

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Clark E. Cross,

*Appellant*

v.

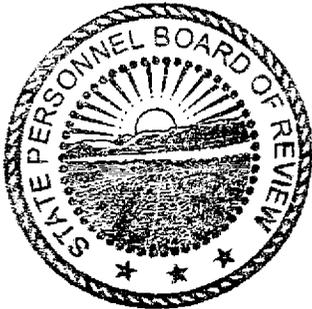
Case No. 08-REM-05-0218

Scioto County,  
Board of Mental Retardation and Developmental Disabilities,

*Appellee.*

**ORDER**

This matter came on for consideration before the full Board. Based upon the reasoning set forth in the Board's Opinion attached hereto, it is hereby **ORDERED** that Appellant's removal be **DISAFFIRMED**.



Lumpe – Aye

Booth – Aye

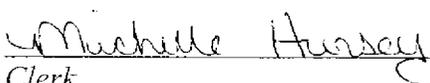
Sfalcin – Aye

  
\_\_\_\_\_  
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, August 11, 2008.

  
\_\_\_\_\_  
*Clerk*

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

8-11-08

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

Clark E. Cross,

*Appellant*

v.

Case No. 08-REM-05-0218

Scioto County,

Board of Mental Retardation and Developmental Disabilities,

*Appellee.*

**OPINION**

Appellant was removed on May 5, 2008. Although no R.C. 124.34 Order of Removal was provided to Appellant, the record reflects that Appellee did provide Appellant with written notification of his removal in letter form. The written notification provided to Appellant by Appellee was defective in the following manner:

Ohio Administrative Code Section 124-03-01(A) requires that before an Order may be affirmed, the appointing authority must satisfy the following:

- (1) The copies of the order filed with the state personnel board of review and the director of administrative services or its statutory designee and served on the employee shall bear the original signature of the appointing authority and the date of signature. If an appointing authority is a public body, the order must contain the signatures of a majority of the members, or in the alternative, a certified copy of the resolution adopting the order shall be attached to each copy of the order; and
- (2) The employer shall serve the employee with a copy of the order on or before the effective date of the action; and
- (3) The employer shall file a copy of the order with the state personnel board of review and the department of administrative services or its statutory designee within ten calendar days after a copy of the order has been served on the employee, in accordance with rule 124-3-02 of the Administrative Code, unless it can be shown that failure to file timely had no adverse effect on the employee; and
- (4) The order shows, on its face, a list of particulars which form the basis for the order; and
- (5) The appointing authority can, if challenged, demonstrate both the authority of the signer and the authenticity of the signature on a "section 124.34 order" or an order of involuntary disability separation.

The appointing authority has failed to comply with Ohio Administrative Code Section 124-03-01(A)(4), as its written notification of termination provided to Appellant did not show, on its face, a list of the particulars forming the basis for the discipline. Although Appellee asserted in response to this Board's June 24, 2008, Procedural Order that Appellant was aware of the underlying charges supporting his removal as a result of a pre-disciplinary hearing held on April 21, 2008, case law has upheld the due process requirement that an appointing authority set forth in its notice the details of the acts and circumstances upon which an action is based. See, *Thomas-Abel v. Ohio Dept. of Rehab. & Corr.*, 2008-Ohio-3302

Therefore, Appellant's removal is **DISAFFIRMED**. Disaffirmance of this removal pursuant to O.A.C. 124-03-01(A) shall not be a bar to refile an Order, based upon the same incidents, which complies with the rule. O.A.C. 124-03-01(B). Appellant shall receive all back pay and applicable benefits, such as vacation, pensions, and health benefits to which he is entitled, subject to monetary set off for monies earned, as a result of such disaffirmance.

  
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J. Richard Lumpe, *Chairman*