

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Anita D. Cash,

*Appellant,*

v.

Case No. 11-OSH-01-0010

Greater Dayton Regional Transit Authority,

*Appellee.*

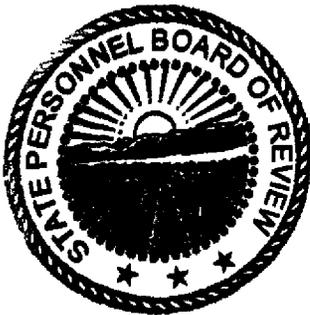
**ORDER**

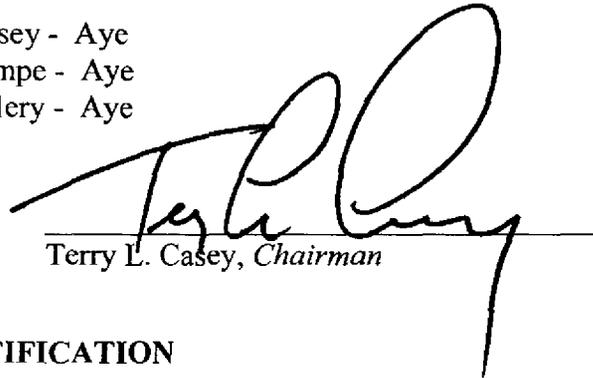
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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. § 4167.13.

Casey - Aye  
Lumpe - Aye  
Tillery - Aye

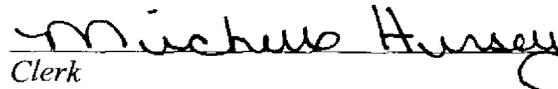


  
Terry L. Casey, *Chairman*

**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 6, 2011.

  
Michelle Hursey  
*Clerk*

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

4-6-11mH

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

Anita D. Cash,

Case No. 11-OSH-01-0010

*Appellant*

v.

March 1, 2011

Greater Dayton Regional Transit Authority,

Jeannette E. Gunn

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration pursuant to Appellant's Response to this Board's February 4, 2011, Procedural Order and Questionnaire, filed with this Board on February 25, 2011. Appellant originally filed an appeal with this board alleging that Appellee retaliated against her as prohibited by Ohio Revised Code Section 4167.13.

Ohio Revised Code Section 4167.13(A) prohibits a public employer from discharging or discriminating against any public employee who undertakes certain actions or exercises their right afforded under Revised Code Chapter 4167. Specifically, Revised Code Section 4167.13(A) states:

No public employer shall discharge or in any manner discriminate against any public employee because the public employee, in good faith, files any complaint or institutes any proceeding under or related to this chapter, or testifies or is about to testify in any proceeding, or because of the exercise by the public employee, on his own behalf or on the behalf of others, of any right afforded under this chapter.

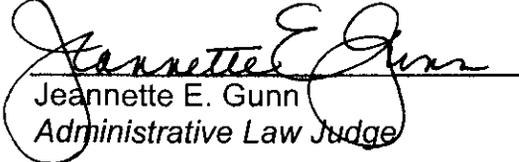
Ohio Revised Code Section 4167.13(B) identifies five different remedies for a public employee who believes that he or she has been discharged or otherwise discriminated against in violation of Revised Code Section 4167.13(A). The employee may 1) file a complaint with this Board; 2) pursue any grievance or appeal procedure provided for under a collective bargaining agreement; 3) pursue any grievance or appeal procedure provided for under a municipal or county charter; 4)

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pursue any grievance or appeal procedure provided for by R.C. 124.34; or 5) pursue any other right or remedy provided by law.

Appellant indicated in her response that prior to filing her appeal with this Board she also filed grievances/appeals of the matter with ATU (Amalgamated Transit Union) and the EEOC (Equal Employment Opportunity Commission). Pursuant to the express provisions of Ohio Revised Code Section 4167.13(C), a public employee may elect only one of the remedies set forth in R.C. 4167.13(B).

Therefore, I find that Appellant is statutorily barred from seeking redress for Appellee's alleged retaliatory actions through an appeal to this Board because Appellant had already selected one of the remedies provided for in R.C. 4167.13(B) prior to filing the instant appeal. Accordingly, I respectfully **RECOMMEND** that the Appellant's appeal be **DISMISSED** for lack of subject matter jurisdiction pursuant to Ohio Revised Code Section 4167.13.

  
Jeannette E. Gunn  
Administrative Law Judge

JEG: