

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

George Nowels,

Case Nos. 09-TFR-06-0303  
09-MIS-06-0304

*Appellant,*

v.

Department of Health,

*Appellee.*

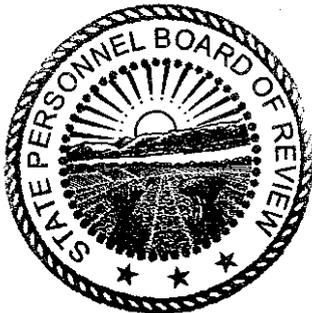
**ORDER**

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

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 jurisdiction and for being moot, as there is no adequate remedy at law.

Lumpe - Aye  
Sfalcin - Aye  
Tillery - Aye

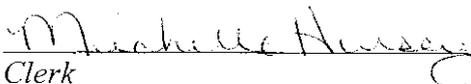


  
\_\_\_\_\_  
J. Richard Lumpe, *Chairman*

**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 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, December 22, 2009.

  
\_\_\_\_\_  
Michelle Hunsay  
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**

George Nowels,

*Appellant*

v.

Dept. of Health,

*Appellee*

Case No. 09-TFR-06-0303

Case No. 09-MIS-06-0304

December 2, 2009

Christopher R. Young

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration on December 2, 2009, upon the Appellee's Motion to Dismiss filed on November 4, 2009, upon the Appellant's Memorandum in Opposition to Appellee's Motion to Dismiss filed on November 17, 2009, upon the Appellee's Reply to Appellant's Memorandum in Opposition to Appellee's Motion to Dismiss filed on November 25, 2009, and after the completion of a status conference which was held on November 13, 2009.

The Appellee is requesting that the above caption appeals be dismissed for lack of jurisdiction, as the alleged transfer never took effect and that the miscellaneous appeal stems from the same set of facts and circumstances which surround the alleged transfer appeal. On the other hand, the Appellant believes that there is a genuine issue in dispute regarding the alleged transfer, that being; if the transfer actually took place it would affect his displacement rights related to the abolishment of his position from the Toledo office to the Columbus office and/or district.

For clarification, the evidence reveals that the Appellant, George Nowels began his employment with the Appellee, the Ohio Department of Health, effective September 7, 1976. Further, the evidence reveals that as of the date of his above-referenced appeals, the Appellant held the position of Management Analyst Supervisor 1 (MAS 1) in Toledo, Ohio. The evidence contained in the pleadings also reveal that on June 5, 2009, Mr. Nowels was called into a meeting with Barbara Bradley, a Bureau Chief with the Ohio Department of Health, wherein Ms. Bradley approached the Appellant regarding the potential transfer of his position from the Toledo office to the Columbus office. However, the Appellant states in his

memorandum in opposition to Appellee's motion to dismiss that he was told in unequivocal terms that his position was being transferred to the Columbus office. On the other hand, the Appellee states that the Appellant refused to transfer and the Ohio Department of Health did not in fact transfer him to the Columbus office. Further, the Appellee contends that the Appellant continues to work of the Toledo office, as he had prior to the June 2009 conversation. Moreover, the Appellant continues to be paid travel expenses per Ohio Department of Health's policy, whenever his business takes into the Columbus office.

The evidence contained in the pleadings also revealed that the Appellant was told by Barbara Bradley that his position had been transferred from the Toledo office to the Columbus office, wherein she verbally ordered him to report to the Columbus Ohio office, along with stating that that order was never rescinded by the Ohio Department of Health. However, according to Appellee's Reply to Appellant's Memorandum in Opposition to Appellee's motion to dismiss the Appellant's attorney, and agents at his firm, McNees, Wallace and Nurick were well aware that the Ohio Department of Health had rescinded any order that the Appellant must transfer to Columbus Ohio. The evidence reveals that on July 8, 2009, Mr. Lillard called the Ohio Department of Health's General Counsel, Carol Ray, to speak with her regarding the Appellant. Mr. Lillard represented that he was retained by the Appellant with regard to the State Personnel Board of Review transfer issue. The evidence further revealed that Ms. Ray called Mr. Lillard and spoke with him regarding the Appellant that same day. Subsequently, on July 15, 2009, Brett Younkin of McNees, Wallace and Nurick contacted Okwudili Anekwe, the deputy director of human resources via an e-mail with the following message:

Didi,

Thank you again for your return call. It was a pleasure to speak with you.

As a follow-up to our conversation, can you please confirm that Mr. Knowles is authorized report for his work duties in Lucas County, Ohio and that the conversation with his supervisor was simply an initial step towards *possibly* relocating his position to Franklin County and *no formal action has occurred* to start that process at this time.

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In response Mr. Anekwe's simply stated:

Good evening Brett. Correct on all three counts. Thanks.

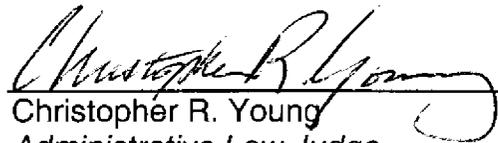
Therefore, the documentary evidence contained in the pleadings reveals that it was quite clear to the attorneys at McNees, Wallace and Nurick were well aware that the conversation between his supervisor and the Appellant was with regard to a "possible" relocation and that no formal action had occurred. Thus, the Appellant can not come before this Board alleging a genuine issue in dispute with regards to an alleged transfer if in fact it was known to the Appellant and or his agents that a transfer had never formally taken place.

Further, both of the parties to this action agree that no written document was ever given to the Appellant which would evidence an actual transfer had occurred, as well.

The Appellant argues that intra-transfers do not require the act of transfer to be in writing by the agency. Ohio administrative code section 123:1-25-01 entitled "transfers and intra-transfers in classified service" states in subsection (H) that "written notice of *any* transfer and reasons therefore in writing shall be given to the employee concerned." As the Appellant amply pointed out, the administrative code only defines two types of transfers: "inter-transfers" and "intra-transfers," but there is no definition of the word "transfer" alone. Ohio administrative code section 123:1-47-01(41) and (42). This is because both inter transfer and intra-transfers are both transfers. In any case, in order to intra-transfer an employee, the Appellee would need to provide the Appellant with a written document amongst other requirements. As previously mentioned, both parties agree that no written document was ever given to the Appellant. As such, there is no evidence to suggest that transfer ever occurred and that the appeal is moot. Moreover, if this Board were to find that the Ohio Department of Health attempted to transfer the Appellant, but did not provide him with the legally required written notice of transfer, the Board is obligated to disaffirm the transfer, as this is the only remedy that can be granted, although he is still working out of the Toledo office.

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Therefore, I respectfully **RECOMMEND** that the Appellee's motion to dismiss be **GRANTED** and the instant appeals be **DISMISSED** for lack of jurisdiction and for being moot, as there is no adequate remedy at law.

  
Christopher R. Young  
Administrative Law Judge

CRY: