BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

JEROME MCFARLAND, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	))))))))))	PRB Case No. R-JUR-11-006 **ORDER OF DISMISSAL**

This matter came before the Personnel Resources Board, DJ MARK, Chair, and JOSEPH PINZONE, Vice Chair, 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 December 15, 2011, Jerome McFarland filed an appeal of his dismissal from his Juvenile Rehabilitation Security Officer 1 position with the Department of Social and Health Services. Based on the information Mr. McFarland provided with his appeal, the position from which he was dismissed was covered by a collective bargaining agreement.

Because Mr. McFarland's position was covered by a collective bargaining agreement, it appeared that the Board lacked jurisdiction in this matter. By letter dated December 19, 2011, Board staff directed the parties to provided written argument addressing the Board's jurisdiction in this matter.

On December 22, 2011, Respondent provided a written response and confirmed that at the time of Mr. McFarland's dismissal, his position was covered by a collective bargaining agreement. Respondent asserted that the Board lacks jurisdiction in this matter.

Mr. McFarland did not provide a response to the Board's December 19, 2011 letter.

RCW 41.06.170 provides, in relevant part, that

> (2) Any employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service 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) <u>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.</u>
>
> (Emphasis added).

On January 10, 2012, Board staff served the parties with a Notice of Potential Dismissal. The notice stated 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. Appellant filed an untimely letter on January 30, 2012. He indicated that he had been misled by the union. However, he did not establish that the Board has jurisdiction in this matter.

In this case, at the time of Mr. McFarland's dismissal, his position and the terms of his employment were covered by a collective bargaining agreement. Therefore, 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 request of Jerome McFarland vs. Department of Social and Health Services, PRB Case No. R-JUR-11-006, is dismissed.

DATED AND MAILED this _____ day of _____, 2012.

WASHINGTON PERSONNEL RESOURCES BOARD

_____
DJ MARK, Chair

_____
JOSEPH PINZONE, Vice Chair