.

**REPLY OF APPELLANT KING COUNTY SHERIFF'S OFFICE &  
RESPONSE OF CROSS-RESPONDENT KING COUNTY  
SHERIFF'S OFFICE**

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**ORIGINAL**

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## I. INTRODUCTION

Goding has filed a combined brief consisting of (1) his response to the Sheriff's Office brief on the merits, and (2) his opening brief on his cross appeal. The Sheriff's Office will therefore begin with its reply on the merits, followed by its response to Goding's cross appeal arguments.

## II. REPLY

### A. **THE ONLY ISSUE IS WHETHER THERE IS SOME EVIDENCE TO SUPPORT THE COMMISSION'S CONCLUSIONS.**

Goding had proper notice of the charges against him and a full and fair opportunity for a hearing on the merits. Therefore, the correct standard of review presents the court with a single issue: was there *some* evidence before the Civil Service Commission to support a finding that Deputy Goding was insubordinate when he refused a jail directive to handcuff prisoner Harlon Phipps on February 20, 2013? Because the answer to this question is yes, the court's inquiry is at an end, and it should affirm the Civil Service Commission.

The court's decision in *Perry v. City of Seattle*, 69 Wn.2d 816, 420 P.2d 704 (1967), correctly states how courts apply the arbitrary and capricious standard to decisions of the Civil Service

Commission. Judicial review is limited to determining whether an employee was given a right to be heard and whether competent evidence supports the charge:

The crucial question is *whether or not there is evidence to support the commission's conclusion*. A finding or a conclusion made without evidence to support it, is, of course, arbitrary. [B]ut it is not arbitrary or capricious if made with due consideration of the evidence presented at the hearing. . . . Neither the trial court nor this court can substitute its judgment for the independent judgment of the civil service commission.

(citations omitted; italics added) *Perry*, 69 Wn.2d at 821.

When there is competent evidence that tends to support the charges the court may not inquire into the weight or sufficiency of the evidence. See *Perry*, 69 Wn.2d at 819. The court's power is limited to inquiring whether the officers entrusted with authority to impose discipline have acted within the prescribed rules. *Id.* A decision is not arbitrary and capricious merely because this court concludes, after reading the record, that it would have decided the issue differently had it been the commission. *Perry*, 69 Wn.2d at 821.

**B. THERE IS EVIDENCE TO SUPPORT THE COMMISSION'S FINDING THAT GODING WAS INSUBORDINATE.**

In this case, Goding refused to follow the directive of a jail correction officer and jail sergeant to restrain an inmate he was escorting through the jail's sally port area. His defense was that he thought it might be illegal to restrain the inmate. After an investigation, the Sheriff's Office found Goding insubordinate. The Sheriff's Office rejected Goding's illegality defense after determining that Goding did not reasonably believe the illegality exception applied.

The Commission framed the issue as whether the County had good cause to reject Goding's position. CP 1160.

Acknowledging that it was a close question, the Commission carefully evaluated the evidence and made a number of findings before concluding that Goding was insubordinate. CP 1162.

Specifically, the Commission determined that "[t]he overall record does not support that Goding reasonably believed that the 'illegal' exception applied". CP 1160. It based this conclusion on the following evidence:

1. the jail's rule of restraining prisoners escorted through the unsecured sally port area was longstanding, consistently

followed, justified for safety reasons, and lawful;<sup>1</sup>

2. Goding had booked thousands of persons into the jail, and he admitted that he had never escorted a prisoner through the sally port unrestrained (CP 456-57);

3. When the jail declined Phipps for medical reasons, Goding was visibly irritated, "kind of hostile", persistent and pushy in an effort to change the jail's position, and rolled his eyes in apparent frustration (CP 643, 648-49, 720);

4. Jail staff at the scene viewed Goding's behavior during the incident as disrespectful;<sup>2</sup>

5. Evidence of Goding's prior discipline and history of resistance to jail policies and requests tended to show that his intent in refusing to handcuff Phipps was defiance as opposed to a legitimate concern over the legality of his actions (CP 557, 1157, 1162);

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<sup>1</sup>This finding is supported not only by the testimony of Goding himself (CP 456-57), but also by the testimony of Sergeants Richardson (CP 358-59) and Myers. CP 311-312. The Commission also heard evidence that it is lawful to restrain a person wanted on a felony warrant, who is in police custody, and is being escorted through an unsecured area of the jail (sally port). CP 374-75; 923; 888; 358 and 723.

<sup>2</sup> Goding told jail sergeant Richardson that he would not handcuff Phipps unless "a sergeant" told him to do so. CP 723. To Richardson, Goding was essentially saying that Richardson's status as a jail sergeant wasn't good enough. CP 351-52. The overall impression Richardson had following the encounter was that Goding believed he "can do what he wants and that he doesn't have to abide by our rules, that he's just above us." CP 360.

6. When he did apply the restraints to Phipps, Goding did so in a loose and unsecure manner. Sergeant Richardson's direct observation of Goding left him with the impression that Goding was behaving defiantly and "just doing it for show" (CP 354);

7. Goding's actions were not consistent with a genuine belief that handcuffing the prisoner (Phipps) would have been illegal.<sup>3</sup>

This evidence allows for the conclusion that Goding did not reasonably believe the "illegality" exception applied, that he was instead motivated by defiance to legitimate jail rules, and that he was therefore insubordinate. CP 1162. Because there is evidence in the record to support these conclusions, the Commission's decision was not arbitrary, capricious, or contrary to law.

**C. GODING'S RESPONSE MERELY RE-ARGUES THE EVIDENCE UNDER THE WRONG STANDARD OF REVIEW.**

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<sup>3</sup> This is shown by Goding's testimony that if Myers had been unavailable by phone, he would have just handcuffed Phipps anyway. CP 653. Additionally, if Goding truly believed he was being asked to do something unlawful – something he had never before encountered in thousands of bookings during his 11 year career – he would have taken the opportunity to explain the circumstances to his sergeant directly over the phone. The fact that he made no effort to do so suggests he was not as concerned about the gravity of the situation as he would later claim to be. CP 1161.

Goding's response brief misstates the standard of review and then improperly re-argues the merits of the case under this incorrect standard. Citing *Eiden v. Snohomish County Civil Service Commission*, 13 Wn. App. 32, 533 P.2d 426 (1975), Goding contends that in reviewing the Commission's decision, this court is to "assess whether it agrees with the findings of the commission." Goding Response, at 17. Then, following a lengthy block quote from *Eiden*, Goding concludes that "this court is entitled to review the reasonableness of the findings of the Commission." Goding Response, at 18. Goding misinterprets the *Eiden* decision.

In *Eiden*, the Snohomish County Sheriff's Department terminated deputy James Eiden for answering a telephone using the name of another deputy. He appealed to the Civil Service Commission, which reduced the discipline to a demotion and suspension but made no findings of fact. Eiden appealed to superior court, which *did* enter findings and conclusions, reversed the Commission, and reinstated Eiden to his original position. The Commission appealed to the Court of Appeals, assigning error to a number of the trial court's findings and conclusions. *Eiden*, 13 Wn. App. at 33-36.

The parties in *Eiden* disputed the significance of the trial court's findings, which the trial court entered in its appellate capacity on review of the Civil Service Commission's decision. See *Eiden*, 13 Wn. App. at 40. The Commission argued that the trial court improperly entered findings because a "scintilla" of the evidence supported the Commission's decision, while respondent (*Eiden*) claimed that the trial court's findings were supported by substantial evidence and were therefore "verities" on appeal. *Id.*

The court did not adopt either contention, stating instead that "the trial court did not per se err in entering these findings but, in making our independent review of the record, we must determine whether we agree with the trial court's findings, not merely whether such findings are supported by substantial evidence." (footnote omitted) *Eiden*, 13 Wn. App. at 40.

The court ultimately affirmed the trial court, finding that there was no persuasive evidence that deputy *Eiden*'s use of another deputy's name in a single phone call established that he was incompetent. See *Eiden*, 13 Wn. App. at 41. The discipline was therefore not in good faith for cause and was contrary to law. *Eiden*, 13 Wn. App. at 42. This result is consistent with *Perry v.*

*City of Seattle*, where the court stated that when there is no evidence to support a finding or conclusion, it is arbitrary. *Perry*, 69 Wn.2d at 821.

Goding contends that *Eiden* authorizes this court to overturn the Commission if it simply disagrees with the Commission's findings or views them as unreasonable. Goding Response, at 17-18. This is an erroneous interpretation of *Eiden* that misstates the standard of review and conflicts with *Perry*.

The court's statement in *Eiden* (i.e. "we must determine whether we agree with the trial court's findings") must be read in light of the unusual procedural context of that case. The fact finding body in *Eiden* (the Commission) made no findings at all, but the appellate body (the trial court) made a series of *non-binding* findings and conclusions. In that instance, the Court of Appeals was not bound by the findings of the trial court and was not required to evaluate whether they were supported by substantial evidence. Its task was to review the record de novo and exercise independent judgment to determine if the Commission acted arbitrarily, capriciously, or contrary to law.

Where the Commission does enter detailed findings and conclusions – as it did in this case – this court is limited to reviewing “whether or not there is evidence to support the commission’s conclusion.” *Perry*, 69 Wn.2d at 821. The court does not re-evaluate the weight or sufficiency of the evidence, nor does it find arbitrary or capricious action simply because it disagrees with the outcome or may have decided the issue differently than the Commission. The only question is whether some evidence supports the Commission’s conclusion. Because that test is satisfied in this case, the court should uphold the Commission’s decision.

**D. THE COURT SHOULD DECLINE GODING’S  
REQUEST TO RE-WEIGH THE EVIDENCE ON  
APPEAL.**

On pages 18 through 31 of his Response, Goding essentially asks the court to engage in a trial de novo on appeal, re-evaluate the weight and sufficiency of the evidence, and determine whether the findings are “reasonable.” The court should decline to do so under the analysis of *Perry* and *Eiden* for the reasons previously discussed. The Sheriff’s Office will nonetheless address Goding’s contentions and demonstrate that there is evidence to support the

findings he contests.

1. Goding disobeyed command staff directives.

Goding argues that he did precisely what he had been told to do if he disagreed with an instruction from jail staff – he sought the advice of his supervisor. Goding Response, at 19. This is incorrect.

Given the history of conflict and tension, Goding was told *not* to try to resolve problems with jail staff himself. CP 824. His superiors told him that if thought he was being asked to do something inappropriate, “just do what they ask and bring it to [his supervisor’s] attention *later* if you feel they are asking you to do something that is not appropriate for whatever reason. . . .” (italics added) CP 790.<sup>4</sup> He was only to contact his supervisor *from the scene* if he had concerns that were of “an emergent, safety nature that [could not] wait . . .”. CP 824-25.

Goding did not abide by this directive. He refused to follow jail staff requests and insisted that his own command staff intervene on a routine application of jail policy. Although Goding argued that he was confronted with an unusual circumstance because he

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<sup>4</sup> The day after the handcuffing incident, Sergeant Myers again told Goding that he was to follow the direction from the jail staff and that if he had any issues with it, he would need to contact Myers afterwards. See CP 653.

believed handcuffing Phipps would have been illegal, the Commission found that his claimed belief was not genuine, and there is evidence to support that finding.

2. Goding could not have reasonably regarded the jail's routine policy as illegal.

Citing *Lowry v. Board of Industrial Insurance Appeals*, 102 Wn.2d 58, 684 P.2d 678 (1984), Goding maintains he cannot be disciplined for disobeying the jail's order because he had a "reasonable concern" that following the order would be illegal. Goding Response, at 20. *Lowry* does not apply in this case.

The court in *Lowry* stated that while a failure to obey a superior's order is normally insubordination, there are some orders a public employee can disobey, including orders "that compel what can reasonably be construed as illegal, . . .". *Lowry*, 102 Wn.2d at 62. A "reasonable belief" as to unlawfulness, however, cannot simply be based on the employee's personal views. In *Lowry*, for example, the court found the employee's belief reasonable because he relied on a statement from his employer's legal advisor, which stated that a rule the employee was required to enforce authorized the unlawful practice of law. *Lowry*, 102 Wn.2d at 59, 67.

