

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

Joshua Easter,

Appellant,

v.

Case No. 2014-ABL-08-0231

University of Toledo,

Appellee,

ORDER

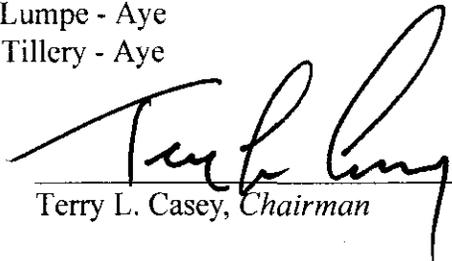
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 appeal is **DISMISSED** as untimely filed and for lack of subject matter jurisdiction pursuant to R.C. 4117.10(A).

Casey - Aye
Lumpe - Aye
Tillery - Aye

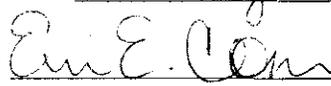



Terry L. Casey, *Chairman*

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 25, 2015.


Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice.

Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE March 4, 2015. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2014-ABL-08-0231

Transcript Costs: N/A Administrative Costs: \$25.00

Total Deposit Required: * \$25.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: March 12, 2015

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

Joshua Easter,

Case No. 14-ABL-08-0231

Appellant

v.

January 20, 2015

University of Toledo,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration on January 20, 2015, pursuant to Appellee's Motion to Dismiss, filed on December 30, 2014. Appellant filed no memorandum *contra*.

Appellee contends that this Board is without jurisdiction to consider the instant matter because Appellant failed to file a timely appeal with this Board and because Appellant is subject to a collective bargaining agreement which provides for final and binding arbitration.

FINDINGS OF FACT

Based upon the uncontroverted evidence contained in the file, I make the following findings of fact:

Appellant occupied a position classified as a Maintenance Plumber Journeyman; that classification is included in a bargaining unit which is represented by AFSCME Ohio Council 8, Local 2415, AFL-CIO ("AFSCME"). Appellee and AFSCME have signed a collective bargaining contract, which covers the Appellant's bargaining unit.

Appellant received notice on August 14, 2013, that his position would be abolished for reasons of economy, effective August 28, 2013. Appellant filed an appeal of his abolishment on August 18, 2014, a little more than one year after he receive notice of the abolishment.

The collective bargaining contract between AFSCME and Appellee provides for an abolishment procedure in Article 19. Article 14.11 of the contract further provides a grievance procedure for any alleged violation of the agreement that results in final and binding arbitration.

CONCLUSIONS OF LAW

Ohio Administrative Code Section 124-1-03(B) provides that abolishment appeals must be filed with this Board, or postmarked, not more than ten calendar days after receipt of the notice of the action. Compliance with statutory filing requirements is required in order to invoke the Board's jurisdiction. In *Brush v. Licking County Child Support Enforcement Agency* (2011), 10th Dist. Franklin No. 11AP-101, the Tenth District Court of Appeals noted, "Where a statute confers the right of appeal, an appeal may be perfected only in the manner prescribed by statute." In the matter at hand, Appellant filed his appeal more than one year after he received notice of his abolishment, clearly outside the ten-day time period referenced by O.A.C. 124-1-03(B). Accordingly, I find that the Board lacks jurisdiction to consider this appeal because it was not filed in a timely manner.

Additionally, the Board lacks jurisdiction over this appeal by operation of Ohio Revised Code Section 4117.10(A). R.C. 4117.10(A) unequivocally states that where a bargaining agreement provides a grievance procedure which culminates in final and binding arbitration, the Board has no jurisdiction to consider an appeal from an employee subject to such collective bargaining agreement. In this instance, the Appellant occupied a position subject to the terms of the collective bargaining agreement, and the action appealed to this Board is one addressed by the agreement, which provides for final and binding arbitration.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** this appeal as untimely filed and for lack of subject matter jurisdiction pursuant to R.C. 4117.10(A).


Jeannette E. Gunn
Administrative Law Judge