

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

Angela J. Green,

*Appellant.*

v.

Case No. 10-REM-12-0328

Department of Rehabilitation and Correction,  
Ohio Reformatory for Women,

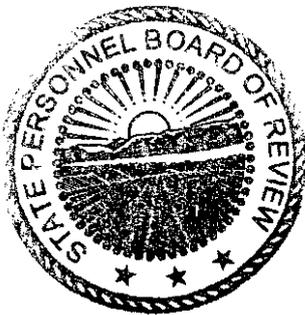
*Appellee.*

**ORDER**

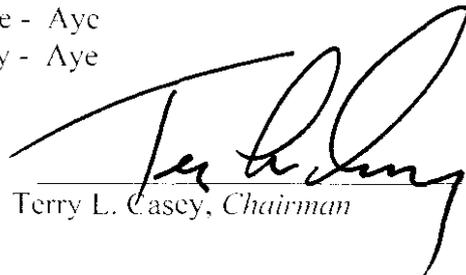
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 over employees in a probationary period and in a bargaining unit, pursuant to O.R.C. §§ 124.27 (C) and 4117.10.



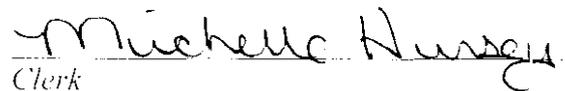
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
\_\_\_\_\_  
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 10, 2011.

  
\_\_\_\_\_  
*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**

Angela J. Green

Case No. 10-REM-12-0328

*Appellant*

v.

February 1, 2011

Department of Rehabilitation & Correction,  
Ohio Reformatory for Women

*Appellee*

Marcie M. Scholl  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellee's Motion to Dismiss, filed on January 7, 2011. To date, Appellant Green has not filed a memorandum *contra*.

Appellee argues that this Board is without jurisdiction to hear this appeal as Appellant Green was in her probationary period at the time of her removal and she was also in a bargaining unit.

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Section 124.27(C) of the Revised Code specifically states that there is no right to appeal a probationary removal. It states, in pertinent part:

A probationary employee duly removed or reduced in position for unsatisfactory service does not have the right to appeal the removal or reduction under section 124.34 of the Revised Code.

Appellee attached an affidavit to its Motion to Dismiss from David Luncberg, Labor Relations Officer for Appellee. His affidavit states Appellant Green began her employment as a Licensed Practical Nurse on July 6, 2010. She was to serve a 180 day probationary period, which would have ended on December 3, 2010. Appellant Green was removed from her position effective November 16, 2010. Appellant Green was clearly in her probationary period when she was removed. Therefore, this Board does not possess jurisdiction to hear her appeal.

Mr. Lundberg also states in his affidavit that the position of Licensed Practical Nurse was included in a bargaining unit under the terms and conditions of the collective bargaining agreement between the State of Ohio and the Ohio Civil Service Employees Association. As such, pursuant to section 4117.10 of the Ohio Revised Code, this Board is without jurisdiction to hear appeals of employees covered under collective bargaining agreements.

Appellee also argues that Article 6, Section 6.01 of the collective bargaining agreement which governs Appellant Green's position states:

During an initial probationary period, the Employer shall have the sole discretion to discipline or discharge probationary employee(s) and any such probationary action shall not be appealable through any grievance or appeal procedure contained herein or to the State Personnel Board of Review.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** for a lack of subject matter jurisdiction over employees in a probationary period and in a bargaining unit.

  
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Marcie M. Scholl  
Administrative Law Judge

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