Goding did not rely on any external authority in refusing to comply with the jail's directive in this case. He cites no authority and makes no persuasive argument that the jail's policy was in fact unlawful. He simply came up with the idea at the scene. He wasn't certain he was right (CP 459), he was in fact wrong, and he wasn't relying on any authority other than himself. Moreover, the Commission found that he did not have a genuine belief that his actions were unlawful. CP 1160.

Goding maintains that his police training taught him that individuals were not to be restrained unless they were under arrest or posed a safety risk, and that, in his view, the arrestee (Phipps) fit neither category. Goding Response, at 20. Goding's views were wrong and did not justify his actions.

First, Phipps was under arrest and in Goding's custody until his release at the hospital. CP 374-75; 923. Second, Goding had no authority to override jail policy based on his own personal views – which in this case were questionable at best. Phipps was charged with a violent felony – threatening to bomb or injure property. CP 888. Goding was escorting him through an

unsecured area – the sally port – where officers could be handling weapons and other inmates could be present. CP 358, 723, 1160-61. Under these circumstances, Phipps posed a potential safety risk.<sup>5</sup>

Goding's apparent belief that he could pick and choose which jail policies to follow was the precise mindset that caused so much friction between him and jail staff. CP 1156-57. He acted as if he was above the jail personnel and did not have to abide by their rules. CP 360. Goding had been expressly told that the Sheriff's Office does "not make the rules [at the jail] and [does] not dictate or dispute policy there." CP 1157. The jail has its own policies to ensure the safety of its personnel and others in their facilities, and Goding's unsubstantiated concerns cannot override those policies. The directive here was lawful and could not reasonably be

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<sup>5</sup> Goding cites Judge Prochnau's ruling at page 21 of his response, although the trial court's ruling is not under review in this case. And while Judge Prochnau commended Goding's reluctance to restrain Phipps based on legality and health concerns, the genuineness of Goding's concerns over legality were unsubstantiated, and he did not base his refusal to handcuff Phipps on health concerns while at the scene.

construed otherwise.<sup>6</sup>

3. Because the Commission's findings are supported by evidence, Goding's claim that the findings are "unreasonable" is not a basis to overturn them.

Goding maintains that the "uniqueness" of the situation did not warrant the Commission's disbelief of his illegality claim. Goding Response, at 22. The Commission properly addressed this argument and found it unavailing (CP 1160), and its determination is supported by the evidence. Goding also argues that the Commission was wrong because exceptions to the restraint rule are sometimes made for elderly and infirm individuals. Goding Response, at 23. This is no more than a post-hoc rationalization: there is no evidence that Goding, while at the scene, based his refusal to handcuff Phipps on a concern that Phipps was elderly or infirm. Goding's objection was based solely on his alleged, erroneous belief that Phipps was not under arrest.

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<sup>6</sup> In an effort to establish that Phipps was not dangerous, Goding claims that Phipps was not under restraint when undergoing examination at the RJC. Goding Response, at 21, note 3. That is not surprising. Inmates are unrestrained in the ITR section of the jail, but only after a pat down search to ensure they have no weapons. CP 365. An unarmed inmate leaving the jail through the *unsecured* sally port, however, could still gain access to an officer's weapon (CP 358, 723), thus justifying the jail's restraint policy.

4. Goding did not adequately consider potential risks.

Goding contends that the Commission mistakenly found that he did not consider Phipps' potential risk when he refused to follow the jail's directive. Goding's Response, at 23. He claims that he perceived Phipps was not a risk due to his poor health. *Id.*

The Commission's finding on this issue is correct. Goding defended his refusal to handcuff Phipps based on his alleged concerns over legality – he did not assert the alleged poor health of Phipps as a reason for refusing to handcuff him at the jail.<sup>7</sup>

And because Goding placed Phipps in restraints when he transported him to the RJC (CP 445), he cannot credibly claim that Phipps' frailty justified his later refusal to follow the jail's directive to do the exact same thing. Goding's contention that Phipps was frail and harmless is also inconsistent with the fact that he encouraged jail staff to accept Phipps precisely because the charges against him were serious. CP 643. Lastly, the jail is entitled to enforce its own rules, and Goding's subjective, personal views about whether Phipps was harmless due to poor health do not control.

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<sup>7</sup> Goding later raised the health concern in an effort to justify why he loosely placed the restraints on Phipps after his sergeant ordered him to do so. CP 1161.

5. The fact that Goding made no effort to speak directly with his supervisor over his alleged legality concerns allows an inference that he did not regard the matter too seriously.

Goding contends the manner that he communicated with his sergeant about the lawfulness issue (i.e., through Sergeant Richardson) does not create an inference that his concerns were not genuine. Goding's Response, at 24. But this is a permissible inference under the circumstances.

Goding claimed to be in a situation he had never encountered before as an 11-year deputy with thousands of prisoner transports. One would expect – particularly in light of the alleged gravity of Goding's concerns – that he would simply reach out, ask his own partner for the cell phone (CP 459), and explain the situation in his own words to his sergeant. The fact that he did not do so suggests that, to some extent, he did not regard the situation as critical as he would later claim. This is reinforced by Goding's later admission that had his sergeant not been available, he would have just handcuffed Phipps anyway. CP 923.

6. The Commission properly relied on Goding's frustration toward medical staff to support its conclusion.

Goding claims that it was unreasonable for the Commission to rely on his documented irritation and frustration with jail staff as a

basis for finding him insubordinate. Goding's Response, at 26.

Goding is merely re-arguing the evidence and asking the Court to make a different finding. Evidence of his hostile demeanor towards jail staff is supported by the record (CP 643, 649, 720) and allows an inference that he was motivated by defiance.

7. The Commission properly relied on Goding's loose application of restraints to support its conclusion.

Goding argues that his loose application of restraints on Phipps was not evidence of insubordination, because he acted out of concern for Phipps' health and body shape. Goding's Response, at 27. But there is evidence to the contrary, and the Commission was entitled to rely on it. Sergeant Richardson directly observed Goding's actions and demeanor throughout this incident, and he testified that Goding's application of the restraints was defiant and just for show. CP 354, 360. This is sufficient evidence to support the Commission's finding.

8. The Commission's findings are consistent and supported by common sense.

Goding claims the conclusions of the Commission are contrary to its own findings and to common sense. Goding's Response, at 28. His argument here consists mostly of evidence

that the incident was “brief” and non-confrontational. But that does not undercut a finding of insubordination.

Common sense (and life experience) indicates that an employee does not have to shout, jump up and down, and pound his fist on the table to be insubordinate. An employee can simply smile, refuse to follow a supervisor’s order, and go about his or her business. And that can be accomplished in a few moments. Polite defiance is still insubordination.

9. The Commission was entitled to consider Goding’s past conflicts with jail staff as evidence of his intent.

Goding next claims that the Commission improperly relied on “character evidence” (prior conduct) in finding him insubordinate. Goding Response at 29. Goding fails to specify what “prior conduct” he is complaining about, although he is presumably referring to his prior discipline for the “Superform” incident. CP 1139.

The Commission was entitled to rely on this incident as evidence of Goding’s intent on the date he refused the directive to handcuff Phipps. See ER 404(b). Goding’s intent was the principal issue in this case: was he legitimately concerned with lawfulness or was he merely being defiant and difficult? In this situation, even

assuming strict application of the Rules of Evidence in Civil Service Commission proceedings, Goding's past discipline was properly considered on the issue of his intent. See ER 404(b).<sup>8</sup>

10. The Commission properly relied on the "Superform" incident to support its conclusions.

Finally, Goding recites additional reasons why he believes the Commission improperly relied on his prior discipline in the "Superform" incident. Goding's Response, at 30-31. He claims the Superform incident "was not an articulated basis" for the discipline taken against him in this case. This argument is properly addressed by the Commission's findings. The Commission found that the discipline imposed in this case was progressive based on prior discipline and warnings given to Goding. CP 1162.

