

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

Robert D. Foster,

Appellant,

v.

Case No. 07-INV-03-0100

Department of Rehabilitation and Correction,
London Correctional Institution,

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 record and 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 request for investigation be **DISMISSED** since the applicable grievance procedure provides an adequate source of remedy for the subject matter of concern in the instant case, pursuant to O.R.C. § 124.56.



Lumpe – Aye
Booth – Aye

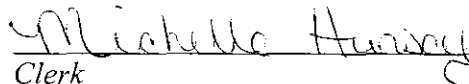


J. Richard Lumpe, *Chairman*

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 the foregoing is ~~(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, November 1, 2007.



Michelle Hursey
Clerk

11-1-07

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

ROBERT D. FOSTER,

Case No. 07-INV-03-0100

Appellant

v.

October 15, 2007

DEPARTMENT OF REHABILITATION AND CORRECTION,
LONDON CORRECTIONAL INSTITUTION,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:


This matter came on for consideration upon Appellee's filing of a motion to dismiss. Appellee contends this matter is properly resolved through the grievance procedure pursuant to a collective bargaining agreement. Appellant did not file a memorandum *contra*. ***It should be noted that Appellant withdrew his companion appeal in Case No. 07-RED-03-0099.***

I find that the Appellant is currently classified as a Correction Officer. The Correction Officer classification is included in a bargaining unit, which is represented by OCSEA, AFSCME Local 11. Appellee, Department of Rehabilitation and Correction, London Correctional Institution and OCSEA, AFSCME Local 11 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. The Appellant was reduced and as a result has contested his being credited with no seniority upon assuming his Correction Officer position. The subject matter of seniority is extensively addressed in the contract and appears to be covered by the contract grievance procedures. Ohio Revised Code Section 4117.10(A) states that where a bargaining agreement meeting all applicable elements provides a grievance procedure that culminates in final and binding arbitration, the State Personnel Board of Review has no jurisdiction over an *appeal*.

Even though the instant matter involves a request for an investigation and not an appeal, it appears that the grievance procedure set forth in the contract provides an adequate source of remedy for Appellant's concerns regarding awarding or denying seniority credit to Appellant.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** this investigation since the applicable grievance procedure provides an adequate source of remedy for the subject matter of concern in the instant case, pursuant to R.C. 124.56.

A handwritten signature in cursive script, reading "James R. Sprague".

JAMES R. SPRAGUE
Administrative Law Judge

JRS: