

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Timothy A. Short,

Appellant,

v.

Case No. 2015-REC-10-0206

Department of Transportation,
and
Department of Administrative Services,

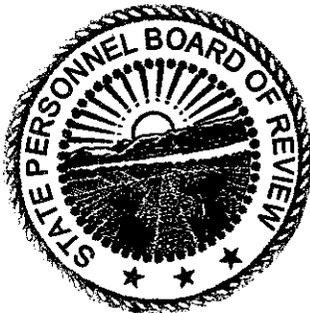
Appellees,

ORDER

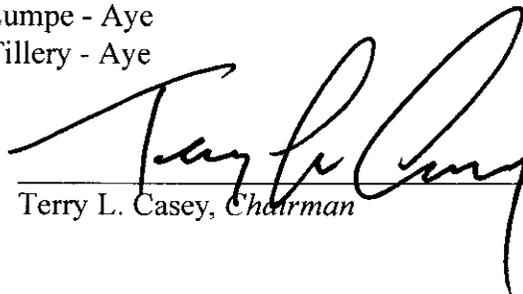
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 this appeal is **DISMISSED** for lack of subject matter jurisdiction, pursuant to R.C. 4117.10(A).



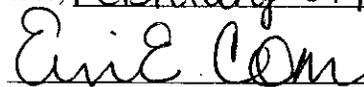
Casey - Aye
Lumpe - Aye
Tillery - Aye


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 29, 2016.


Eric Com
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 7, 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.

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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 15, 2016

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

Timothy A. Short

Case No. 15-REC-10-0206

Appellant

v.

December 30, 2015

Department of Transportation,

and

Department of Administrative Services,
Human Resource Division

Appellee

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 for lack of jurisdiction, filed on December 17, 2015. Appellee contends this Board lacks jurisdiction to consider this matter because Appellant's position is covered by a collective bargaining agreement and the matter is grievable under its provisions. Appellant did not file a memorandum *contra*.

Based on the uncontroverted evidence contained in the record, I find that Appellant occupied a position classified as Highway Technician 3, classification number 53773; that classification is included in a bargaining unit which is represented by Ohio Civil Service Employees Association/AFSCME Local 11 (OCSEA Chapter 11). The State of Ohio and OCSEA Chapter 11 have signed a collective bargaining contract, which covers the Appellant's bargaining unit.

Pursuant to an agreement between OCSEA Chapter 11 and the State of Ohio's Office of Collective Bargaining, the Department of Administrative Services amended the state classification plan, effective October 4, 2015, to create the bargaining unit classification of Highway Technician 3C/M, classification number 53776, and to retitle Highway Technician 3, classification number 53773, as

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Highway Technician 3M. Pursuant to the same agreement, the classification specifications for Highway Technician 1, 2, 3M, 4 and 5 were revised. Appellant's position was reclassified as Highway Technician 3C/M.

Article 19 of the above contract provides a final and binding grievance procedure for employees who believe that the classification assigned to their position does not accurately reflect the job duties they actually perform. 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 has no jurisdiction to consider an appeal from an employee subject to such collective bargaining agreement.

Therefore, because the subject of Appellant's appeal is properly resolved through the final and binding grievance procedure outlined in the collective bargaining agreement which applies to his position, 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(A).


Jeannette E. Gunn
Administrative Law Judge