Next, Goding maintains that "the discipline for the alleged prior misconduct" was the subject of an appeal by Goding's union. But he cites no authority indicating that the Commission cannot rely on a sustained finding of discipline simply because the employee's union may decide to appeal and proceed to arbitration.

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<sup>8</sup> Evidentiary rulings are typically reviewed for abuse of discretion, and Goding makes no effort to establish an abuse in this case. See Goding Response, at 29.

Significantly, Goding makes no claim that his discipline over the Superform incident has been overturned.<sup>9</sup>

Finally, Goding complains that the Commission disregarded evidence that his discipline came after he filed an IIU complaint against Sheriff's Office personnel. Goding Response, at 31. The Commission was not required to credit these allegations given the sufficiency of the evidence on the merits.

### III. CONCLUSION OF REPLY BRIEF

Goding's claims before this court and the trial court amount to little more than assertions that the Commission wrongly decided the charges against him on the merits. This is not a basis to overturn the Commission's findings and conclusions, and the trial court erred in doing so.

Appellate review is not a trial de novo. Where an employee has proper notice of the charges and an opportunity to be heard, as Goding did here, the court's role is limited to determining whether some evidence supports the Commission's conclusions.<sup>10</sup> Because evidence does support the Commission's conclusions, the King

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<sup>9</sup> Subject to this Court's approval, pursuant to RAP 9.11, the Sheriff's Office invites Goding to supplement the record with evidence limited to a showing of how the Superform incident was finally resolved.

<sup>10</sup> *Perry*, 69 Wn.2d at 820-21.

County Sheriff's Office asks the court to reverse the orders of the trial court (CP 1218-19; 1222-24) and reinstate the decision of the Civil Service Commission. CP 1156.

**IV. RESPONSE TO GODING'S CROSS-APPEAL**

**A. THE COMMISSION'S PROCEEDINGS WERE TIMELY.**

Goding contends the Commission's hearing was not timely under RCW 41.14.120. Goding Cross App. at 31. He cites nothing to show that he actually raised a timeliness argument before the Commission, and the court should refuse to address this issue for the first time on appeal. See RAP 2.5(a). The court may also refuse to address this issue because Goding makes no argument (and cites no authority) as to what remedy would be appropriate if the hearing was untimely. In any event, the record indicates that the parties stipulated that the appeal was timely. CP 213; 1156.

**B. THE TRIAL COURT PROPERLY DECLINED GODING'S REQUEST THAT IT ORDER THE COMMISSION TO REMOVE ALL REFERENCES TO THE DISCIPLINE FROM HIS RECORDS.**

Goding maintains that the trial court should have granted his request to have the Commission remove all references to his discipline from his personnel records. Goding Cross App. at 32.

The trial court properly refused this relief because neither the King County Civil Service Rules nor RCW 41.14.120 authorize it.

The powers of an administrative agency are derived from statutory authority expressly granted or necessarily implied. *State ex rel. Evergreen Freedom Foundation v. Wash. Educ. Assoc.*, 140 Wn.2d 615, 634, 999 P.2d 602 (2000). Administrative agencies do not possess “inherent authority.” *Assoc. of Wash. Business v. Dep’t of Revenue*, 155 Wn.2d 430, 445, 120 P.3d 46 (2005). Where implied authority to grant or impose a particular remedy is not clearly set forth in the statutory language or its broad implication, the courts of this state have been reluctant to find such authority on the part of an agency. *Skagit Surveyors and Engineers v. Friends of Skagit County*, 135 Wn.2d 542, 565, 958 P.2d 962 (1998).

The trial court properly followed this case law in denying Goding’s requested relief. RCW 41.14.120 does not give the Commission or the court the authority to direct how employers maintain employee records. While the trial court in *Eiden* authorized this relief, the issue was not contested on appeal and was not central to this court’s decision. The question of whether

the Sheriff's Office could *possibly* rely on a finding of insubordination in the future – whether sustained or not - is not now before the court and an anticipatory ruling is unnecessary.

