

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

DAVID A. DANIEL,

Appellant,

v.

Case No. 12-REM-06-0125

DEPARTMENT OF TRANSPORTATION,

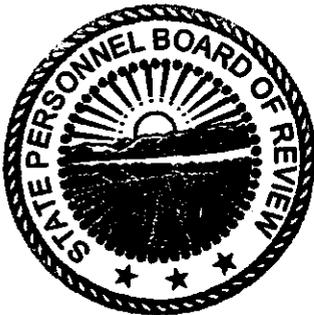
Appellee

ORDER

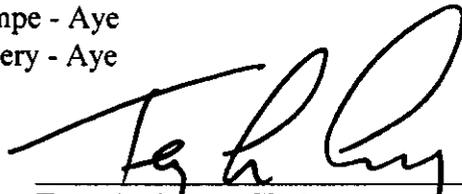
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the instant appeal is **DISMISSED** for lack of jurisdiction pursuant to Ohio Revised Code Sections 4117.10 and 124.27.



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, September 20, 2012.





Erin E. Conn
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**

David A. Daniel

Case No. 12-REM-06-0125

Appellant

v.

July 19, 2012

Department of Transportation

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration on July 19, 2012, upon Appellee's Motion to Dismiss For Lack of Jurisdiction, filed on July 9, 2012. Appellee contends Appellant Daniel was covered under a collective bargaining agreement which does not provide a right to appeal his probationary removal; therefore this Board lacks jurisdiction to consider the matter for that reason and also due to the fact that Appellant Daniel was in his probationary period at the time of his removal. Appellant filed a Motion Not to Dismiss, But Go To Hearing, on July 16, 2012.

I find Appellant Daniel was classified as a Highway Technician 1. The Highway Technician 1 classification is included in a bargaining unit which is represented by the Ohio Civil Service Employees Association AFSCME Local 11. Appellee Department of Transportation and the Ohio Civil Service Employees Association AFSME Local 11 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 during his probationary period; this action 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 also lacks jurisdiction over the instant appeal as Appellant Daniel was serving in a probationary period at the time of his removal. Attached to Appellee's Motion to Dismiss is an affidavit of Gwen Thomas, Human Capital

Management Senior Analyst. As such, she states she is familiar with Appellant Daniel's employment. Ms. Thomas avers Appellant Daniel's began his permanent employment with Appellee on June 6, 2011, serving a one year probationary period. He was removed from his position effective June 2, 2012, three days shy of completing his probationary period.

Both the collective bargaining agreement which covered Appellant Daniel's position and the Ohio Revised Code state that this Board does not have possess jurisdiction over an employee removed during his probationary period.

The pertinent part of the collective bargaining agreement states:

During an initial probationary period, the Employer shall have the sole discretion to discipline or discharge probationary employee(s) and any such probationary action shall not be appealable through any grievance or appeal procedure contained herein or to the State Personnel Board of Review (SPBR).

Section 124.27(B) of the Ohio Revised Code also divests this Board of jurisdiction over an employee removed during his probationary period. That statute states as follows, in pertinent part:

(B) All original and promotional appointments, including appointments made pursuant to section 124.30 of the Revised Code, but not intermittent appointments, shall be for a probationary period, not less than sixty days nor more than one year, to be fixed by the rules of the director, except as provided in section 124.231 of the Revised Code, and except for original appointments to a police department as a police officer or to a fire department as a firefighter which shall be for a probationary period of one year. No appointment or promotion is final until the appointee has satisfactorily served the probationary period. If the service of the probationary employee is unsatisfactory, the employee may be removed or reduced at any time during the probationary period. If the appointing authority decides to remove a probationary employee in the service of the state, the appointing authority shall communicate the removal to the director . **A probationary employee duly removed or reduced in position for**

unsatisfactory service does not have the right to appeal the removal or reduction under section 124.34 of the Revised Code.
(Emphasis added).

Appellant Daniel has asked this Board to take jurisdiction of his case, but by law, this Board is divested of jurisdiction to hear his appeal. Unlike a court of general jurisdiction, this Board has only the jurisdiction granted to it by statute and the Board cannot confer jurisdiction upon itself.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** for lack of jurisdiction pursuant to sections 4117.10 and 124.27 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms