

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

GARY TOBIN,

Appellant,

v.

Case No. 12-FIN-03-0049

DEPARTMENT OF REHABILITATION & CORRECTION,
RICHLAND CORRECTIONAL INSTITUTION,

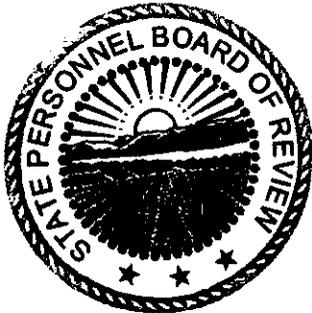
Appellee

ORDER

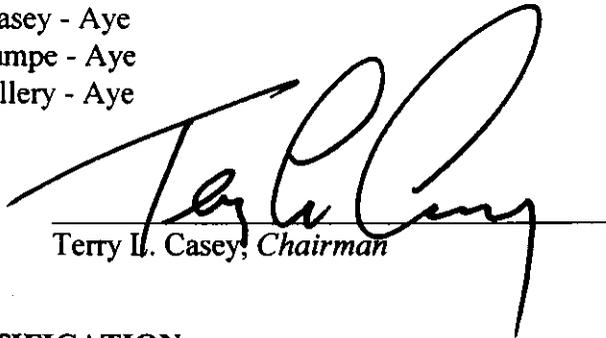
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellee's Motion to Dismiss is **GRANTED** and that the instant appeal is **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to Ohio Revised Code Section 124.34



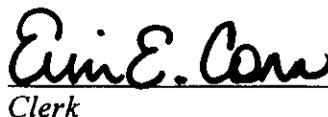
Casey - Aye
Lumpe - Aye
Tillery - Aye


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 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, January 16, 2013.


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**

Gary Tobin,

Appellant

v.

Department of Rehabilitation & Correction,
Richland Correctional Institution,

Appellee

Case No. 12-FIN-03-0049

November 5, 2012

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration pursuant to Appellee's Motion to Dismiss, filed with this Board on October 15, 2012. Appellant filed a Response to Appellee's Motion on October 26, 2012.

Based upon the information contained in the record, I find that the instant appeal is based upon Appellant's receipt of a forty-hour pay fine, effective February 25, 2012, through March 4, 2012. I further find that at the time the fine was implemented, Appellant occupied the position of Correction Lieutenant, which is exempted from the overtime pay provisions of the Fair Labor Standards Act (FLSA), 52 Stat. 1060, 29 U.S.C. 207, as amended.

Unlike a court, the State Personnel Board of Review has jurisdiction only when it has been explicitly conferred upon it by the Ohio General Assembly. Ohio Revised Code Section 124.34 provides for fines as a separate and distinct form of disciplinary action that may be imposed upon employees in the classified service of the state; authority to review fines of more than forty hours for employees who occupy positions that are FLSA-overtime exempt is granted to this Board by subsection (B) of the statute. Fines of a lesser amount for such employees are not appealable to the State Personnel Board of Review. Accordingly, I find that this Board does not have jurisdiction to consider Appellant's appeal of his forty-hour pay fine.

Because the Board lacks jurisdiction to hear the instant appeal, it has no authority to review the issues raised by Appellant regarding Appellee's alleged

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arbitrary rule application, whether or not just cause for discipline existed, whether the discipline imposed was excessive, and whether imposition of a fine constitutes "involuntary servitude."

Therefore, I respectfully **RECOMMEND** that Appellee's Motion to Dismiss be **GRANTED** and that the instant appeal be **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to R.C.124.34.


Jeannette E. Gunn
Administrative Law Judge

JEG: