STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Emmaline L. Adams, Case No. 10-RED-10-0264

Appellant,

v.

Mahoning County Job and Family Services,

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. §§ 124.03(A), 124.14(D) and O.A.C. §§ 124-1-02(Y) and (Q) (1).

Lumpe - 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 28, 2010.

Michelle Hussey
Clerk

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

12-28-10 MH

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Emmaline L. Adams,	Case No. 10-RED-10-0264
and	
Lettie Elam,	Case No. 10-RED-10-0265
Appellants	
v.	November 23, 2010
Mahoning County Job & Family Services,	Jeannette E. Gunn
Appellee	*Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellants' October 2010, filing of an appeal of their alleged reductions. Appellants asserted that they were reduced in pay as a result of Appellee's increase in their share of employee contributions to the Ohio Public Employees' Retirement System (OPERS) and in their hospitalization co-pay amounts. No R.C. 124.34 Order of Reduction was filed.

CONCLUSIONS OF LAW

Unlike a court of general jurisdiction, the State Personnel Board of Review has authority only where it has been explicitly conferred upon it by the Ohio General Assembly. Pursuant to R.C. 124.03(A), this Board is empowered to:

> 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 <u>reduction in pay</u> 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. . . . (emphasis added)

O.A.C. 124-1-02(Y) defines a "reduction in pay" as an action which diminishes an employee's pay; O.A.C. 124-1-02(Q)(1) defines "pay" as the annual, non-overtime compensation due an employee including, when applicable, the cost of the appointing authority's insurance or other contributions, longevity pay, supplemental pay and hazard pay.

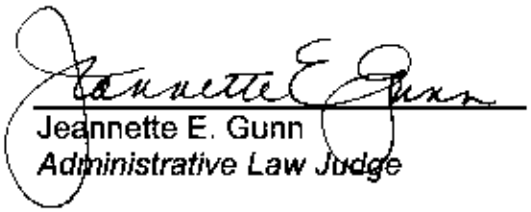
In the instant matter, Appellee made a determination effective September 12, 2010, to increase the employee share of all non-bargaining unit employees' OPERS contributions from .5% to 5.5%, and to increase their co-pay for hospitalization from 10% to 15%. Appellants appealed that determination, arguing that Appellee's actions constituted a reduction in their pay.

Case law has determined that where there is no legislatively conferred right to receive a benefit, cessation of that benefit does not rise to the level of a reduction in pay, position or compensation. *State, ex rel. Bassman v. Earhart*, 18 Ohio St.3d 182 (1985); *State, ex rel. Belknap v. Lavelle*, 18 Ohio St.3d 180 (1985). R.C. 305.171(A) provides that "[t]he board of county commissioners of any county may contract for, purchase, or otherwise procure and pay all or any part of the cost of group insurance policies that may provide benefits including, but not limited to, hospitalization, surgical care, major medical care, disability, dental care, eye care, medical care, hearing aids, or prescription drugs ..." The use of the word "may" in this statute indicates that the commissioners are not required to provide group insurance policies. The statute further indicates that if the commissioners do choose to provide group insurance, they have the option of paying only a portion of the premium. R.C. 145.47(A) states that "[e]ach public employee who is a contributor to the public employees retirement system shall contribute ... to the employees' saving fund," but no section of the Ohio Revised Code requires that an employer contribute to the employee's savings fund on behalf of its employees.

Upon a review of the applicable statutes and after consideration of the arguments presented by both Appellee and Appellants' counsel, I find that there is no legislatively conferred right which entitles Appellants to receive group hospitalization benefits through Appellee or to have Appellee make contributions to OPERS on Appellants' behalf. Because no such right to receive these benefits

exists, I find that Appellee's adjustment of the percentages at which such benefits are provided to Appellants does not constitute a reduction in pay.

Because the action taken by Appellee does not rise to the level of a reduction in pay and does not constitute any other employment action over which this Board may exercise its statutory jurisdiction, I respectfully **RECOMMEND** that the instant appeals be **DISMISSED** for lack of subject matter jurisdiction.



Jeannette E. Gunn
Administrative Law Judge