

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

Theodore D. Jackson, Jr.,

Appellant,

v.

Case No. 08-RED-07-0447

Department of Rehabilitation and Correction,
Ohio State Penitentiary,

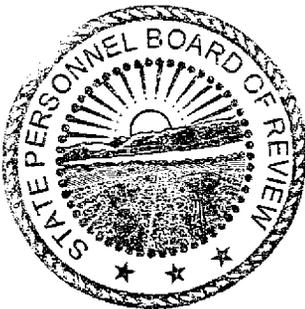
Appellee.

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** since the uncontroverted information contained in the record indicates that this Board lacks jurisdiction to consider Appellant's appeal of his alleged reduction, pursuant to O.R.C. § 4117.10(A).



Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



J. Richard Lumpe, *Chairman*

CERTIFICATION

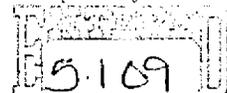
The State of Ohio, State Personnel Board of Review, ss:

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, May 1, 2009.



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**

Theodore D. Jackson, Jr.,

Case No. 08-RED-07-0447

Appellant

v.

March 19, 2009

Ohio Department of Rehabilitation and Correction,
Ohio State Penitentiary,

Appellee

Elaine K. Stevenson
Hearing Officer

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on March 19, 2009, upon Appellant's notice of appeal filed with this Board on July 14, 2008. In his notice of appeal, Appellant asserts that he suffered a reduction in pay and/or position. On November 21, 2008, the parties attended a status conference to clarify issues regarding Appellant's appeal. This Board's jurisdiction over the subject matter of this appeal was not established at the status conference. On January 7, 2009, this Board issued a Procedural Order, instructing Appellee to supplement the record regarding its position on the issue of whether or not this Board has jurisdiction to consider Appellant's appeal. On February 27, 2009, Appellee filed Appellee's Response to Procedural Order. Appellant was given the requisite time to file a reply but chose not to do so.

The information contained in the record of the above-referenced appeal and SPBR Case No. 08-LAY-06-0399 indicates that:

1. On June 3, 2008, Appellant received notice of his layoff from his position of Correctional Grievance Officer 1 at the Ohio State Penitentiary (OSP). (Appellant's appeal from his layoff (SPBR Case No. 08-LAY-06-0399) was dismissed by the Board as untimely filed pursuant to O.A.C. 124-1-03(B)).
2. The effective date of Appellant's layoff was June 22, 2008.
3. On June 23, 2008, Appellant was rehired as a Correction Officer at OSP.
4. In the instant appeal, Appellant claims that he was reduced in pay because he is being paid at a lower hourly rate in his rehired position as Correction Officer and because his institutional seniority is based on his status as a newly hired Correction Officer.

5. Appellee asserts that Appellant is covered under a collective bargaining agreement. Appellee further asserts that this Board is without jurisdiction to consider Appellant's appeal because Appellant's exclusive remedy in terms of his issues surrounding his June 23, 2008 rehire is to seek redress through the collective bargaining agreement's grievance procedure.

* * * *

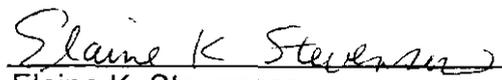
R.C. 4117.10 states, in pertinent part, that:

(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....* (Emphasis added.)

* * * *

As can be seen from reading R.C. 4117.10(A), if a collective bargaining agreement provides for a final and binding arbitration of grievances, the public employers and employees that are covered under the agreement are subject solely to that grievance procedure and this Board has no jurisdiction to hear any appeals relating to matters that were the subject of such a grievance procedure. Appellant has put forth no evidence or argument to refute Appellee's assertion that his exclusive remedy concerning his alleged reduction is to file a grievance pursuant to the pertinent collective bargaining agreement.

Therefore, because the uncontroverted information contained in the record indicates that this Board lacks jurisdiction to consider Appellant's appeal of his alleged reduction, pursuant to R.C. 4117.10(A), I respectfully **RECOMMEND** that this appeal be **DISMISSED**.


Elaine K. Stevenson
Hearing Officer