**C. THE TRIAL COURT PROPERLY FOLLOWED CASE LAW GOVERNING AT THE TIME OF ITS DECISION TO DENY GODING'S REQUEST FOR ATTORNEY FEES.**

As Goding concedes in his Cross Appeal at page 33, the Commission “is not specifically vested with the authority to award attorney fees and costs.” He argues, however, that the Commission does have this authority under RCW 49.48.030, which provides for an award of fees when an employee brings an action to recover wages owed.

The court in *Trachtenberg v. Washington State Department of Corrections*, 122 Wn. App. 491, 497, 93 P.3d 217 (2004), *rev. denied*, 103 P.3d 801 (2004), held that RCW 49.48.030 does not apply to disciplinary challenges before the State Personnel Appeals Board. The rationale was that the legislature did not give the Board the authority to enter judgments or award attorney fees. *Id.*

The same reasoning applies in this case. An appeal to the Commission is not an action for a judgment for wages, see

*Trachtenberg*, 122 Wn. App. at 496, and administrative agencies do not have authority to determine issues outside of their delegated functions. *Trachtenberg*, 122 Wn. App. at 497. Because RCW 41.14.120 does not authorize the Commission to award attorney fees, the trial court was correct in denying Goding's fee request.

Goding correctly notes, however, that this court recently abrogated *Trachtenberg* in *Arnold v. City of Seattle*, \_\_\_ Wn. App. \_\_\_, 345 P.3d 1285 (March 23, 2015). The court in *Arnold* held that "it is irrelevant that the commission itself is not authorized to award attorney fees to an employee who recovers wages in a successful appeal [because] [t]he authority for the award of fees is found in RCW 49.48.030." *Arnold*, 345 P.3d at 1290.

As of the date of this brief, the court's decision in *Arnold* – including its abrogation of *Trachtenberg* – does not appear to be a final decision. Therefore, the Sheriff's Office respectfully asks the court to re-visit the attorney fee issue if it affirms the trial court's decision that Goding's discipline was not in good faith for cause, adhere to its reasoning in *Trachtenberg*, and rule that the trial court correctly denied Goding's request for attorney fees.

**V. CONCLUSION RE CROSS APPEAL**

The trial court correctly refused to direct the Sheriff's Office to remove all references to Goding's discipline from his employment file and properly denied his request for attorney fees. These aspects of the trial court's orders (CP 1218-19; 1222-24) should therefore be affirmed.

DATED this 15<sup>th</sup> day of May, 2015.

RESPECTFULLY submitted,

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Prosecuting Attorney

By:   
\_\_\_\_\_  
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Sheriff's Office

NO. 72890-3-I

COURT OF APPEAL OF THE STATE OF WASHINGTON

DIVISION I

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WAYNE GODING,

Respondent/Cross-Appellant,

v.

CIVIL SERVICE COMMISSION of King County; KING COUNTY,  
a municipal corporation; KING COUNTY SHERIFF'S OFFICE,  
a department of King County,

Appellants/Cross-Respondents.

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**PROOF OF SERVICE**

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**ORIGINAL**

I, LUCIA TAM, hereby certify and declare under penalty of perjury under the laws of the State of Washington as follows:

1. I am a legal secretary employed by King County Prosecutor's Office, am over the age of 18, am not a party to this action and am competent to testify herein.
2. Pursuant to the April 8, 2015 agreement of the parties, I served by email the "Reply of Appellant King County Sheriff's Office & Response of Cross-Respondent King County Sheriff's Office" and this "Proof of Service" to the following counsel of record and assistants:

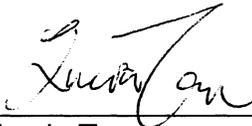
Stephen P. Connor at [steve@cslawfirm.net](mailto:steve@cslawfirm.net)  
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3. I caused via ABC Legal Messenger the original and one copy to be filed with Court of Appeals, Division I at 600 University St, Seattle, WA 98101.

I declare under penalty of perjury under the laws of the State of Washington that the forgoing is true and correct.

DATED this 15<sup>th</sup> day of May, 2015.

By:   
\_\_\_\_\_  
Lucia Tam  
Legal Secretary