

1 **BEFORE THE PERSONNEL RESOURCES BOARD**

2 **STATE OF WASHINGTON**

3 MARY MALIA,

4 Appellant,

5 v.

6 EASTERN WASHINGTON UNIVERSITY,

7 Respondent.

PRB Case No. R-JUR-09-005

**ORDER OF DISMISSAL**

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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.

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

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

15 . . .

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

17 On August 3, 2009, the Personnel Resources Board received Mary Malia's appeal form requesting  
18 an appeal of her July 2, 2009, layoff from her administrative/exempt Manager position at Eastern  
19 Washington University. Based on the information Ms. Malia provided with her appeal, her  
20 exempt/administrative Manager position was eliminated, her appointment to the position was  
21 terminated, she exercised her revision rights, and she was placed in the highest class of position she  
22 previously held in the classified service. She was subsequently laid off from her classified position. As  
23 a remedy to her appeal, Ms. Malia asked for reinstatement of her exempt level salary.

1 Because Ms. Malia was in an exempt position, it appeared that the Board lacked jurisdiction over the  
2 elimination of her position. Further, because the classified position to which Ms. Malia reverted was  
3 covered by a collective bargaining agreement between the Washington Federation of State  
4 Employees and Eastern Washington University, it appeared that the Board lacked jurisdiction over  
5 her position and her subsequent layoff.

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7 By letter dated August 4, 2009, Board staff directed the parties to provide written argument  
8 addressing the Board's jurisdiction in this matter. Written arguments were due within twenty-one  
9 days of the date of the letter. The parties were informed that if the information provided failed to  
10 show that Ms. Malia's appeal fell within the jurisdiction of the Board, the matter may be presented to  
11 the Board for dismissal under the provisions of WAC 357-52-215.

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13 On August 19, 2009, Eastern Washington University filed a written response arguing that Ms.  
14 Malia's appeal of her termination from her exempt Manager position is not under the jurisdiction of  
15 the Board. Eastern Washington University further argued that issues related to Ms. Malia's  
16 subsequent layoff from a classified position are covered by the collective bargaining agreement and  
17 not within the jurisdiction of the Board. Ms. Malia did not provide a response.

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19 RCW 41.06.170, which provides appeal rights for classified employees, states, in part:

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

1       (5) Subsections (1) and (2) of this section do not apply to any employee who is subject to  
2       the provisions of a collective bargaining agreement negotiated under RCW 41.80.001 and  
3       41.80.010 through 41.80.130.

4       (Emphasis added).

5       Separation and layoff appeal rights do not apply to employees covered by the provisions of a  
6       collective bargaining agreement.

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8       In addition, the Board's rules indicate that only employees subject to the statutory jurisdiction of the  
9       Board may appeal a separation or layoff. (See WAC 357-52-010).

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11       On August 27, 2009, Board staff served the parties with a Notice of Potential Dismissal. The notice  
12       stated that the elimination of Ms. Malia's exempt Manager position and her removal from the  
13       position were not within the jurisdiction of the Board. Further, the issues related to Ms. Malia's  
14       layoff from a classified position covered by the terms of the collective bargaining agreement were not  
15       within the jurisdiction of the Board. The notice also stated that the appeal would be dismissed unless,  
16       within fifteen calendar days following the date of service of the notice, the Board received a written  
17       request showing good cause why the appeal should not be dismissed.

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19       Neither party filed a response to the Notice of Potential Dismissal.

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

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**ORDER**

NOW, THEREFORE, IT IS HEREBY ORDERED that the appeal of Mary Malia v. Eastern Washington University, PRB Case No. R-JUR-09-005, is dismissed.

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

**WASHINGTON PERSONNEL RESOURCES BOARD**

\_\_\_\_\_  
JOSEPH PINZONE, Chair

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LAURA J. ANDERSON, Vice Chair

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DJ MARK, Member