STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

SUSAN GREAVES,

Appellant,

v.

Case Nos. 12-INV-05-0090
12-MIS-05-0091

MAHONING COUNTY MENTAL HEALTH BOARD,

Appellee

ORDER

These matters 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 entirety of the records, including 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 cases are **DISMISSED**, as Appellant Greaves has not shown that the Appellee abused its discretion or that Appellee did not follow the law with regard to her sick leave balance or her right to reinstatement from her job abolishment.

Casey - Aye
Lumpe - Aye
Tillery - Aye

Terry L. Casey, *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, September 19, 2012.

ENTERED 9/19/12 cc

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

Susan Greaves	Case Nos. 12-INV-05-0090 12-MIS-05-0091
Appellant	
v.	August 10, 2012
Mahoning County Mental Health Board	Marcie M. Scholl
Appellee	*Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellant Greaves' request for information, filed on May 10, 2012; this Board's June 12, 2012 letter to Appellee requesting a response to Appellant Greaves' concerns; and Appellee's response, filed on June 25, 2012.

In her request for information, Appellant Greaves is questioning why, when her position was abolished, she was not given the opportunity to have her sick leave balance converted to cash and she asked where she could obtain a "recall list". In Appellee's response to this Board's request for a response to Appellant Greaves' questions, Appellee argues that since Appellant Greaves was employed by a county agency, and not a state agency at the time of her job abolishment, she was not eligible to have her sick leave balance paid in cash nor was there any "recall" list which would be applicable to a county employee.

Appellee is correct in its arguments. Appellant Greaves cited to administrative rule 123:1-32-09 of the Ohio Administrative Code. The title of that particular rule is "Conversion of sick leave and personal leave credit upon separation from service **for employees paid by warrant of the director of budget and management."** (Emphasis added). Since Appellant Greaves was an employee of a county agency at the time of her layoff, she was paid by warrant of the county auditor and not by warrant of the director of the office of budget and management. Thus this rule does not apply to Appellant Greaves.

Section 124.39 of the Ohio Revised Code provides that employees of a county agency, who have at least ten years of service, can be paid for one-fourth of the value of any sick leave balance upon retirement. That statute also provides that a county or any other political subdivision may establish a policy which allows an employee to be paid for a portion of their sick leave balance in circumstances other than retirement. The operative word in the statute, however, is "may". There is nothing in the Ohio Revised Code or Administrative Code which mandates a county to promulgate such a policy. As can be seen from reading Appellee's policy, which was attached to Appellee's response, Appellee has chosen not to adopt or promulgate such a policy; therefore, the only time an employee of Appellee is entitled to a be paid for a portion of his or her sick leave balance is upon retirement from service and not due to a job abolishment or layoff.

With regard to Appellant Greaves' concern with a recall list, the administrative rule referenced by her again only applies to agencies of the state and not of the county. Each county agency is its own layoff jurisdiction as, unlike a state agency which may have offices in many counties within the state, a county agency only has an office within one county. Therefore, when an employee is laid off from a county agency, there is no other county or layoff jurisdiction that such employee can chose to go to. Therefore, there is no jurisdictional recall list in the case of a job abolishment and resultant layoff of a county employee such as Appellant Greaves. The law provides for a one year reinstatement period for county employees, so that if the agency Appellant Greaves was laid off from decides to hire an employee in the same classification in which Appellant Greaves was in at the time of her layoff, the agency would have to first fill the position with someone on the layoff list who was laid off from the classification. After a one year period, that would no longer be true.

Since Appellant Greaves has not shown that the Appellee abused it discretion or that Appellee did not follow the law with regard to her sick leave balance or her right to reinstatement from her job abolishment, it is my **RECOMMENDATION** that these cases be **DISMISSED**.

Marcie M. Scholl

Marcie M. Scholl
Administrative Law Judge

:mms