

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

MELISSA L. CURRY,

Case Nos.: 08-RED-07-0442  
08-MIS-07-0443

*Appellant*

v.

DEPARTMENT OF REHABILITATION AND CORRECTION,  
LEBANON CORRECTIONAL INSTITUTION,

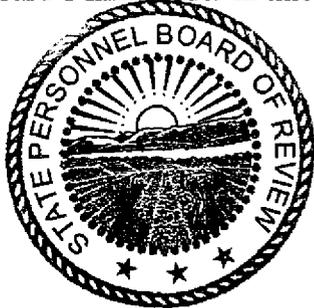
*Appellee*

**LIFTING OF STAY/ISSUANCE OF FINAL ORDER**

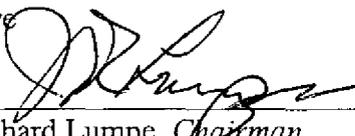
This matter came on for consideration due to Appellant's November 17, 2008 filing of a Motion for Reconsideration, this Board's November 17, 2008 Stay Order, and Appellee's December 8, 2008 filing of Appellee's Memorandum Contra Appellant's Motion for Reconsideration.

Having reviewed Appellant's Motion for Reconsideration and Appellee's Memorandum Contra, this Board finds no good cause to disturb the Board's November 5, 2008 final Order issued in the above-referenced appeals.

Wherefore, it is hereby **ORDERED** that Appellant's Motion for Reconsideration be **DENIED** and the November 17, 2008 Stay Order be **LIFTED**. It is further **ORDERED** that this Board's final Order in this matter **STANDS** as previously issued.



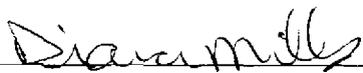
Lumpe - Aye  
Booth - Aye  
Sfalcin - Aye

  
\_\_\_\_\_  
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 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, December 16, 2008.

  
\_\_\_\_\_  
Clerk

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



**BEFORE THE STATE PERSONNEL BOARD OF REVIEW**

MELISSA L. CURRY, :

Appellant, :

CASE NOS. 08-RED-06-0442<sup>v</sup>  
08-MIS-06-0443

v. :

DEPARTMENT OF REHABILITATION :  
AND CORRECTION, LEBANON :  
CORRECTIONAL INSTITUTION, :

Appellee.

**APPELLEE'S MEMORANDUM CONTRA**  
**APPELLANT'S MOTION FOR RECONSIDERATION**

**I. INTRODUCTION**

Appellant, Melissa Curry, filed the above-captioned appeals with this Board on July 10, 2008. Appellant alleged that Appellee, Department of Rehabilitation and Correction, Lebanon Correctional Institution, improperly reduced her in position. Specifically, Appellant claimed that she accepted a demotion from her position as a Correctional Warden Assistant 1 to a Correction Officer, but was terminated and rehired rather than demoted. Appellant claims she applied for the demotion because her Correctional Warden Assistant 1 position was effected by a job abolishment.<sup>1</sup> On October 28, 2008, Appellant requested to voluntarily withdraw the above-captioned appeals. On November 5, 2008 this board issued an order in which it adopted Appellant's withdrawal and dismissed the above-captioned cases. On November 17, 2008, however, Appellant filed a motion for reconsideration based upon her allegation that her union refused to sign off on a settlement. Upon receiving Appellant's motion for reconsideration, This Board issued a stay order in the above-captioned appeals.

STATE PERSONNEL  
BOARD OF REVIEW  
2008 DEC -8 PM 2:46

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<sup>1</sup> It must be noted that Appellant appealed her job abolishment to this Board, and said appeal is scheduled for a record hearing December 15 through December 19. See SPBR Case No. 08-ABL-06-0380 and SPBR Case No. 08-LAY-06-0381.

ENTERED  
12/8/08

## II. LAW AND ARGUMENT

### A. Appellant may not request reconsideration of a voluntary withdrawal.

Although this Board is empowered to reconsider its own decisions, there is no sound basis to do so in the case at bar. “Ordinarily, an application for rehearing is for the purpose of directing attention to matters said to have been overlooked or mistakenly conceived in the original decision, and thus invites a reconsideration upon the record upon which that decision rested.” *Hal Artz Lincoln-Mercury, Inc. v. Ford Motor Co., Lincoln-Mercury Div.*, (1986), 28 Ohio St. 3d 20, 25-26 (citing *Atchison, T. & S. F. Ry. Co. v. Unites States*, 284 U.S. 248, 259-260 (1932)). In the present case, this Board must look to the record to see whether there were any matters “overlooked” or “mistakenly conceived” when it adopted Appellant’s motion to withdraw her cases. Such an examination, however, will only result in this Board finding that it dismissed Appellant’s case at her own request. There are no matters that could be “overlooked” or “mistakenly conceived.” Thus, there is no reason for this Board to grant Appellant’s request for reconsideration.

Appellant is essentially attempting to rescind her withdrawal and re-file her appeals. Since Appellant voluntarily made the decision to withdraw her cases, she should not be afforded another bite at the apple simply because she changed her mind and wants this Board to reconsider her own decision.

### B. Even if the is Board were to reconsider its decision to adopt Appellant’s voluntary withdrawal, it lacks jurisdiction, as a matter of law, to hear her appeals.

Even if this Board allowed Appellant to rescind her withdrawal, it lacks jurisdiction, as a matter of law, to hear the above-captioned appeals. As a creature of statute, SPBR “possesses only such powers and duties as conferred on it by the provisions of the enabling statute,” R.C. Chapter 124. *Ketron v. Ohio Dept. of Transp.*, (1991), 61 Ohio App. 3d 657, 659 (citing *Hansen v. State Personnel Bd. of Review*, (1977), 51 Ohio App.2d 7). This Board’s primary enabling statute is R.C. § 124.03(A), which states that this Board may:

Hear appeals, as provided by law, of employees in the classified state service from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations.

Moreover, R.C. § 4117.10(A) further clarifies this Board's jurisdiction with respect to state employees covered by a collective bargaining agreement. R.C. § 4117.10(A) states:

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.

Appellant included, in her notice of appeal, a job posting for a position as a correction officer with Appellee, which explicitly refers to a collective bargaining agreement ("contract") between the State of Ohio and the Ohio Civil Services Employees Association ("OCSEA").<sup>2</sup> Article 25 of the contract sets forth a grievance procedure, which explicitly states that:

The grievance procedure shall be the exclusive method for revolving grievances. No employee who has rights to final and binding arbitration of grievances, including disciplinary actions, may file an appeal with the State Board of Personnel Review nor may such Board receive such an appeal.

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<sup>2</sup> This Board may take judicial notice that a copy of this agreement can be viewed at <http://www.das.ohio.gov/ocb/OCBcontracts.html>.

Appellant admits, in her notices of appeal, filed on July 10, 2008, that she has been working as a correction officer since June 23, 2008. (See Appellant Statement of Facts). As such, it cannot be disputed that Appellant was covered by the grievance procedure in Article 25 of the contract at the time she filed the above-captioned appeals. Appellant's request for reconsideration even mentions that her union had negotiated with Appellee on a way to resolve the matter at issue in the above-captioned appeals. Therefore, even if this Board were to reconsider Appellant's voluntary withdrawal, it would lack jurisdiction to hear Appellant's claims, as a matter of law, because Appellant's exclusive remedy would be the grievance procedure set forth in Article 25 of the contract.

### III. CONCLUSION

For the foregoing reasons, Appellee respectfully requests that this Board deny Appellant's request for reconsideration and dismiss the above-captioned appeals.

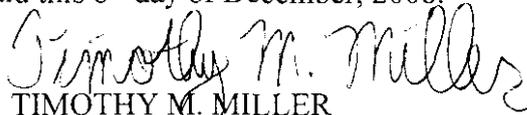
Respectfully submitted,

NANCY H. ROGERS  
Attorney General of Ohio

  
TIMOTHY M. MILLER (0079064)  
Assistant Attorney General  
NICOLE S. MOSS (0062938)  
JOSEPH N. ROSENTHAL (001811)  
Associate Assistant Attorneys General  
Employment Law Section  
30 East Broad Street, 23<sup>rd</sup> Floor  
Columbus, Ohio 43215  
(614) 644-7257 Telephone  
(614) 752-4677 Fax

### CERTIFICATE OF SERVICE

I certify that a copy of the above *Appellee's Memorandum Contra to Appellant's Motion for Reconsideration* was served upon Melissa L. Curry, 5446 Weidner Road, Springboro, Ohio 45066, by ordinary U.S. Mail, postage prepaid this 8<sup>th</sup> day of December, 2008.

