STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Danny Newberry,
Appellant,

v.

Case Nos. 2012-REM-01-0013
2012-RMD-05-0074

Wright State University
Appellee.

ORDER

These matters came on for consideration on the motion of Appellee that the Settlement Agreement attached hereto and incorporated herein by reference, be adopted. Being fully advised in the premises, the Board hereby orders that the attached settlement agreement be **ADOPTED** and the appeals be **DISMISSED**.

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 the foregoing is (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 06 2013.

Clerk

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

FILED
9/6/13

BEFORE THE STATE PERSONNEL BOARD OF REVIEW

DANNY NEWBERRY,	:	
Appellant,	:	CASE NO. 12-RMD-05-0074
v.	:	Beth A. Jewell *Administrative Law Judge*
WRIGHT STATE UNIVERSITY,	:	
Appellee.	:	

NOTICE OF SETTLEMENT

Appellee, Wright State University ("WSU"), by and through counsel does hereby give notice to the State Personnel Board of Review ("SPBR") that WSU and Appellant, Mr. Danny Newberry ("Newberry"), entered into a settlement agreement ("Agreement") on December 13, 2012. Included in the Agreement is a provision that Newberry would execute and file a Notice of Withdrawal of Appeal with SPBR. *See* Agreement, Section 3(A)(1), p. 1, attached hereto as Exhibit 1. Newberry also executed a complete release and waiver of any and all legal claims or causes of action that he may have against WSU up to and including the date on which the Agreement was fully executed. *See* Agreement, Sections 3(A)(4) & 4, pp. 2 & 3. As consideration for the execution and filing of a Notice of Withdrawal of Appeal and the complete release of all claims, WSU would pay Newberry a lump sum payment of $16,335.15. *See* Settlement, Section 3(B)(2), p. 2.

On December 18, 2012, WSU issued a check to Newberry fulfilling its obligation under the settlement. *See* December 18, 2012 Check, attached hereto as Exhibit 2. As of the date of this filing, Newberry has not fulfilled his obligation of executing and filing a Notice of Withdrawal of Appeal. The undersigned counsel attempted to contact Appellant's counsel several times by telephone, e-mail and regular mail, without any success. Therefore, having fulfilled its obligations and Newberry waiving all claims against WSU up to December 12, 2012; WSU respectfully requests the SPBR to dismiss Newberry's appeal *sua sponte*.

ENTERED

Respectfully submitted,

MIKE DEWINE (0009181)
Ohio Attorney General

MATTHEW J. KARAM (0085251)
Assistant Attorney General
JOSEPH N. ROSENTHAL (0018117)
Principal Assistant Attorney General
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30 East Broad Street, 23rd Floor
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(614) 644-7257 Telephone
(614) 752-4677 Fax

Counsel for Wright State University

CERTIFICATE OF SERVICE

I certify that a copy of the above *Notice of Settlement* was served upon Ms. Cynthia M. Rose, Esq., P.O. Box 129, Xenia, Ohio 45385, by ordinary U.S. Mail, postage prepaid this 27th day of August, 2013.

MATTHEW J. KARAM (0085251)
Assistant Attorney General

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of all Claims ("Agreement") is made and entered into by and between Danny Newberry ("Newberry"), and Wright State University ("WSU").

WHEREAS, Newberry filed Case No. 12-REM-01-0013, which was remanded by the State Personnel Board of Review ("SPBR" or "Board") and designated as Case No. 12-RMD-05-0074. Case Nos. 12-REM-01-0013 & 12-RMD-05-0074 are now pending before SPBR; and

WHEREAS, the Parties desire to resolve any and all disputes relating to Newberry's employment with WSU, including, but not limited to, those claims embodied in the above-mentioned appeal filed with the Board.

NOW, THEREFORE, the Parties agree as follows:

1. **Parties.** This Agreement is entered into on behalf of, and shall extend to Newberry, his immediate family, heirs, assigns, personal representative, executors, agents and administrators (herein collectively referred to as "Newberry"); and to WSU, its successors, assigns, officers, directors, employees, and agents, both past and present (herein collectively referred to as "WSU").

2. **Intent.** Except as specifically set forth in this settlement agreement, Newberry and WSU wish to bring to a complete, final and irreversible end to any and all claims and/or disputes which arose or which could arise from Case Nos. 12-REM-01-0013 & 12-RMD-05-0074 and to reach a full and final settlement of all matters and claims, of any nature, as of the date this Agreement is executed.

3. **Consideration.** In consideration of the mutual promises and agreements set forth herein, the Parties agree as follows:

   A. **<u>As for Danny Newberry's Consideration</u>:**

      1. Newberry agrees to withdraw all actions filed by him against WSU, including Case Nos. 12-REM-01-0013 & 12-RMD-05-0074 upon the execution of this Agreement.

      2. Newberry agrees to execute a Notice of Withdrawal of Appeal and shall cause such Notice of Withdrawal of Appeal to be filed with the SPBR within seven (7) days of the execution of this Agreement by all the Parties.

PENGAD 800-631-6989
EXHIBIT
1

3. Newberry agrees to voluntarily resign his position with WSU effective January 9, 2012. Newberry hereby agrees that the tender of his resignation, effective January 9, 2012, is irrevocable.

4. Newberry agrees to execute a complete release and waiver of any and all legal claims or causes of action that he may have against WSU up to and including the date on which the Agreement is fully executed.

5. Newberry acknowledges and agrees that he is not entitled to any service credit which otherwise may have accrued from January 9, 2012, the last date of employment with WSU, and the effective date of this Agreement.

6. Nothing in this agreement is intended to affect Newberry's current status as a retiree entitled to receive benefits from the Ohio Public Employees Retirement System.

7. Newberry shall indemnify and hold harmless WSU against any and all liabilities owed to the Ohio Department of Job and Family Services as a result of Newberry's acceptance of unemployment compensation benefits received after January 8, 2012.

B. <u>As for WSU's Consideration</u>:

1. WSU agrees to rescind Newberry's removal from employment, effective January 9, 2012. By signing this agreement, Newberry, as stated above in paragraph 2(A)(3), hereby tenders his resignation, effective January 9, 2012, which resignation is hereby accepted by WSU upon execution of this Agreement. This Agreement shall constitute the sole affirmative act by which WSU indicates to Newberry its acceptance of Newberry's resignation.

2. WSU agrees to pay Newberry the lump sum of Sixteen Thousand Three Hundred Thirty-Five Dollars and Fifteen Cents ($16,335.15). The parties understand and agree that no Internal Revenue Service ("IRS") Form W-2 shall issue from WSU with respect to the payment described in this paragraph. The parties expressly understand and acknowledge that WSU shall issue an appropriate IRS Form 1099. The parties understand that Newberry shall be responsible for any payment of personal income taxes due thereon as required by applicable federal, state and local tax laws, and that Newberry shall indemnify and hold WSU and the State of Ohio harmless against any and all income tax liability, interest and/or penalties as due thereon from WSU or from Newberry.

4. **Release of All Claims and Dismissal of All Charges and Legal Actions in relation to Case Nos. 12-REM-01-0013 & 12-RMD-05-0074.** Newberry does hereby fully, finally, and forever release and waive any and all claims and rights which he may have against WSU, its officers, directors, employees, and representatives, both in their individual or official capacity, and do hereby specifically quitclaim, release, and forever hold harmless from and against any and all claims, liability, causes of action, compensation, benefits, damages, attorney fees, costs or expenses, of whatever nature or kind which have arisen or which could have arisen from Newberry's employment with WSU or his claims in Case Nos. 12-REM-01-0013 & 12-RMD-05-0074 at any time up to and including the date of execution of this Agreement.

   Such rights, claims, causes of action or liability shall include, but not be limited to, those arising or which might arise out of intentional infliction of emotional distress, harm or illness, intentional injury or intentional tort, or any other facts; the Fair Labor Standards and Equal Pay Acts; Title VII of the Civil Rights Act of 1964, the Civil Rights Act of 1964 as amended, the Civil Rights Act of 1991 as amended; the United States Constitution; the Civil Rights Act of 1866 or 1871(42 U.S.C. Sections 1981, 1983, 1985, et. seq.); the Americans with Disabilities act, the Age Discrimination in Employment Act; Chapter 4112 of the Ohio Revised Code and any other provision of the Ohio Revised Code, not filed and existing as of the date of this Agreement; and any other Federal, State, City, County or other local law or ordinance concerning employment, or in any other manner regulating or otherwise concerning wages, hours or any other terms or conditions of employment, which, (a) have been filed, (b) are now pending, or (c) could have been filed relating to any acts which have transpired at any time up to and including the date of execution of this Agreement.

   Newberry's release of claims shall include, but not be limited to Case Nos. 12-REM-01-0013 & 12-RMD-05-0074, now pending before the SPBR and any and all grievances, arbitrations, mediations, and all other complaints of any sort which have arisen or could have arisen from Newberry's employment with WSU up to and including the date on which this Agreement is executed. Newberry represents and warrants that he has not assigned or otherwise transferred any right to any other person to assert any claims of any kind or character against WSU, and agrees to indemnify and hold WSU harmless from and against any such claims to be asserted by any other party.

5. **Non-Admission.** The terms set out in the Agreement are a compromise settlement of disputed claims, the validity, existence or occurrence of which is expressly denied by WSU. Neither the terms nor the Agreement shall be deemed or construed as an admission by WSU of any wrongful acts whatsoever by or against Newberry or any other person, nor does any arrangement(s) made with Newberry constitute an acknowledgment of the validity of any claim, charge, liability or cause of action asserted, it being expressly understood that all such

claims are in all respects denied by WSU. Likewise, Newberry makes no admission concerning the merits of his appeal by accepting the terms of this agreement.

6. **General Terms.** The Parties to this Agreement represent and affirm that the only consideration for their agreement and execution are the terms stated above; that no other promise or agreement of any kind has been made to or with any of them by any persons or entity to cause any to execute this Agreement, and that no other compensation, benefits, or prerequisites other than those specified in the foregoing Agreement shall be involved or claimed; that this Agreement shall not be interpreted to render Newberry a prevailing party for any purpose, including but not limited to an award of attorney fees under any applicable statute or otherwise; and that each fully understands the meaning and intent of this Agreement, including but not limited to their final and binding effect. Newberry further acknowledges that he has had the opportunity to consult counsel, if so desired, concerning and before executing this Agreement and that the execution of the Agreement is by knowing and voluntary act.

7. **Construction and Severability.** This Agreement shall be construed according to its fair meaning and not strictly for or against any of the Parties. Should any provision of the Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and the illegal or invalid part, term, or provision shall be deemed not part of the Agreement.

NOTICE: DANNY NEWBERRY, PLEASE READ CAREFULLY BEFORE SIGNING:

PERSUANT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACT, 29 U.S.C. § 621 *ET SEQ.*, A WAIVER OF RIGHTS CANNOT APPLY TO AGE DISCRIMINATION CLAIMS ARISING IN THE FUTURE. I HAVE READ THE FOREGOING AGREEMENT AND RELEASE, AND FULLY UNDERSTAND IT. I ACKNOWLEDGE THAT I WAS GIVEN UP TO TWENTY-ONE (21) DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT, THAT I HAVE BEEN ADVISED TO CONSULT WITH LEGAL COUNSEL PRIOR TO SIGNING THIS AGREEMENT, AND THAT I HAVE THE RIGHT TO REVOKE THIS AGREEMENT, IN WRITING, FOR A PERIOD NOT TO EXCEED SEVEN (7) DAYS AFTER THE DATE ON WHICH IT IS SIGNED BY ME. I HEREBY ACKNOWLEDGE THAT IF I FAIL TO EXERCISE THIS RIGHT TO REVOKE, THIS AGREEMENT WILL BECOME A BINDING CONTRACT AS TO ITS TERMS ON THE EIGHTH (8TH) DAY AFTER I SIGN THIS AGREEMENT. I NOW VOLUNTARILY SIGN THIS AGREEMENT AND RELEASE ON THE DATE INDICATED. IF THIS AGREEMENT SHOULD BE REVOKED BY ME WITHIN THE TIME SET FORTH ABOVE, THIS AGREEMENT SHALL BE VOID AND WSU SHALL BE EXCUSED FROM PERFORMANCE HEREUNDER.

This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any and all prior discussions, agreements, transmissions or understandings between the Parties or their representatives.

The undersigned Parties state that they have carefully read the foregoing and understand the contents thereof, and that they execute the same as their own free and voluntary act.

Danny Newberry
Appellant

12/6/12
DATE

Gwen Mattison
General Counsel, Wright State University

12/13/12
DATE