

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

Jaime L. Clutter,

Appellant,

v.

Case No. 08-REM-08-0488

Columbiana County Department of Job and Family Services,

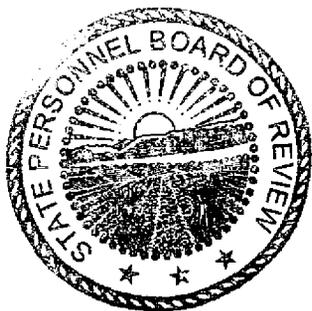
Appellee

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 jurisdiction over its subject matter, pursuant to R.C. 124.27.



Lumpe - Aye

Booth - Aye

Sfalcin - Aye

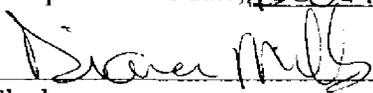


J. Richard Lumpe, *Chairman*

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.



Diana Mills
Clerk

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



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

Jaime L. Clutter,

Case No. 08-REM-08-0488

Appellant

v.

November 5, 2008

Columbiana County Department of
Job & Family Services,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration on November 5, 2008, upon Appellant's response to this Board's October 10, 2008, Procedural Order and Questionnaire, filed on October 20, 2008; Appellee's Response to Appellant's Questionnaire, filed on October 23, 2008; and Appellant's subsequent reply, filed on October 30, 2008. Appellee contends that this Board lacks jurisdiction to consider the instant appeal because Appellant's position was covered by a collective bargaining agreement which exempts Appellant from the protections of the civil service laws contained in R.C. Chapter 124.. Appellee further asserts that Appellant was serving in a probationary period at the time of her removal.

Based upon the uncontroverted evidence contained in the record, I find that the Appellant was classified as a Youth Leader, which is included in a bargaining unit represented by the Glass, Molders, Pottery, Plastics and Allied Workers International Union, AFL-CIO Local 384 (GMP). Appellee Columbiana County Department of Job & Family Services and the Glass, Molders, Pottery, Plastics and Allied Workers International Union, AFL-CIO Local 384 (GMP) have signed a collective bargaining contract, which covers the Appellant's bargaining unit.

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. No evidence is contained in the record indicating whether or not the above-referenced contract contains such a procedure, however, the contract does specifically provide in Article 35, Section 35.1 that, with the exception of R.C. 124.57, Ohio civil service law does

not apply to bargaining unit employees, and that this Board has no jurisdiction over bargaining unit employees.

In this instance, however, it is unnecessary to make a final determination as to the applicability of the collective bargaining agreement to Appellant's situation. Even assuming, *arguendo*, that the Board was not precluded from hearing Appellant's appeal due to the operation of a valid collective bargaining agreement, it is undisputed that Appellant was serving in a probationary period at the time of her removal. Pursuant to R.C. 124.27, there is no statutory right of appeal from a removal which occurs during an employee's probationary period.

Accordingly, I conclude that the State Personnel Board of Review does not have subject matter jurisdiction to hear the instant appeal, and I respectfully **RECOMMEND** that this appeal be **DISMISSED**.


Jeanette E. Gunn
Administrative Law Judge

JEG: