

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

MICHAEL BUTLER,

Appellant,

v.

Case No. 11-RED-02-0050

DEPARTMENT OF TRANSPORTATION,

Appellee

ORDER

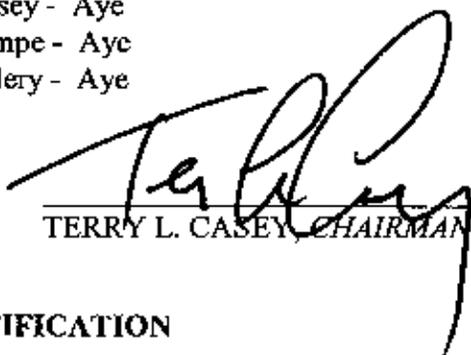
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 this appeal be **DISMISSED** for lack of subject matter jurisdiction, pursuant to sections 124.27 and 4117.10 of the Ohio Revised Code.



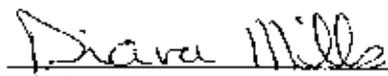
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, September 19, 2011.


Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights. 9/19/2011

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

Michael Butler

Case No. 11-RED-02-0050

Appellant

v.

August 4, 2011

Department of Transportation

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration on August 4, 2011, upon an appeal filed by Appellant Butler on February 4, 2011. In his notice of appeal, Appellant Butler stated he had been reduced in his position from a Transportation Manager1 to a Highway Technician 2. A Procedural Order and Questionnaire was issued to the parties by this Board on March 14, 2011 and Appellee responded on March 28, 2011. Appellant had ten days to file an optional reply to the Appellee's response and to date, no response has been filed by Appellant Butler.

In the response to the Questionnaire, Appellee states that the position currently held by Appellant Butler, that of Highway Technician 2, is covered by a collective bargaining agreement with OCSEA/AFSCME. The above contract provides a grievance procedure resulting in final and binding arbitration. The Appellant was reduced; 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 on that basis.

This Board is also without jurisdiction to hear this appeal, as in his notice of appeal, Appellant Butler states that he was promoted from his position of Highway Technician 2 to that of Transportation Manager, effective December 5, 2010. Effective January 29, 2011, Appellant Butler was probationarily reduced back to his position of Highway Technician 2. Appellee states in its response to this Board's Questionnaire that Appellant Butler was in a probationary period at the time of his reduction, as his probationary period began commensurate with his promotion to

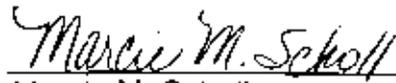
Michael Butler
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Transportation Manager on December 5, 2010 and was to end on June 3, 2011. Ohio Revised Code section 124.27(C) provides, in pertinent part:

No appointment or promotion is final until the appointee has satisfactorily served the probationary period. **If the service of the probationary employee is unsatisfactory, the employee may be removed or reduced at any time during the probationary period.** If the appointing authority decides to remove a probationary employee in the service of the state, the appointing authority shall communicate to the director the reason for that decision. **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.** (Emphasis added).

As can be seen from reading the above statute, this Board is without jurisdiction to hear the appeal of an employee reduced during his or her probationary period. Therefore, since Appellant Butler was probationarily reduced, this Board is without jurisdiction to hear his appeal.

Therefore, it is my **RECOMMENDATION** that Appellant Butler's appeal be **DISMISSED** due to a lack of subject matter jurisdiction pursuant to sections 124.27 and 4117.10 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms