

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. MA-030-12

(MANAGEMENT SERVICE ALLOCATION)

MARILYN NICHOLS,)	
)	
Appellant,)	
)	
v.)	DISMISSAL ORDER
)	
STATE OF OREGON, OREGON HEALTH)	
AUTHORITY, OREGON STATE)	
HOSPITAL,)	
Respondent.)	

Marilyn Nichols, Salem, Oregon, *pro se* Appellant.

Sylvia Van Dyke, Assistant Attorney General, Labor and Employment Section, Department of Justice, Salem, Oregon, represented Respondent.

On October 12, 2012, Appellant Marilyn Nichols filed this appeal alleging that the State of Oregon, Oregon Health Authority, Oregon State Hospital (OHA) unlawfully designated her position as classified represented rather than management service. She alleges her nondisciplinary removal occurred due to OHA reviewing its management service positions pursuant to House Bill 2020.¹ She asserts she cannot perform the duties of her position as a classified represented employee.

On October 15, 2012, Administrative Law Judge (ALJ) Wendy L. Greenwald sent a letter to the parties asking them to show cause why the appeal should not be dismissed because the Employment Relations Board lacked jurisdiction of the matter. Both parties filed a timely response. Thereafter, ALJ Greenwald transferred the case to the Board with a recommendation that the appeal be dismissed.

¹HB 2020 required the Department of Administrative Services to develop a plan for certain state agencies to “attain a ratio of 11 to 1 of public employees to supervisory employees and managerial employees acting in a supervisory capacity.”

For purposes of this Order, we assume the allegations in the appeal are true. We also rely on undisputed facts discovered during our investigation. *Miller v. State of Oregon, Department of Human Services, Seniors and People with Disabilities*, Case No. MA-010-10 (2011).

Prior to November 1, 2012, Nichols' position was classified as an Executive Support Specialist II in the management service.² She was notified that effective November 1, her position status would change from management service to classified represented, and her position would now be included in the SEIU bargaining unit. The effect of this change was a reduction in her vacation accrual rate and a requirement that she pay union dues or fair share fees to SEIU.

Nichols asks this Board to review the position status change and return her position to management service status. This Board has no authority to do so.

ORS 240.570 (2) provides:

"An appointing authority may assign, reassign and transfer management service employees for the good of the service and may remove employees from the management service due to reorganization or lack of work."

ORS 240.570 (4) provides:

"[Management Service] Employees who are assigned, reassigned, transferred or removed, as provided in subsection (2) of this section, and employees who are disciplined or removed from the management service for the reasons specified in subsection (3) of this section may appeal to the Employment Relations Board in the manner provided by ORS 240.560."

Under these statutes, management service employees have limited appeal rights of personnel actions. *Herron v. State of Oregon, Department of Corrections*, Case No. MA-20-03 (November 2003) (Board dismissed management service correctional lieutenant's appeal of his position reclassification to classified correctional sergeant represented by a union). While Nichols and her position have been removed from management service, she was not removed due to reorganization or lack of work. Rather, she was removed due to OHA's determination that her position status did not warrant remaining in management service. The statute does not provide for an appeal regarding either the change in position status or the designation of one's position as management or classified service.

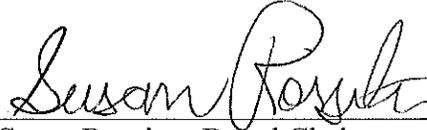
As Nichol's appeal does not meet the limited appeal categories set forth in the statute, this Board does not have jurisdiction of this matter. The appeal will be dismissed.

²The record is unclear as to the reason for her management service designation. Her March 28, 2012 position description indicates she was a supervisor; the October 4, 2012 letter from OHA states she was a managerial employee; Nichols' states in her October 30 response to ALJ Greenwald that she was a confidential employee. For purposes of this order, we need not resolve this issue.

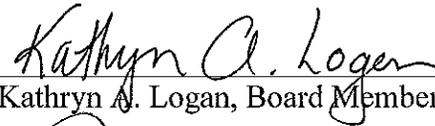
ORDER

The appeal is dismissed.

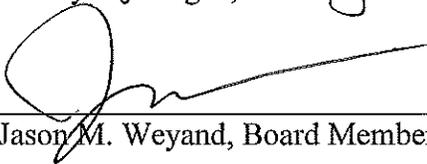
DATED this 13 day of November 2012.



Susan Rossiter, Board Chair



Kathryn A. Logan, Board Member



Jason M. Weyand, Board Member

This Order may be appealed pursuant to ORS 183.482.