

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

SCOTT MCCREERY,

Appellant,

v.

Case No. 12-REM-12-0260

TUSCARAWAS COUNTY WATER AND SEWER,

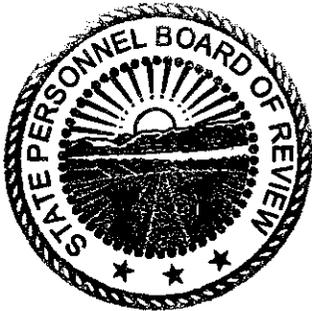
Appellee

ORDER

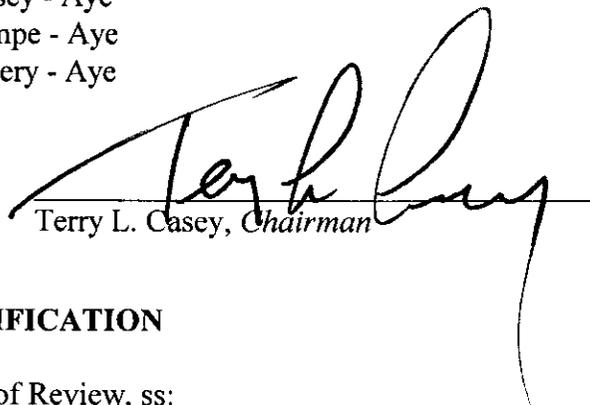
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 is granted and the instant appeal is **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to Ohio Revised Code Section 4117.10 (A).



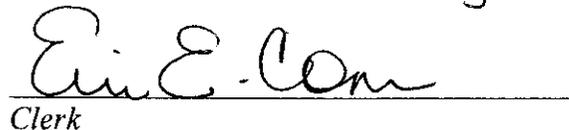
Casey - Aye
Lumpe - Aye
Tillery - Aye

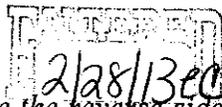

Terry L. Casey, *Chairman*

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, February 28, 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**

SCOTT MCCREERY,

Case No. 12-REM-12-0260

Appellant

v.

January 31, 2013

TUSCARAWAS COUNTY WATER AND SEWER DISTRICT,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration due to Appellee's January 16, 2013 fax filing of a motion to dismiss and supporting documentation. Appellee contends this matter is properly resolved through the grievance procedure pursuant to a collective bargaining agreement and that this Board lacks jurisdiction to consider the matter. On January 28, 2013, Appellant timely filed his response to Appellee's motion and Appellant provided extensive supporting documentation with his response.

I find that Appellant was classified as a Wastewater Collection Operator. The Wastewater Collection Operator classification is included in a bargaining unit which is represented by AFSCME, Ohio Council 8, Local 2308. Appellee, Tuscarawas County Water and Sewer District, and AFSCME, Ohio Council 8, Local 2308 have signed a collective bargaining contract that covers Appellant's bargaining unit.

The above contract provides a grievance procedure resulting in final and binding arbitration. Appellant was removed; this action is covered by the contract grievance procedures. R.C. 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 is divested of jurisdiction to consider the matter. This Board is, therefore, without jurisdiction to hear the instant appeal.

Unfortunately, then, for Appellant, because this Board can only utilize the jurisdiction provided to it by the General Assembly, this Board is precluded from further considering Appellant's materials and his situation.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal for lack of jurisdiction over its subject matter, pursuant to R.C. 4117.10 (A).



JAMES R. SPRAGUE
Administrative Law Judge

JRS: