

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

Tammy L. Duncan,

Appellant,

v.

Case No. 07-SUS-03-0096

Ohio State University,

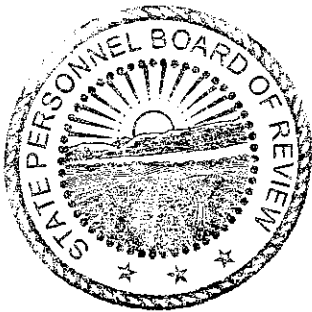
Appellee.

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 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 instant appeal be **DISMISSED** for lack of subject matter jurisdiction, pursuant to O.R.C. § 4117.10.



Lumpe – Aye
Booth – Aye
Tracy – Aye

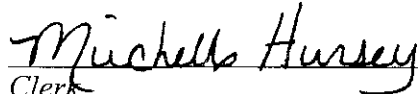


J. Richard Lumpe, *Chairman*

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, August 20, 2007.



Clerk

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

8.20.07

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

Tammy L. Duncan

Case No. 07-SUS-03-0096

Appellant

v.

June 29, 2007

Ohio State University,

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on June 29, 2007. Appellant Duncan filed a notice of appeal with this Board on March 28, 2007, marking "other" and "suspension" on the notice of appeal form. A Procedural Order and Questionnaire was issued by this Board on May 23, 2007, directing Appellee to respond to the questionnaire by June 6, 2007. Appellee filed its response timely on June 6, 2007. Appellant then had ten days to file an optional reply, which, to date, has not been filed.

Appellant Duncan provided no particulars as to why she was filing two appeals of her suspension and she did not respond to the questionnaire. The Appellee's response indicates Appellant Duncan is in a bargaining unit and covered under a contract between the Appellee and the Communications Workers of America (CWA). Attached to Appellee's response was a letter from the CWA to Ms. Chitra Iyer, Labor Relations Manager & Strategist, informing her that:

Pursuant to Article 10 of the of the (sic) contract agreement between Communications Workers of America, Local 4501 and the Ohio State University, the Union request that the given "Discipline, Grievance and/or Resolution of Disputes" be set to Arbitration:


Name	Date of Hrg/Mtg	Decision (by HR)
Duncan, Tammy	Mar. 13, 2007	DsuspD Esquivel-Gozalez

Your appropriate disposition of this request is appreciated.

As can be seen from reading the attached letter, Appellant's suspension has been requested for arbitration pursuant to the collective bargaining agreement covering her position. Pursuant to section 4117.10 of the Ohio Revised Code, this Board lacks jurisdiction when a collective bargaining agreement provides for final and binding arbitration. That statute states as follows, in pertinent part:

- (A) An agreement between a public employer and an exclusive representative entered into pursuant to this chapter governs the wages, hours, and terms and conditions of public employment covered by the agreement. **If the agreement provides for a final and binding arbitration of grievances, public employers, employees, and employee organizations 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).

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** due to a lack of subject matter jurisdiction.



Marcie M. Scholl
Administrative Law Judge