

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Samuel J. Smith,

Appellant,

v.

Case No. 10-REM-07-0191

Pickaway County,
Pickaway County Community Corrections Board,

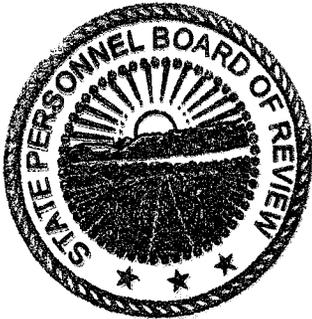
Appellee.

ORDER

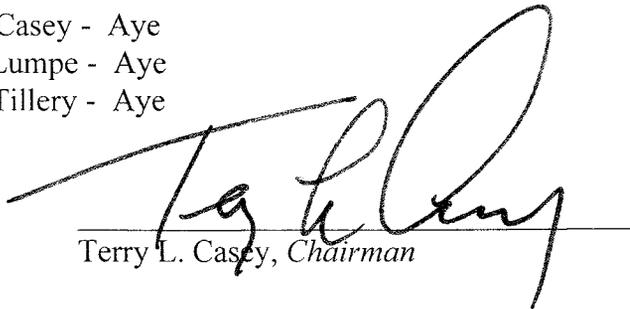
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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, pursuant to O.R.C. § 124.03 (A).



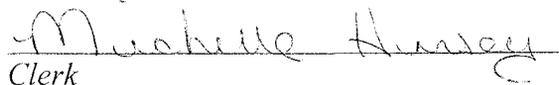
Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *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 constitute ~~(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, March 1, 2011.


Clerk

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

2.1.11M4

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

Samuel J. Smith,

Case No. 10-REM-07-0191

Appellant

v.

January 11, 2011

Pickaway County, Pickaway County
Community Corrections Board,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration pursuant to Appellee's Motion to Dismiss, filed with this Board on August 11, 2010. Appellant filed a Memorandum Contra on August 23, 2010, and Appellee filed a Reply on August 27, 2010. On September 23, 2010, this Board issued a Procedural Order and Questionnaire requesting additional information from Appellee. Appellee responded on October 14, 2010.

Uncontroverted evidence contained in the record indicates that no county department of probation has been established by the court of common pleas in Pickaway County, pursuant to the provisions of R.C. 2301.27(A), but that the court has contracted with the Ohio Adult Probation and Parole Authority to provide the services of a probation department. R.C. 2301.32(B). The court also refers individuals to the Pickaway County Community Corrections Board, referred to locally as the Intensive Supervision Program (ISP). R.C. 2301.27(B)(1). Appellant was employed by the ISP, which is a grant-funded organization created by the Pickaway County Board of Commissioners pursuant to R.C. 5149.34.

Appellee asserts that as an employee of the ISP, Appellant was statutorily exempted from the civil service by operation of R.C. 2301.27(B). Appellee further notes that Appellant was made aware that his position was exempt from civil service at the time the position was offered to and accepted by him.

As previously noted, the uncontroverted evidence contained in the record shows that the Pickaway County Court of Common Pleas refers individuals to the

ISP, pursuant to R.C. 2301.27(B)(1). That section of the Revised Code specifically provides that individuals providing probation and supervisory services pursuant to that section shall not be included in the classified or unclassified civil service of the county.

R.C. Section 124.03(A) provides that this Board shall hear appeals of employees in the classified state service. R.C. Section 124.01(B) defines the following terms:

* * *

(A) "Civil service" includes all offices and positions of trust or employment in the service of the state and in the service of the counties, cities, city health districts, general health districts, and city school districts of the state.

(B) "State service" includes all offices and positions in the service of the state and the counties and general health districts of the state. "State service" does not include offices and positions in the service of the cities, city health districts, and city school districts of the state.

(C) "Classified service" means the competitive classified civil service of the state, the several counties, cities, city health districts, general health districts, and city school districts of the state, and civil service townships.

* * *

I find that sufficient uncontroverted information is contained in the record to support a conclusion that as an employee of ISP, Appellant provided probation services to the Pickaway County Court of Common Pleas pursuant to R.C. 2301.27(B)(1). Pursuant to that statute, Appellant was exempted from the classified and unclassified civil service of the county. Because this Board does not have the authority to hear an appeal brought by an employee outside the classified state service, unless otherwise provided for by law, it lacks jurisdiction to consider the instant matter.

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Therefore, I respectfully **RECOMMEND** that the instant appeal be DISMISSED for lack of jurisdiction. R.C. 124.03(A).



Jeannette E. Gunn
Administrative Law Judge

JEG: