



been completed by December 18, 2002, but was not completed until a date in 2005 not known to him.

ORS 240.570 provides in part:

“(4) [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.” (Emphasis added.)

In *Rosevear and Tetzlaff v. Department of Corrections*, Case Nos. MA-4/6-97 (February 1998), this Board stated:

“In this Board’s decision in *Knutzen v. Department of Insurance and Finance*, Case No. MA-13-92 (November 1994), on remand from 129 Or App 565 (1994), we stated that we have ‘no jurisdiction to review management service personnel actions not enumerated in ORS 240.570.’ (Decision on remand at 7.) The legislature has not granted jurisdiction to this Board to consider management service employees’ claims regarding refusal to promote and hire.<sup>2</sup> These elements of the appeals are dismissed.

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<sup>2</sup>The legislature has limited the authority of this Board to review alleged violations of the State Personnel Relations Law (SPRL), ORS 240, that involve management service personnel. In contrast, the legislature provided this Board with the authority to review allegations that a party violated any portion of the Public Employee Collective Bargaining Act, ORS 243.650, *et seq.* See ORS 243.672(1)(f)/(2)(c) and 243.676.” *Rosevear and Tetzlaff* at 3-4(emphasis omitted).

Accordingly, this Board has held that it does not have jurisdiction over appeals from reclassifications and reallocations. In *Herron v. State of Oregon, Department of Corrections*, Case No. MA-20-03 (November 2003), this Board stated:

“In *Jester v. Department of Corrections*, Case No. MA-9-00 (October 2000), this Board concluded that management service employees have limited appeal rights under ORS 240.570(2) and 240.570(3). Reclassification and reallocation are not among the specific categories of personnel actions which ORS 240.570(4) provides that a management service employee may appeal to this Board.” *Herron* at page 2.

On March 14, 2006, the Administrative Law Judge (ALJ) notified Rieke of this precedent, and stated that it appeared from the face of Rieke’s appeal letter that the action should be dismissed for failure to state a claim for relief. The ALJ invited Rieke to provide him with any reasoning or factual allegations which would show that the arguments identified by the ALJ were incorrect, or that the complaint rested on other legal theories, so that the ALJ could determine whether it was appropriate to recommend that the complaint be dismissed. Rieke did not file a response.

This agency has no jurisdiction to hear appeals of reclassification decisions concerning management service employees. Therefore, Rieke has failed to state a claim for relief. We will dismiss the complaint.

ORDER

The complaint is dismissed.


DATED this 10<sup>th</sup> day of August 2006.

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Donna Sandoval Bennett, Chair



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Paul B. Gamson, Board Member



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James W. Kasameyer, Board Member

\*Chair Bennett is recused from this matter.

This Order may be appealed pursuant to ORS 183.482.