

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

MICHAEL C. PERRY,

Appellant,

v.

Case No. 11-LAY-09-0318

LAKE COUNTY SHERIFF,

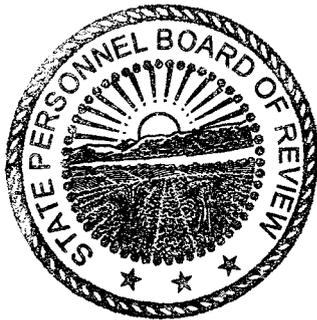
Appellee

ORDER

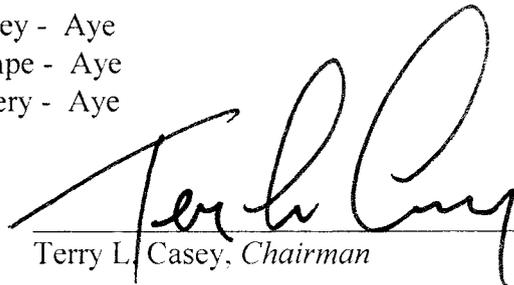
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including 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 appeal is **DISMISSED** for lack of jurisdiction pursuant to section 4117.10(A) of the Ohio Revised Code since Appellant Perry was covered by a collective bargaining agreement which contains a final and binding arbitration clause and his layoff is a subject specifically addressed by the collective bargaining agreement.



Casey - Aye
Lumpe - Aye
Tillery - Aye

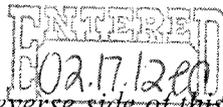

Terry L. Casey, *Chairman*

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 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, February 17, 2012.


Erin E. Cona
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**

Michael C. Perry

Case No. 11-LAY-09-0318

Appellant

v.

November 4, 2011

Lake County Sheriff

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration on November 3, 2011, upon Appellee's Motion to Dismiss for Lack of Jurisdiction. Appellee contends this matter is properly resolved through the grievance procedure pursuant to a collective bargaining agreement and this Board lacks jurisdiction to consider the matter. Appellant filed an Opposition to Motion to Dismiss on October 14, 2011 and Appellee filed a Reply Brief to Appellant's Opposition to Motion to Dismiss on October 28, 2011.

I find that the Appellant was classified as a Deputized Deputy Sheriff/Court Officer. The Deputized Deputy Sheriff/Court Officer classification is included in a bargaining unit which is represented by the Ohio Patrolmans' Benevolent Association (OPBA). Appellee Lake County Sheriff and OPBA 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 laid off; 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.

Appellant Perry states, with no disagreement from Appellee, that only full-time court officers are covered by the collective bargaining agreement and that the agreement does not cover part-time court officers. Appellant Perry alleges that no part-time court officers were laid off and therefore, this Board has jurisdiction over his appeal because the collective bargaining agreement is silent with regard to the lay-off of part-time court officers. He argues that because the Ohio Revised Code

Michael C. Perry
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states that part-time employees are to be laid off prior to laying off full-time employees, he should be able to appeal to this Board and address why the part-time officers were not laid off first.

Appellant Perry's arguments are not persuasive. The collective bargaining agreement does address the subject of layoffs for those employees who are covered under the agreement, namely, the full-time court officers. The agreement provides a grievance process for those employees and the agreement contains a final and binding arbitration clause. Therefore, the action that happened to Appellant Perry, his layoff, is covered by the agreement. Thus, his avenue of redress is within the agreement and this Board has no jurisdiction. This Board cannot address the propriety of not laying off the part-time officers, as this Board has no appeal pending from any part-time officers. The Sheriff's judgment in deciding who to lay off is within his discretion and within the parameters set by the collective bargaining agreement. The agreement gives the Sheriff the right to determine when layoffs are necessary, the classification and the number of employees within the affected classifications that are to be laid off. This Board cannot substitute its judgment for that of the Sheriff's in those matters.

Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED** for lack of jurisdiction pursuant to section 4117.10(A) of the Ohio Revised Code since Appellant Perry was covered by a collective bargaining agreement which contains a final and binding arbitration clause and his layoff is a subject specifically addressed by the collective bargaining agreement.



Marcie M. Scholl
Administrative Law Judge

:mms