

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Rebecca J. Schmearsal,

Appellant,

v.

University of Toledo,

Case Nos. 08-LAY-07-0455

08-SUS-07-0456

08-MIS-07-0458

08-REM-08-0470

Appellee

ORDER

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the records and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeals be **DISMISSED** for lack of jurisdiction over their subject matter, pursuant to R.C. 4117.10 (A).



Lumpe - Aye

Booth - Aye

Sfalcin - Aye

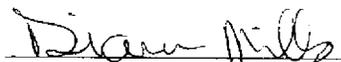


J. Richard Lumpe, *Chairman*

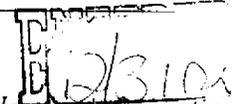
CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, December 31, 2008.



Clerk



NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Rebecca J. Schmearsal,

Case No. 08-LAY-07-0455

Appellant

v.

November 10, 2008

University of Toledo,

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration on November 10, 2008, upon Appellant's notice of appeal filed on July 25, 2008. In her notice of appeal, Appellant checked the boxes of "layoff" "suspension" "whistleblower" and "other". Since it was unclear as to the circumstances surrounding Appellant's appeals, this Board issued a Procedural Order and Questionnaire to the parties on September 17, 2008. Appellant filed her reply on September 30, 2008 and Appellee filed its response on October 8, 2008. Both parties' responses indicated Appellant Schmearsal's position of Patient Care Assistant was covered by a collective bargaining agreement. Appellant Schmearsal indicated in her response that she filed a grievance under her collective bargaining agreement.

I find that the Appellant is classified as a Patient Care Assistant. The Patient Care Assistant classification is included in a bargaining unit which is represented by AFSCME, AFL-CIO Local #2415. Appellee University of Toledo and AFSCME, AFL-CIO Local #2415 have signed a collective bargaining contract, which covers the Appellant's bargaining unit.

The above contract provides a grievance procedure resulting in final and binding arbitration. The Appellant was removed; this action is covered by the contract grievance procedures. Ohio Revised Code Section 4117.10(A) states that where a bargaining agreement provides a grievance procedure which culminates in

final and binding arbitration, the State Personnel Board of Review has no jurisdiction. This Board is, therefore, without jurisdiction to hear the instant appeal.

Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED** for lack of jurisdiction.



Marcie M. Scholl
Administrative Law Judge

MMS:dIm