

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

Ruth E. Ferguson,

Appellant,

v.

Case No. 08-SUS-01-0022

Columbiana County
Board of Mental Retardation and Developmental Disabilities,

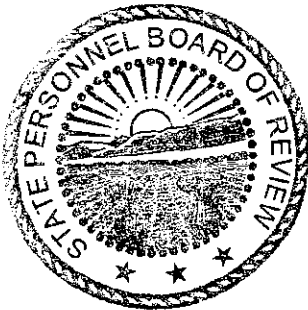
Appellee.

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(A).



Lumpe - Aye
Booth - Aye
Sfalcin - Aye

J. Richard Lumpe, *Chairman*

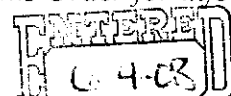
CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(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, June 4, 2008.

Clerk

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



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

Ruth E. Ferguson,

Case No. 08-SUS-01-0022

Appellant

v.

May 2, 2008

Columbiana County Board of Mental Retardation
and Developmental Disabilities,

Elaine K. Stevenson
Hearing Officer

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration due to Appellant's January 14, 2008 filing of a notice of appeal from a ten-day suspension. On April 11, 2008, Appellee filed a Motion to Dismiss for Want of Subject Matter Jurisdiction. On April 21, 2008, Appellant filed a Brief in Opposition to Appellee's Motion to Dismiss for Want of Subject Matter Jurisdiction.

For the reasons set forth below, the record hearing in this matter, which has been scheduled for June 10, 2008 at 10:00 a.m., is hereby **VACATED**.

The uncontroverted information contained in the record establishes the following:

1. Appellee entered into a Collective Bargaining Agreement (CBA) with the Columbiana County Mental Retardation and Developmental Disabilities Employees' Association (the Union) for the period from January 1, 2006 through December 31, 2008.
2. The CBA applies to the 2007-2008 school year.
3. Article 22.3 of the CBA provides a discipline procedure and Article 22.4 provides a procedure for filing grievances of disciplinary actions.
4. Article 6 provides for final and binding arbitration of grievances through the American Arbitration Association.
5. During the time period relevant to the instant appeal, Appellant has been a member of the bargaining unit represented by the Union. The bargaining unit position occupied by Appellant is classified as Workshop Specialist II.

6. As the result of information obtained through an investigation and a pre-disciplinary hearing, Appellee determined that Appellant was guilty of neglect of duty in providing adequate client supervision on August 1, 2007 and August 20, 2007.
7. On January 2, 2008, Appellee imposed a ten-day suspension on Appellant for neglect of duty in providing adequate client supervision on August 1, 2007 and August 20, 2007.
8. After Appellant received notice of Appellee's decision to impose a ten-day suspension on her, Appellant filed a grievance under the CBA and, subsequently, filed a request for arbitration through her Union representation. As of April 10, 2008, the arbitration process had not yet gone forward.

CONCLUSIONS OF LAW

R.C. 4117.10 provides for a public employer and employee, through the employee's exclusive representative, to commit to final and binding arbitration of grievances through a collective bargaining agreement:


(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.)

* * *

As can be seen from reading the above-cited language of R.C. 4117.10(A), Appellant is required to pursue the grievance and binding arbitration procedure. The information contained in the record indicates that Appellant has done so. Therefore, since the merits of Appellant's ten-day suspension will be addressed through the CBA's procedure for a final and binding arbitration of grievances, the State Personnel Board of Review has no jurisdiction to consider this matter.

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Based on the foregoing, I respectfully **RECOMMEND** that Appellee's Motion to Dismiss be **GRANTED** and the instant appeal be **DISMISSED** for lack of subject matter jurisdiction, pursuant to R.C. 4117.10(A).


Elaine K. Stevenson
Hearing Officer

EKS:/