STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Heather Braun,

Appellant,

v. Case Nos. 2015-REC-09-0182
2015-MIS-09-0183

Montgomery County Department of Job & Family Services,

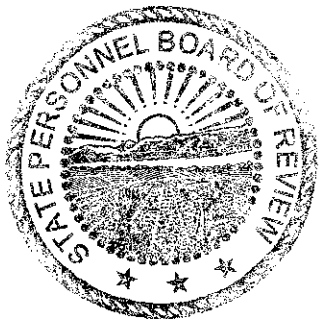
Appellee,

ORDER

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, 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 these appeals are **DISMISSED** for lack of subject matter jurisdiction pursuant to R.C. 4117.10.



Casey - Aye
Lumpe - Aye
Tillery - Not Present

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 06, 2016.

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 January 13, 2016. 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 Numbers: 2015-REC-09-0182 and 2015-MIS-09-0183

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: January 21, 2016

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Heather Braun	Case Nos. 15-REC-09-0182 15-MIS-09-0183
Appellant	
v.	December 3, 2015
Montgomery County, Department of Job & Family Services	
Appellee	Jeannette E. Gunn *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

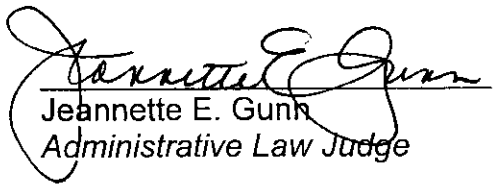
This matter came on for consideration upon Appellee's Motion to Dismiss for lack of jurisdiction, filed with this Board on November 18, 2015. Appellee contends this Board lacks jurisdiction to consider the instant appeal because Appellant's position is covered by a collective bargaining agreement which specifically addresses the matter appealed. Appellant filed no memorandum *contra*.

Information contained in the record indicates that Appellant's position is classified as CSEA Account Clerk I, which is a position included in a bargaining unit represented by Ohio Council #8, Local #101, American Federation of State, County, and Municipal Employees, AFL-CIO (AFSCME). Appellee and Ohio Council #8, Local #101, AFSCME have signed a collective bargaining agreement (CBA) covering the Appellant's bargaining unit.

Article 20 of the CBA states that the agreement "supersedes all rules and regulations of the Ohio Department of Administrative Services or its successors and all civil service statutes, rules and regulations pertaining to wages, hours and terms and conditions of employment unless otherwise expressly indicated" except those addressed in R.C. 4117.10. The parties expressly address the terms and conditions of employment as they relate to a job audit in Article 18, Section 3 of the CBA, which provides that the results of position audits are not subject to the final and binding grievance process contained in Article 12 of the CBA.

Accordingly, I find that the parties have considered and bargained away the right to appeal the results of a position audit, which is the action appealed to this Board by Appellant. Notwithstanding the exclusion of position audits from the grievance procedure, evidence contained in the record indicates that the grievance process would still be available if Appellant alleged that Appellee had failed to abide by the bargained for requirements of Article 18.

Based upon the above analysis, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** this appeal for lack of subject matter jurisdiction pursuant to R.C. 4117.10.



Jeannette E. Gunn
Administrative Law Judge