

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Jay E. Ashworth,

*Appellant,*

v.

Ohio State University,

*Appellee.*

Case Nos. 10-REM-10-0269  
10-MIS-10-0270

**ORDER**

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

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 appeals be **DISMISSED** for lack of jurisdiction based upon the Appellant being a member of Collective Bargaining Unit, as well as the appeal being filed untimely, pursuant to O.R.C. § 4117.10(A) and O.A.C. § 124-1-03(I).

Lumpe - Aye  
Sfalcin - Aye  
Tillery - Aye



*J. Richard Lumpe*  
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, December 13, 2010.

*Michelle Hanney*  
Clerk

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

12-13-10 MH

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

Jay E. Ashworth,  
*Appellant*

Case Nos. 10-REM-10-0269  
10-MIS-10-0270

v.

November 5, 2010

Ohio State University,  
*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 November 5, 2010, upon Appellee's Motion to Dismiss For Lack of Jurisdiction. Appellee contends this matter is properly resolved through the grievance procedure pursuant to a collective bargaining agreement and this Board lacks jurisdiction to consider the matter, as well as asserting that the Appellant's filing of his appeal is untimely. To date, the Appellant has not filed any memorandum in opposition to Appellee's motion to dismiss.

I find that the Appellant was classified as a Custodial Worker at the Ohio State University. The Custodial Worker classification is included in a bargaining unit which is represented by Communications Workers of America ("CWA") Local 4501. The Appellee, the Ohio State University and Communications Workers of America have signed a collective bargaining contract, which covers the Appellant's bargaining unit.

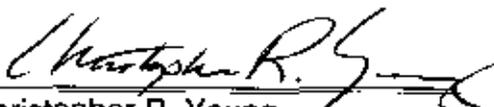
The above contract provides a grievance procedure resulting in final and binding arbitration. The Appellant was removed from his position effective August 27, 2010, and by the Appellant's own admission he received notification of this action on August 13, 2010, an action which is covered by the contract 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.

Moreover, as previously mentioned, Mr. Ashworth was notified of his termination on August 13, 2010, but did not file his appeal to this Board until September 27, 2010. Pursuant to Ohio Administrative Code section 124-1-03(I), which states in pertinent part:

(I) Appeals from all other actions, including denials of reinstatement from disability separations, *shall be filed*, in writing, with the state personnel board of review not more than *thirty calendar days after the time the appellant receives actual notice of the action*.

an Appellant must file a (no order) removal action with this Board within thirty calendar days after the time he receives actual notice of his removal for the appeal to be considered timely filed. While Mr. Ashworth's termination was not effective until August 27, 2010, the time for filing an appeal runs from the *notification of the action*, not the effective date, as can be seen from reading the above noted Ohio Administrative Code section. Mr. Ashworth's appeal was filed more than thirty calendar days after he received actual notice of the action that he was being removed from employment with the Ohio State University. Thus, the Appellant's appeal is untimely and should be dismissed.

Therefore, I respectfully **RECOMMEND** that this appeal be **DISMISSED** for lack of jurisdiction based upon the Appellant being a member of Collective Bargaining Unit, as well as the appeal being filed untimely.

  
Christopher R. Young  
Administrative Law Judge

CRY: