

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

Matthew D. Kohus,

Appellant,

v.

Case No. 11-REM-01-0016

Department of Public Safety,
State Highway Patrol,

Appellee.

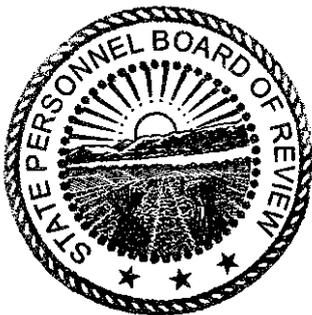
ORDER

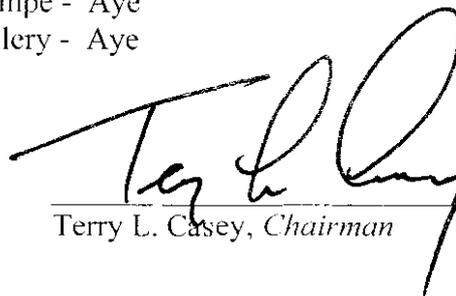
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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, pursuant to O.R.C. § 4117.10(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. April 13, 2011.



Michelle Hansey
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**

Matthew D. Kohus,

Case No. 11-REM-01-0016

Appellant,

v.

March 18, 2011

Dep't of Public Safety,
State Highway Patrol,

Beth A. Jewell

Appellee.

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

On March 1, 2011, Appellee filed a Motion to Dismiss for lack of subject matter jurisdiction. The motion is unopposed.

Appellee argues that the State Personnel Board of Review is without jurisdiction to hear this appeal because the matter subject to the appeal is covered by a collective bargaining agreement between Appellee and an exclusive bargaining unit representative.

Immediately prior to his removal, Appellant was employed by Appellee as an Ohio State Trooper. As such, Appellant was a member of the Ohio State Troopers' Association ("Union"). The terms and conditions of employment and disciplinary grievance procedures are governed by the collective bargaining agreement between Appellee and the Union ("CBA").

Article 20 of the CBA sets forth a grievance procedure that culminates in final and binding arbitration. Article 20 further defines "grievance" as "an alleged violation, misinterpretation or misapplication of a specific article(s) or section(s) of this Agreement," and "Disciplinary Grievance" as "a grievance involving a verbal reprimand, written reprimand, suspension, removal or a reduction in pay and/or position." Under the CBA, grievances concerning removals are to be initiated at the second step of the grievance procedure.

Ohio Revised Code § 4117.10(A) provides in relevant part as follows:

(A) An agreement between a public employer and an exclusive representative entered into pursuant to this chapter governs the wages, hours, and terms and conditions of public employment covered by the agreement. If the agreement provides for a final and binding arbitration of grievances, public employers, employees, and employee organizations are subject solely to that grievance procedure and the state personnel board of review or civil service commissions have no jurisdiction to receive and determine any appeals relating to matters that were the subject of a final and binding grievance procedure.

Since the matter which is the subject of this appeal is covered by a collective bargaining agreement between Appellee and an exclusive bargaining representative, this Board is without jurisdiction to determine this appeal.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** for lack of subject matter jurisdiction.



Beth A. Jewell
Administrative Law Judge

BAJ: