BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

JOHN GATES, Appellant, v. DEPARTMENT OF CORRECTIONS, Respondent.	)	PRB Case No. R-JUR-12-005 **ORDER OF DISMISSAL**

This matter came before the Personnel Resources Board, JOSEPH PINZONE, Vice Chair, and NANCY HOLLAND YOUNG, Member, for dismissal pursuant to WAC 357-52-215 and WAC 357-52-220.

WAC 357-52-215 provides, in relevant part:

> The board may dismiss an appeal on its own motion when:
> . . .
> (4) The board lacks jurisdiction over the subject matter or parties to the appeal. . . .

On August 30, 2012, John Gates filed an appeal of his termination from his probationary position at the Monroe Correctional Complex. Based on the information Mr. Gates provided with his appeal, it appeared that his position was subject to the provisions of the collective bargaining agreement between the Teamsters Union Local 117 and the State of Washington.

Appeal rights for state civil service employees are provided by RCW 41.06.170, which states, in part:

> (2) Any employee who is reduced, dismissed, suspended, or demoted, <u>after completing his or her probationary period of service</u> as provided by the rules of the director . . . 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 to the Washington personnel resources board. . . .
>
> . . . .
>
> (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.
>
> (Emphasis added).

Because Mr. Gates' position was covered by a collective bargaining agreement, it appeared that the Board lacked jurisdiction in this matter. In addition, it appeared that Mr. Gates was separated prior to completing his probationary period. By letter dated September 4, 2012, Board staff directed the parties to provided written argument addressing the Board's jurisdiction in this matter.

On September 25, 2012, Respondent filed written argument supporting dismissal of the appeal. Respondent argued that Mr. Gates was separated during his probationary period and that he was a member of the Teamsters Local 117 bargaining unit during his employment. Respondent asserted that appeal rights set forth in RCW 41.06.170(2) do not apply to represented employees.

Mr. Gates did not provide written argument addressing the Board's jurisdiction.

On September 26, 2012, the Board served the parties with a Notice of Potential Dismissal. The notice stated that it appeared that Mr. Gates' position and the terms of his probationary employment were covered by the provisions of a collective bargaining agreement. Therefore, as provided in RCW 41.06.170(5), it appeared that the Board lacked jurisdiction in this matter.

The Notice of Potential Dismissal notified that parties that the appeal would be dismissed unless, within fifteen calendar days following the date of service of the notice, the Board received a written request showing good cause why the appeal should not be dismissed.

Neither party provided a response to the Notice of Potential Dismissal.

Mr. Gates' position and the terms of his probationary employment were covered by the provisions of a collective bargaining agreement. Therefore, as provided in RCW 41.06.170(5), the Board lacks jurisdiction in this matter.

The Board having reviewed the file and records herein and being fully advised in the premises, now enters the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of John Gates v. Department of Corrections, PRB Case No. R-JUR-12-005, is dismissed.

DATED AND MAILED this _____ day of _____, 2012.

WASHINGTON PERSONNEL RESOURCES BOARD

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JOSEPH PINZONE, Vice Chair

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NANCY HOLLAND YOUNG, Member