

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

KAY A. KINGSLEY,

Appellant,

v.

Case No. 09-REM-11-0465

STATE EMPLOYMENT RELATIONS BOARD,

Appellee

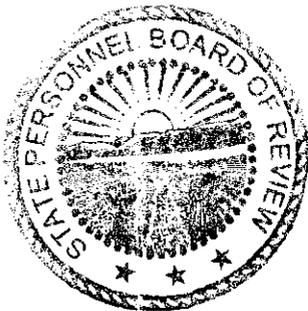
ORDER

This matter came on for consideration upon Appellant's filing of an appeal from her removal from the position of Administrative Law Judge with Appellee, State Employment Relations Board. Pursuant to that filing, on March 3, 2010, the full Board held a pre-hearing and, thereafter, took the instant matter under advisement.

After a thorough examination of the entirety of the record, this Board hereby dismisses the instant appeal for lack of jurisdiction over its subject matter, *in accordance with the Opinion attached, hereto*. Further, this Board denies all pending motions currently before it.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to R.C. 124.03.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



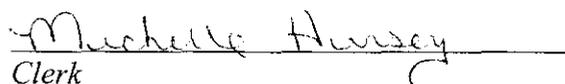


J. Richard Lumpe, *Chairman*

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, March 19, 2010.



Michelle Hursey
Clerk

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

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Case No. 09-REM-11-0465

STATE EMPLOYMENT RELATIONS BOARD,

Appellee

OPINION

This cause comes on due to Appellant's filing of an appeal from her removal from the position of Administrative Law Judge (ALJ) with Appellee, State Employment Relations Board. On February 19, 2010, Appellee filed a motion to dismiss, memorandum in support, and pertinent accompanying documentation. On February 26, 2010, Appellant filed Appellant's memorandum contra to Appellee's motion to dismiss. On March 3, 2010, the full Board held a pre-hearing to, among other things, consider questions raised in the above-referenced pleadings.

The record in this matter reflects that Appellant was appointed to an ALJ position with Appellee. At the time the Appellant was appointed, the ALJ position was in the classified service of the state. The record further reflects that, effective July 17, 2009, pursuant to Am. Sub. H.B. 1, the Ohio General Assembly amended R.C. 4117.02 (H) to redesignate the status of all of Appellee's ALJs as unclassified.

A review of pertinent case law discloses that the General Assembly possesses the authority to redesignate the status of any of Ohio's civil service positions. Shearer v. Cuyahoga County Hosp., 34 Ohio App. 3d 59 (Cuyahoga County 1986); Lawrence v. Edwin Shaw Hosp., 34 Ohio App. 3d 137 (Franklin County 1986). Moreover, when the General Assembly alters the civil service status of a state employee by a statutory amendment or enactment, all state employees serving in that position on or after the effective date of the legislation are subject to the change. See Karb v. State ex rel. Carter, 87 Ohio St. 197 (1912); Shearer v. Cuyahoga County Hosp., 34 Ohio App. 3d 59 (Cuyahoga County 1986); Lawrence v. Edwin Shaw Hosp., 34 Ohio App. 3d 137 (Franklin County 1986); 1998 Op. Att'y Gen. No. 98-020, At 2-104; 1990 Op. Att'y Gen. No. 90-013. Thus, regardless of the civil service status accorded to the Appellant prior to the enactment of Am. Sub. H.B. 1 on July 17, 2009, the status of the Appellant is governed by R.C. 4117.02 (H), as amended by Am. Sub. H.B. 1.

In the instant case, the General Assembly through Am. Sub. H.B. 1 amended R.C. 4117.02 (H) to change the status of the Appellant from classified to unclassified. This means that as of July 17, 2009, the Appellant was in the unclassified service of the state, rather than in the classified service of the state.

Subsequent to the enactment of Am. Sub. H.B. 1 on July 17, 2009, the Appellant was removed from her position as an ALJ by the Appellee for the stated reason of budget cuts necessitated by Am. Sub. H.B. 1. As explained above, at the time of the Appellant's removal from her position, the Appellant was in the unclassified service of the state.

Pursuant to R.C. 124.03 (A)(1) and R.C. 124.34 (B), this Board is vested with the authority to hear only appeals from employees who were in the classified service at the time of their removal. The Board therefore does not have the requisite authority to consider an appeal pertaining to the removal of a person from a position in the unclassified service of the state.

Appellant asserts that Am. Sub. H.B. 1 is unconstitutional because it violates the provision of Article II, § 15(D) of the Ohio Constitution prohibiting a bill from containing more than one subject. It is, however, well established that "[a]n attack upon the constitutional validity of a law must be made in a proper court. The judicial power to declare a law unconstitutional is exclusively within the judicial branch of government." Maloney v. Rhodes, 45 Ohio ST. 2d 319, 324 (1976). It is therefore inappropriate for this Board to purport to determine the constitutionality of actions taken by the General Assembly and, as such, this Board presumes that Am. Sub. H.B. 1 is valid and constitutional. See R.C. 1.47(A) (statutes are presumed to be constitutional).

Accordingly, this Board lacks jurisdiction over the subject matter of Appellant's appeal and it should, for this reason, be dismissed. A final Order shall accompany this Opinion dismissing this appeal for lack of jurisdiction over its subject matter, pursuant to R.C. 124.03.



J. Richard Lumpe, *Chairman*