  
TIMOTHY M. MILLER  
Assistant Attorney General

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

MELISSA L. CURRY,

*Appellant,*

v.

Case Nos. 08-RED-07-0442  
08-MIS-07-0443

DEPARTMENT OF REHABILITATION AND CORRECTION,  
LEBANON CORRECTIONAL INSTITUTION,

*Appellee.*

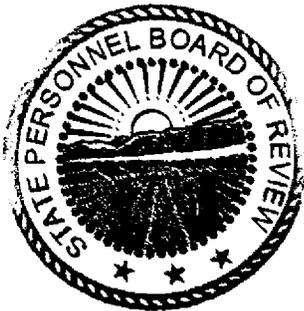
**STAY ORDER**

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

Having reviewed the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been filed, the Board hereby stays the final Board Order in this matter for a sufficient period of time from the date this Order is mailed to allow Appellee to file its optional memorandum contra to Appellant's motion for reconsideration, with that memorandum contra to be filed with this Board and with Appellant on or before December 2, 2008. Thereafter, the Board will review Appellant's motion and any timely filed memorandum contra and will then apprise the parties in writing of the next appropriate step in the processing of the two instant appeals.

Wherefore, it is hereby **ORDERED** that this matter be **STAYED** for a sufficient period of time from the mailing of this Order, as set forth, above.

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 the foregoing and any attachment hereto 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, November 17, 2008.

Clerk

11 17 08

To: State Personnel Board of Review

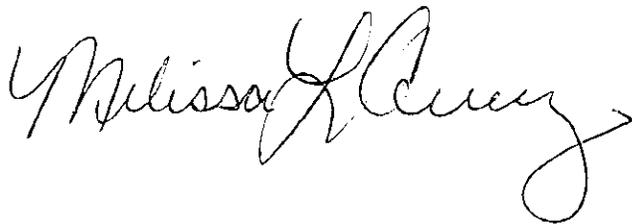
From: Melissa L. Curry  
5446 Weidner Road  
Springboro, OH 45066  
(937) 748-2110

Date: November 17, 2008

RE: Motion for Reconsideration

STATE PERSONNEL BOARD OF REVIEW  
2008 NOV 17 PM 12:06

I am requesting a "Motion for Reconsideration" on Case Nos. 08-RED-07-0442 and 08-MIS-07-0443. I withdrew these cases on 10/28/08, in Good Faith, because the Union and Management had an agreement to make the situation whole. However, when the agreement was drawn up and ready to be signed, the union backed out on the agreement. I am being told it is because I had been an exempt employee at the time of the job change and the union isn't going to fight for me. SPBR is my only option in correcting the wrong that has been done.



11-17-08

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Melissa L. Curry,

Case Nos. 08-RED-07-0442  
08-MIS-07-0443

*Appellant,*

v.

Department of Rehabilitation and Correction,  
Lebanon Correctional Institution,

*Appellee.*

**ORDER**

This matter came on for consideration on the motion of Appellant that the Withdrawal attached hereto be adopted. Being fully advised in the premises, the Board hereby orders that the attached withdrawal, incorporated herein by reference and made a part of the case file in these appeals, be **ADOPTED**. Accordingly, the above-referenced appeals are hereby **DISMISSED**.

Lumpe - Aye  
Booth - Aye  
Sfalcin - Aye

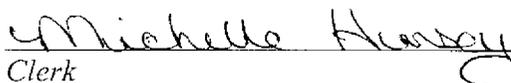


  
\_\_\_\_\_  
J. Richard Lumpe, *Chairman*

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\_\_\_\_\_  
Michelle Hensby  
*Clerk*

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STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

2008 OCT 28 PM 12:16

Melissa L. Curry,

Date: 10/28/08

Appellant,

Case No. 08-MIS-07-0443

08-RED-07-0442

v.

State of Ohio, DRC, Lebanon  
Corr. Inst

Appellee.

WITHDRAWAL OF APPEAL

I, Melissa L. Curry, Appellant in the captioned case,  
hereby withdraw my appeal, effective 10/28/08.

Melissa L. Curry  
Appellant

10-28-08