

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 JASON WISE , )  
4 Appellant, )  
5 v. )  
6 DEPARTMENT OF NATURAL RESOURCES, )  
7 Respondent. )  
8 \_\_\_\_\_ )

PRB Case No. R-DISM-09-008

**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  
11 and WAC 357-52-220.

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

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

14 . . .

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

16  
17 On May 6, 2009, the Personnel Resources Board (Board) received Jason Wise's May 5, 2009 letter  
18 appealing his termination from his Equipment Technician 5 position with the Department of Natural  
19 Resources.

20 By letter dated May 8, 2009, Board staff notified Mr. Wise that it appeared his position was covered  
21 by a collective bargaining agreement and that the Board did not have jurisdiction. By letter dated  
22 May 11, 2009, Mr. Wise's attorney responded that Mr. Wise was not in a covered position. Rather,  
23 he indicated that Mr. Wise's position was a supervisory position and was exempted from the scope  
24 of the bargaining unit.  
25

1 As a result of the information in Mr. Wise's attorney's response, by letter dated May 14, 2009,  
2 Board staff acknowledged receipt of Mr. Wise's appeal and assigned it case number R-DISM-09-  
3 008.

4 By letter dated May 19, 2009, the Assistant Attorney General (AAG) for the Department of Natural  
5 Resources (DNR), argued that as an Equipment Technician 5, Mr. Wise was a classified represented  
6 employee and that his position was covered by the Washington Public Employees Association's  
7 (WPEA) collective bargaining agreement. The AAG provided a copy of the Public Employment  
8 Relations Commission order clarifying the bargaining unit. The order provides that with the  
9 exception of positions 5023 and 6677, Equipment Technician 5 positions are included in the  
10 supervisory bargaining unit. Mr. Wise was in position number 2536. Furthermore, on June 30, 2005,  
11 Mr. Wise authorized representation fees to be paid to the WPEA and his December 24, 2008  
12 earnings and deductions statement indicates that union dues were deducted and paid to the WPEA.  
13

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

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

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

25 (Emphasis added).

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

1 On June 8, 2009, Board staff served the parties with a Notice of Potential Dismissal. The notice  
2 stated that Mr. Wise's position and the action appealed were covered by the terms of the CBA and  
3 that it appeared the Board lacked jurisdiction in the matter. The notice also stated that the appeal  
4 would be dismissed unless, within fifteen (15) calendar days following the date of service of the  
5 notice, the Board received a written request showing good cause why the appeal should not be  
6 dismissed.

7 Neither party submitted a response to the notice.  
8

9 In this case, Mr. Wise's position and the action appealed are covered by the terms of the CBA. As a  
10 result, the Board lacks jurisdiction in the matter and the appeal should be dismissed.  
11

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

14 **ORDER**

15 NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Jason Wise v. Department of  
16 Natural Resources, PRB Case No. R-DISM-09-008, is dismissed.

17 DATED AND MAILED this \_\_\_\_ day of \_\_\_\_\_, 2009.

18 **WASHINGTON PERSONNEL RESOURCES BOARD**

19  
20 \_\_\_\_\_  
21 JOSEPH PINZONE, Chair

22 \_\_\_\_\_  
23 LAURA J. ANDERSON, Vice Chair

24 \_\_\_\_\_  
25 DJ MARK, Member