BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

ANNTOINETTE CROSBY, Appellant, v. DEPARTMENT OF VETERANS AFFAIRS, Respondent.	)	Case No. R-DEMO-08-008 ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. INTRODUCTION

1.1 **Consideration of Motion.** This matter came before the Personnel Resources Board, MARSHA TADANO LONG, Chair; JOSEPH PINZONE, Vice Chair; and LAURA ANDERSON, Member, for consideration of Respondent's Motion to Dismiss. This matter was considered on written documents without oral argument.

1.2 **Representation.** Anntoinette Crosby represented herself. Valerie B. Petrie, Senior Assistant Attorney General, represented Respondent Department of Veterans Affairs.

1.3 **Documents Considered.** The Board considered the files and documents in this matter including:

- Respondent's Motion to Dismiss, filed October 27, 2008;
- Declaration of Debby Griswold with attachments, filed October 27, 2008;
- Appellant's response to the Motion filed November 12, 2008; and
- Respondent's Reply to Appellant's Response to Respondent's Motion to Dismiss, filed November 25, 2008.

II. FACTS

2.1 By letter dated June 24, 2008, Appellant was demoted from her position as Dietary Manager effective July 9, 2008. Appellant was demoted to a position covered by the collective bargaining

agreement between the Washington State Department of Veterans Affairs and the Washington State Federation of State Employees. On August 8, 2008, Appellant filed an appeal of her demotion.

2.2 On September 8, 2008, the Board scheduled the appeal for a January 28, 2009, hearing. On September 30, 2008, Board staff conducted a status conference with the parties and an additional hearing day was scheduled for January 29, 2009.

2.3 By letter dated October 16, 2008, Respondent withdrew the demotion action. On October 23, 2008, Respondent filed a Motion to Dismiss.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant acknowledges that the demotion has been withdrawn and that the disciplinary action no longer exists. Because the demotion no longer exists, Respondent asserts that there is no action from which the Board can hear an appeal under RCW 41.06.170. Respondent contends that since an action no longer exists over which the Board can exercise jurisdiction, the appeal should be dismissed.

3.2 Appellant argues that the appeal should go forward because Respondent did not offer any relief for benefits and leave that were accrued before the demotion was withdrawn. Appellant also argues that because the demotion has been withdrawn, there is no clarity as to when a grievance may be filed with the union.

IV. DISCUSSION

4.1 The Board may decide an appeal by motion if the documents on file, depositions and affidavits show there is no genuine issue as to any material fact and the appeal should be dismissed as a matter of law. WAC 357-52-140. All facts and reasonable inferences therefrom are to be determined in favor of the nonmoving party. For purposes of Respondent's motion to dismiss, we must assume any disputed facts in favor of Appellant. *See*, Hall v. University of Washington, PAB No. 3863-V2 (1995).

4.2 There is no question of material fact that Appellant's demotion was rescinded. Therefore, the question here is whether an action exists over which the Board can exercise jurisdiction.

4.3 RCW 41.06.170 provides, in relevant part, that the Board has jurisdiction to hear appeals of

> (2) Any employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period as provided by the rules of the director, or any employee who is adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or rules adopted under it, shall have the right to appeal either individually, or through his or her authorized representative, not later than thirty days after the effective date of such action . . . .
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> . . . .
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> (5) Subsections (1) and (2) of this section do not apply to any employee who is subject to the provisions of a collective bargaining agreement negotiated under RCW 41.80.001 and 41.80.010 through 41.80.130.

4.5 By letter dated October 16, 2008, the appointing authority withdrew Appellant's demotion. Therefore, the demotion action no longer exists. In this case, there is no action over which we can exercise jurisdiction. The appeal should be dismissed.

V. ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted and the appeal of Anntoinette Crosby is dismissed.

DATED this _____ day of _____, 2008.

WASHINGTON PERSONNEL RESOURCES BOARD

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MARSHA TADANO LONG, Chair

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JOSEPH PINZONE, Vice Chair

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LAURA ANDERSON, Member