

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

Eric McCarroll,

*Appellant,*

v.

Case No. 2016-REM-04-0076

Ohio State University,

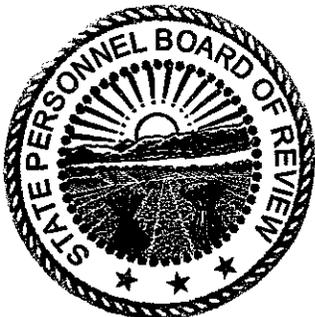
*Appellee,*

**ORDER**

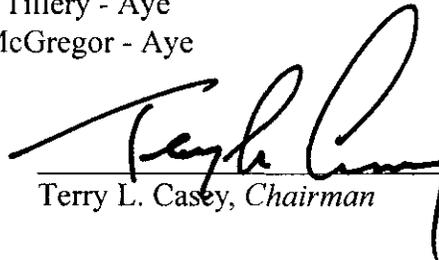
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellant's and Appellee's motions are **GRANTED** and the appeal is **DISMISSED**.



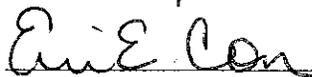
Casey - Aye  
Tillery - Aye  
McGregor - Aye

  
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, July 14, 2016.

  
Eric E. Con  
*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 July 21, 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 Number: 2016-REM-04-0076

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: July 29, 2016

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

Eric McCarroll

Case No. 2016-REM-04-0076

*Appellant*

v.

June 16, 2016

Ohio State University

Raymond M. Geis

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This matter came on for consideration on June 15, 2016. A pre-hearing was scheduled to take place before this Board on June 15, 2016 at 2:00 p.m.

**STATEMENT OF THE CASE REGARDING PROCEDURAL HISTORY**

Appellee, The Ohio State University, timely appeared before the Board by and through counsel Matthew J. Karam and Amy R. Ita, Assistant Attorneys General.

Appellant, Eric McCarroll, failed to personally appear and Appellee moved to dismiss this appeal.

During the pre-hearing this ALJ conferenced in Attorney Michael A. Moses ("Moses") who was listed on the appeal as counsel for the Appellant.

Moses explained that he was counsel for Communications Workers of America ("CWA"), and that Moses did not file a notice of appearance for Appellant and would not do so until he contacted Appellant regarding CWA's exclusive representation of Appellant as a member of CWA.

Moses asked this ALJ for leave until Friday, June 17, 2016 to consult with CWA and Appellant Eric McCarroll to determine whether Mr. Moses would file a motion to withdraw. I granted leave for this purpose.

On June 15, 2016, Attorney Moses filed a motion to withdraw the instant appeal, styling himself as counsel for the Appellant.

#### **FINDINGS OF FACT**

1. Appellant failed to appear at his pre-hearing.
2. Notice of pre-hearing was properly served upon Appellant on May 12 by regular mail.
3. Subsequent to his pre-hearing, Appellant filed a motion to withdraw by and through counsel.
4. Appellant is a party to a collective bargaining agreement culminating in final and binding arbitration. (Appellee's Exhibit 2 showing Appellant's card check-off for union dues) and (Appellee's Exhibit 3 applicable collective bargaining agreement)
5. Appellant has an active grievance over the same subject matter as the instant appeal. (Appellee's Exhibit 5: Arbitration Referral for Eric McCarroll)

#### **CONCLUSIONS OF LAW**

I find that this appeal should be dismissed with prejudice on multiple alternative grounds:

The Board may dismiss this appeal based on Appellant's failure to appear pursuant to O.A.C. 124-11-19 (A).

The Board may alternatively dismiss the appeal by granting Appellant's motion to withdraw.

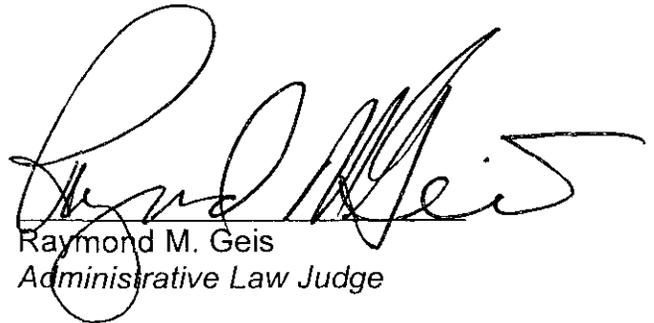
The Board may alternatively dismiss this appeal pursuant to R.C. 4117.10 (A) which states in pertinent part:

An agreement between a public employer and an exclusive representative entered into pursuant to this chapter governs...terms and conditions of public employment covered by the agreement. **If the agreement provides for a final and binding arbitration of grievances...employees...are subject solely to that grievance procedure and the state personnel board of review or civil service commissions have no jurisdiction to receive and determine any appeals relating to matters that were the subject of a final and binding grievance procedure...** (emphasis added)

This Board lacks jurisdiction over Appellant's appeal because he is a member of a Union and has availed himself of the grievance procedure culminating in final and binding arbitration over the same subject matter as the instant appeal.

#### RECOMMENDATION

Therefore, for all of the reasons specified above, I respectfully **RECOMMEND** that Appellant's and Appellee's motions be **GRANTED** and the appeal be **DISMISSED**.



Raymond M. Geis  
Administrative Law Judge