

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

RYAN ACKER,

Appellant,

v.

Case No. 11-REM-09-0324

DEPARTMENT OF REHABILITATION & CORRECTION,
LORAIN CORRECTIONAL INSTITUTION,

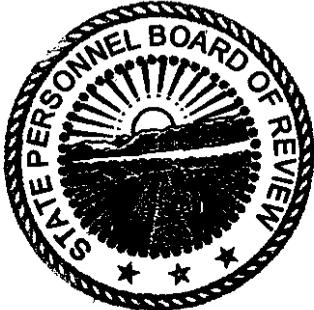
Appellee

ORDER

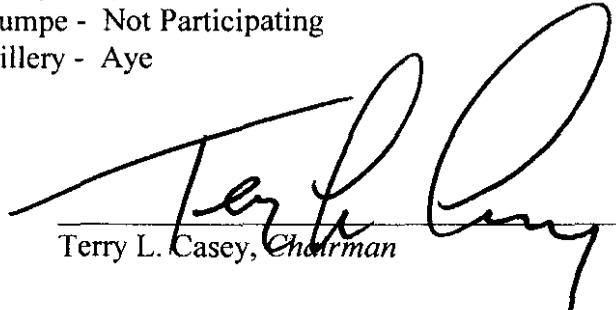
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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.



Casey - Aye
Lumpe - Not Participating
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, December 01, 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**

Ryan Acker,

Case No. 11-REM-09-0324

Appellant

v.

October 14, 2011

Dept. of Rehab. & Corr.,
Lorain Corr. Institution,

Appellee

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration on October 14, 2011, upon the October 3, 2011, Appellee's response to the previously issued Procedural Order and Questionnaire of September 28, 2011. The Appellee in its response states that the Appellant's position is subject to a collective bargaining agreement and that this matter is properly resolved through the grievance procedure pursuant to the collective bargaining agreement and this Board lacks jurisdiction to consider the matter. Additionally, the Appellee asserts that the Appellant was removed during his probationary period. To date, the Appellant has not filed a response to the Procedural Order and Questionnaire.

I find that the Appellant is classified as a Correction Officer. The Correction Officer classification is included in a bargaining unit which is represented by OCSEA AFSCME. The Appellee, the Department of Rehabilitation and Correction, Lorain Correction Institution and OCSEA AFSCME have signed a collective bargaining contract, which covers the Appellant's bargaining unit.

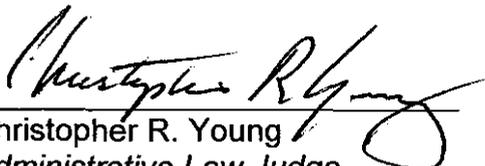
The above contract provides a grievance procedure resulting in final and binding arbitration. The Appellant was removed; this action is covered by the contract grievance procedures. Ohio Revised Code Section 4117.10(A) states that where a bargaining agreement provides a grievance procedure which culminates in

final and binding arbitration, the State Personnel Board of Review has no jurisdiction.

I further find Appellant was appointed as a Correction Officer on January 3, 2011, with a final date of his probationary period of January 3, 2011, and that he was removed from employment on September 9, 2011. I further find that this classification has been assigned a one year probationary period.

The Appellant was removed during the Appellant's probationary period. Because there is no right to appeal from a removal which occurs during a probationary period, I conclude that the State Personnel Board of Review does not have subject matter jurisdiction. See Ohio Revised Code Section 124.27; *Walton v. Montgomery County Welfare Department* (1982), 69 Ohio St. 2d 58.

Therefore, I respectfully **RECOMMEND** based upon the above analysis this appeal be **DISMISSED** for lack of jurisdiction.


Christopher R. Young
Administrative Law Judge

CRY: