

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 JOHN PETRUZZELLI,)

4 Appellant,)

5 v.)

PRB Case No. R-JUR-09-004

6 DEPARTMENT OF LABOR AND)
7 INDUSTRIES,)

8 Respondent.)

ORDER OF DISMISSAL

9 This matter came before the Personnel Resources Board, JOSEPH PINZONE, Chair; LAURA
10 ANDERSON, Vice Chair; and DJ MARK, Member, for dismissal pursuant to WAC 357-52-215 and
11 WAC 357-52-220.

12
13 WAC 357-52-215 provides, in relevant part:

14 The board may dismiss an appeal on its own motion when:

15 . . .

16 (3) An appeal is not filed on time;

17 (4) The board lacks jurisdiction over the subject matter or parties to the appeal . . .

18
19 On June 16, 2009, the Personnel Resources Board received John Petruzzelli's appeal form and letter
20 requesting an appeal of his termination from Department of Labor and Industries (L&I). Based on
21 the information in Mr. Petruzzelli's appeal request, his employment and position at L&I were
22 covered by a collective bargaining agreement between the Washington Federation of State
23 Employees and the State of Washington. Therefore, it appeared that the Personnel Resources Board
24 lacked jurisdiction to hear his appeal. In addition, his appeal request was filed more than thirty (30)
25 days after the effective date of his termination.

1
2 Because it appeared that Mr. Petruzzelli's position was not subject to the jurisdiction of the Board
3 and that the appeal was filed more than thirty (30) days after the effective date of his termination, by
4 letter dated June 16, 2009, Board staff directed the parties to provide written argument addressing
5 the Board's jurisdiction in this matter. The parties were informed that the written argument was due
6 within twenty-one (21) calendar days of the date of the letter. The parties were also informed that if
7 the information provided failed to show that Mr. Petruzzelli's appeal fell within the jurisdiction of the
8 Board, the matter may be presented to the Board for dismissal under the provisions of WAC 357-52-
9 215.

10
11 On July 7, 2009, in response to staff's letter, L&I filed a Motion to Dismiss arguing that Mr.
12 Petruzzelli's position was covered by the collective bargaining agreement and that the Board lacked
13 jurisdiction to hear this matter. L&I further argued that Mr. Petruzzelli's request for appeal was
14 untimely. Mr. Petruzzelli's did not provide a response.

15
16 Appeal rights for state civil service employees are provided by RCW 41.06.170, which states, in part:

17 . . . (2) Any employee who is reduced, dismissed, suspended, or demoted, after
18 completing his or her probationary period of service as provided by the rules of the
19 director, or any employee who is adversely affected by a violation of the state civil
20 service law, chapter 41.06 RCW, or rules adopted under it, shall have the right to
21 appeal, either individually or through his or her authorized representative, not later
22 than thirty days after the effective date of such action . . . to the Washington
23 personnel resources board after June 30, 2005. . . .

24 (5) Subsections (1) and (2) of this section do not apply to any employee who is
25 subject to the provisions of a collective bargaining agreement negotiated under RCW
26 41.80.001 and 41.80.010 through 41.80.130.

(Emphasis added).

1 In addition, the Board's rules provide that only employees subject to the statutory jurisdiction of the
2 Board may appeal dismissal actions. (See WAC 357-52-010).

3
4 On July 8, 2009, Board staff served the parties with a Notice of Potential Dismissal. The notice
5 stated that Mr. Petruzzelli's position and the action appealed were covered by the terms of the
6 collective bargaining agreement and that it appeared the Board lacked jurisdiction in the matter. The
7 notice also stated that the appeal would be dismissed unless, within fifteen (15) calendar days
8 following the date of service of the notice, the Board received a written request showing good cause
9 why the appeal should not be dismissed. The notice was dated July 8, 2009. Therefore, written
10 responses were due July 23, 2009.

11
12 On July 27, 2009, Mr. Petruzzelli filed an untimely response to the Notice of Potential Dismissal. In
13 summary, Mr. Petruzzelli argued that RCW 41.06.170 is applicable because the union did not take
14 his grievance forward, and therefore, he was not covered by the collective bargaining agreement. Mr.
15 Petruzzelli further argued that if RCW 41.06.170 is applicable, the timeline for filing his appeal
16 should be excused because he unintentionally filed a late appeal.

17
18 Neither the RCW nor the civil service rules allow the Board to expand the scope of its statutory
19 jurisdiction. In this case, at the time of his termination, Mr. Petruzzelli's position and the action
20 appealed were covered by the terms of the collective bargaining agreement. As a result, the Board
21 lacks jurisdiction in the matter and the appeal should be dismissed. The issues concerning whether
22 the union failed to take his grievance forward and by doing so committed an unfair labor practice are
23 outside of the jurisdiction of this Board.

1 In addition, even if Mr. Petruzzelli's position and the action appealed had been under the jurisdiction
2 of this Board, the RCW and the rules require that such an appeal must be received by the Board
3 within thirty (30) days of the effective date of the disciplinary action. Neither the RCW nor the civil
4 service rules allow the Board to waive the jurisdictional requirements for filing appeals.

5
6 The Board having reviewed the file and records herein, being fully advised in the premises, now
7 enters the following:

8 **ORDER**

9 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of John Petruzzelli v. Department of
10 Labor and Industries, PRB Case No. R-JUR-09-004, is dismissed.

11 DATED AND MAILED this ____ day of _____, 2009.

12 **WASHINGTON PERSONNEL RESOURCES BOARD**

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14 _____
15 JOSEPH PINZONE, Chair

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17 _____
18 LAURA J. ANDERSON, Vice Chair

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20 _____
21 DJ MARK, Member