

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

DANIEL J. SARVER,

Appellant,

v.

Case No. 08-REM-07-0467

UNION RECYCLERS, INC.,

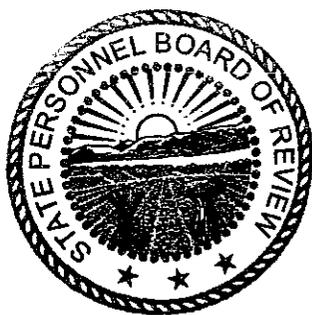
Appellee

ORDER

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record 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 appeal be **DISMISSED** for lack of subject matter jurisdiction, pursuant to R.C. 124.03.



Lumpe - Aye
Booth - Aye
Sfalcin - Aye

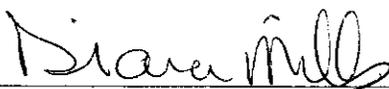


J. Richard Lumpe, *Chairman*

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, November 20, 2008.



Clerk 11/20/08

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

DANIEL J. SARVER,

Case No. 08-REM-07-0467

Appellant

v.

October 16, 2008

UNION RECYCLERS, INC.,

JAMES R. SPRAGUE

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

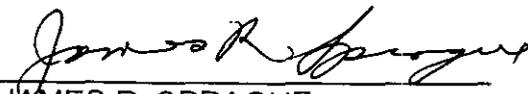
To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's filing of an appeal from his removal from his position with Appellee. On August 27, 2008, Appellee filed a motion to dismiss and accompanying documentation, including the affidavit of Darlene Steele, current President of the Board of Union Recyclers, Inc. Appellant was provided with the requisite time and additional time to file a memorandum *contra* but, to date, has not done so.

O.A.C. 124-11-07 (A)(2) calls for a party against whom is filed a properly supported dispositive motion (such as a motion to dismiss) to respond and demonstrate that there is a genuine issue in dispute. O.A.C. 124-11-07 (C) sets forth a 10-day response time to file the required memorandum *contra*.

In this case, Appellant failed to file a memorandum *contra*, thus failing to comply with the requirements set forth in O.A.C. 124-11-07. Further, Appellee's motion to dismiss appears justified on its face, in that it appears that Appellee is an entity that does not fall under the subject matter jurisdiction of this Board.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant appeal for lack of subject matter jurisdiction over Appellee, pursuant to R.C. 124.03.



JAMES R. SPRAGUE
Administrative Law Judge

JRS: