

EMPLOYMENT RELATIONS BOARD

OF THE

STATE OF OREGON

Case No. MA-9-06

(TRIAL SERVICE REMOVAL)

BELINDA DEGLOW,)	
)	
Appellant,)	
)	
v)	
)	DISMISSAL ORDER
STATE OF OREGON,)	
REAL ESTATE AGENCY,)	
)	
Respondent.)	
_____)	

Dennis Koho, Attorney at Law, Koho & Associates, 142 Glynbrook N., Suite 210, Keizer, Oregon 97303, represented Appellant.

Francis J. Connell III, Attorney-in-Charge, Labor and Employment Section, Department of Justice, 1162 Court Street N.E., Salem, Oregon 97301-4096, represented Respondent.

On September 1, 2006, Appellant Belinda Deglow filed a timely appeal of the State of Oregon, Real Estate Agency's (State or Agency) August 4, 2006 decision to remove her from trial service. The case was assigned to Administrative Law Judge (ALJ) Vickie Cowan for processing. On October 3, 2006, the State moved to dismiss the appeal for lack of jurisdiction. By letter dated October 9, 2006, the ALJ warned Appellant that she would recommend dismissal of the appeal unless Appellant could convince her to the contrary by October 23, 2006. Appellant responded on October 23, 2006.

Background

Appellant began her employment with the Agency on February 13, 2006, in the classified position of financial investigator in the regulation division. The Agency and the American Federation of State, County, and Municipal Employees (Union or

AFSCME) are parties to a collective bargaining agreement effective 2005-07. Appellant's position is included in the bargaining unit represented by AFSCME. The parties' agreement provides, in relevant part:

"ARTICLE 1 - RECOGNITION

"Section 1. The Employer and the Agency recognize the Union as the sole and exclusive bargaining agent for all classified employees of the Real Estate Agency excluding supervisory, confidential and managerial employees as defined by ORS 243.650, employees working less than half-time, and temporary employees within the meaning of ORS 240 309.

"* * * * *

"ARTICLE 16 - TRIAL SERVICE

"Section 1. All employees hired, appointed, promoted, or re-employed to a position shall serve a trial service period of six (6) months.

"Section 2. At any time during the trial service period, the Agency may remove an employee if, in the judgment of the Agency, the employee is unable or unwilling to perform his/her duties satisfactorily or if in the judgment of the Agency his/her habits and dependability do not merit his/her continuance in the position.

"If such employee was previously a regular status employee in another position in this bargaining unit in the Agency immediately prior to his/her present appointment, he/she shall be reinstated to his/her former position in the bargaining unit, unless charges are filed and he/she is discharged for just cause as provided in Article 13 (Discipline and Discharge).

"* * * * *

"Section 4. If an employee is removed from his/her position during his/her trial service period *the employee shall not have rights to appeal the Agency's decision.*" (Emphasis added).

ORS 240.086, the statute conferring jurisdiction on the Employment Relations Board (ERB) to resolve state employee appeals, prohibits this Board from adjudicating State Personnel Relations Law (SPRL) appeals where the affected employee is a member of a bargaining unit. ORS 240.086(1) provides that this Board shall:

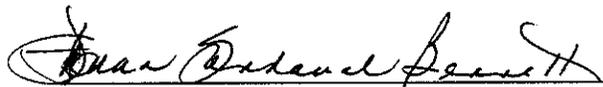
“Review any personnel action affecting an employee, *who is not in a certified or recognized appropriate collective bargaining unit*, that is alleged to be arbitrary or contrary to law or rule, or taken for political reason, and set aside such action if it finds these allegations to be correct ” (Emphasis added)

Appellant is an employee in a recognized or certified bargaining unit and is covered by the provisions of a collective bargaining agreement. Therefore, we have no jurisdiction to adjudicate Appellant’s claim under the provisions of SPRL. We will dismiss this case for lack of jurisdiction. *Thorson v. State of Oregon, Department of Human Services, Medford Child Welfare Office*, Case No. MA-15-04 (February 2005) (ERB lacked jurisdiction of appeal of trial service employee covered by labor contract under which trial service removals not subject to grievance procedure); *Loftus v. Board on Public Safety Standards and Training*, Case No MA-8-95 (July 1995).

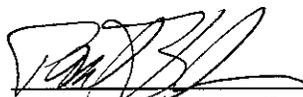
ORDER

The appeal is dismissed.

DATED this 20th day of November 2006.



Donna Sandoval Bennett, Chair



Paul B. Gamson, Board Member



James W. Kasameyer, Board Member

This Order may be appealed pursuant to ORS 183.482.