

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

Terrelle R. Cunningham,

Appellant,

v.

Case No. 09-REM-04-0212

State Library of Ohio,

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) and for Appellant serving in the unclassified service, pursuant to O.R.C. § 124.11 (A)(7)(b).

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



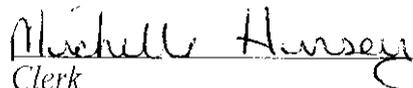


J. Richard Lumpe, *Chairman*

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, November 6, 2009.



Michelle Hursey
Clerk

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

11-6-09mta

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

Terrelle R. Cunningham,

Case No. 09-REM-04-0212

Appellant

v.

September 17, 2009

State Library of Ohio,

Christopher R. Young

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on September 17, 2009, upon the Appellee's filing of a motion to dismiss on September 3, 2009, along with the attached memorandum and affidavit of JoAnne M. Budler, the Director of the State Library of Ohio. To date, the Appellant, Terrelle R. Cunningham, has not filed any memorandum in opposition to Appellee's motion to dismiss. The Appellee contends that this board lacks jurisdiction to consider this matter because the Appellant's position, as a Library Assistant 1, was covered by collective bargaining agreement, and that she was employed in the unclassified service pursuant to Ohio Revised Code section 124.11(A)(7)(b).

For clarification, the Appellee, the State Library of Ohio, employed the Appellant, Terrelle Cunningham, as a Library Assistant 1. On April 16, 2009, the Appellee removed the Appellant from her position. At the time of the Appellant's removal, the Appellee contends that she, along with every individual employed by the Appellee, was serving in the unclassified service. However, it is the Appellee's further contention that the Appellant was also employed as a member of the Ohio Civil Service Employees Association (OCSEA).

Ohio Revised Code section 124.11(A)(7)(b) provides that the "library staff of any library in the state supported wholly or in part by public funds" is not a classified employee. In the instant appeal, the Appellee is a Library within the state of Ohio that is supported by public funds. (See Budler Affidavit, paragraph 2). After a clear and simple reading of the above noted statute, none of the staff of a Library within the state of Ohio that is supported by public funds is a classified employee. Thus, this Board does therefore lacks jurisdiction to hear the above caption appeal

because the appellant was not a classified employee at the time of her separation from service.

Moreover, Ohio Revised Code section 4117.10 (A) through their dictates this Board's jurisdiction with respect to state employees covered by a collective bargaining agreement. Ohio Revised Code section 4117.10 (A) states:

In agreement between a public employer and an exclusive representative entered into pursuant to this chapter governs their 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 review or civil service commissions have no jurisdiction to receive and determine any appeals relating to matters that were subject of a final and binding grievance procedure.

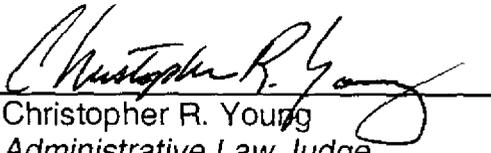
At the time of the appellant's removal she was a member of OCSEA. (See Budler Affidavit, paragraph 5). Article 25.01 (A) of the contract between the OCSEA and the state of Ohio sets forth a grievance procedure, which explicitly states that:

A grievance is defined as any difference, complaint or dispute between the Employer and the Union or an employee regarding the application, meaning or interpretation of this Agreement. The grievance procedure shall be the exclusive method for resolving grievances. No employee who has rights to final and binding arbitration of grievances, including disciplinary actions, may file an appeal with the State Personnel Board of Review nor may such Board received such an appeal.

Additionally, Article 24 of the contract specifically deals with discipline, as she has alleged in her notice of appeal, and thus is covered by the grievance procedure set forth in Article 25, under the collective bargaining agreement. Therefore, this board lacks jurisdiction, as a matter of law to hear the above caption appeal because the Appellant could have grieved it through her union.

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Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion to dismiss and **DISMISS** this appeal for lack of subject matter jurisdiction pursuant to Ohio Revised Code section 4117.10 (A) and for the Appellant serving in the unclassified service pursuant to Ohio Revised Code section 124.11(A)(7)(b), as well.


Christopher R. Young
Administrative Law Judge

CRY: