BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

JEFFERY SMITH, Appellant, v. EMPLOYMENT SECURITY DEPARTMENT, Respondent.	)	PRB Case No. R-JUR-13-006 **ORDER OF DISMISSAL**

This matter came before the Personnel Resources Board, DJ MARK, 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:
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> . . . .
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> (4) The board lacks jurisdiction over the subject matter or parties to the appeal . . . .

On May 31, 2013, Mr. Smith filed an appeal of Employment Security Department's failure to place his name on the layoff list for the UI Specialist 4 classification. Based on the information Mr. Smith provided with his appeal, it appeared that his position was subject to the provisions of the collective bargaining agreement between the Washington Federation of State Employees 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 . . . 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 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).

In accordance with WAC 357-52-035, by letter dated June 4, 2013, Board staff directed the parties to provided written argument addressing the Board's jurisdiction.

On June 20, 2013, Respondent filed written argument supporting dismissal of the appeal. Respondent argued that Mr. Smith's position was covered by a collective bargaining agreement placing Mr. Smith outside of the jurisdiction of the Board. Mr. Smith did not provide written argument addressing the Board jurisdiction.

On June 25, 2013, the Board served the parties with a Notice of Potential Dismissal. 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 responded to the Notice of Potential Dismissal.

Mr. Smith's position and the terms of his employment are 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 and the appeal should be dismissed.

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

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ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jeffery Smith vs. Employment Security Department, PRB Case No. R-JUR-13-006, is dismissed.

DATED AND MAILED this _____ day of _____, 2013.

WASHINGTON PERSONNEL RESOURCES BOARD

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DJ MARK, Vice Chair

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NANCY HOLLAND YOUNG, Member