

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Debbie Fossie,

Appellant,

v.

Case No. 2013-INV-01-0029

Lorain County Civil Service Commission,

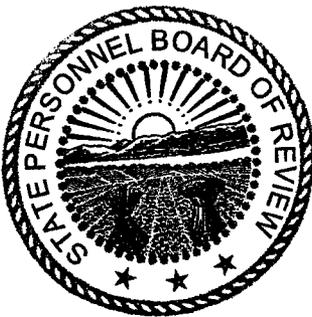
Appellee.

ORDER

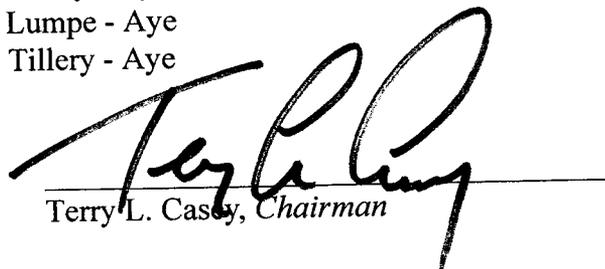
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, 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 instant investigation is **TERMINATED**.



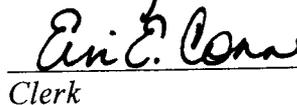
Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

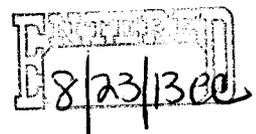
CERTIFICATION

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, August 23, 2013.


Erin E. Conn
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**

Debbie Fossie,

Appellant

v.

Lorain Civil Service Commission,

Appellee

Case No. 13-INV-01-0029

July 22, 2013

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon a review of the information contained in the record. On January 24, 2013, the Appellant, Ms. Debbie Fossie, filed the instant investigation request with this Board. The Appellant, among other things, explained that she was being denied the opportunity to apply for a classified civil service position, wherein she asserted that a non-bargaining city employee was appointed to a classified civil service position without posting the job for all other non-bargaining employees to see, therefore not giving the same opportunity to apply for the position.

On February 7, 2013, the undersigned sent Ms. Fossie's investigation request to the Appellee, the Lorain Civil Service Commission, seeking a response regarding allegations noted above. It was noted that the Lorain Civil Service Commission was to respond on or about February 21, 2013. On February 19, 2013, the Board granted extension of time for the Lorain Civil Service Commission to respond until March 7, 2013, and again until March 25, 2013.

On March 25, 2013, the Appellee, the Lorain Civil Service Commission responded to the instant allegations. For clarification, the Appellee noted that the position of secretary in the Building/Electrical department, was a bargaining unit position per a collective bargaining agreement with local 6621, was posted in every department within the City that has at least one classified employee pursuant the union contract (see Ms. Fossie's Exhibit B). Said position was posted on every floor of the Lorain City Hall per Mr. Geoff Smith, Deputy Director of Human Resource and

Risk Management. (See affidavit of Geoffrey R. Smith, Appellee's Exhibit 1) As stated in the affidavit, anyone can sign these postings per Mr. Smith, including Ms. Fossie. The evidence in the file revealed that Ms. Fossie did not sign the posting.

Appellee's response also noted that when the only person who signed the posting withdrew her name from consideration for the secretarial position, and the Civil Service Commission was asked by the Appointing Authority (Safety/Service Director), through his designated representative, Mr. Smith, to appoint Ms. Sheryl Corbin to the position at its November 5, 2012 meeting (see Ms. Fossie's Exhibit D). Further, the Appellee has asserted that said appointment was made pursuant to O.R.C. Section 124.30 and O.A.C. Section 123:1-17-01(C) (See Appellee's Exhibit 1).

In Appellee's response it also asserts that when no one is eligible to be appointed to a vacant position from a job posting, pursuant to the collective bargaining agreement, the city follows O.R.C. Section 124.30 and O.A.C. Section 123:1-17-01(C), which allows for appointments to a position without testing. While Ms. Fossie alleges the position should "automatically be advertised" per local rule, a rule believed by Ms. Fossie to be referring to what was adopted by the Commission at its October 8, 2012 meeting, a rule that only applies to "exceptional appointments", not in a simple posting. (see Ms. Fossie's Exhibit A - minutes of October 8, 2012 meeting). In this case the Appellee explained that here was no "exceptional appointment" in this matter which would require "automatic advertising". O.A.C. Section 123:1-17-01(B).

Further, the Appellee also has asserted that even if Ms. Fossie argues that O.A.C. Section 123:1-17-01(B) was not followed, said section allows for posting by "any other means proved by the Director". (See O.A.C. Section 123:1-17-01(B)). The Appellee stated that the City did post the secretarial position citywide, and always has posted vacant positions available for anyone to sign, and in fact, people who were non-bargaining unit employees have signed such postings have been eventually appointed. (See affidavit of Geoffrey R. Smith, Exhibit 1). Moreover, the Appellee stated that the Appellant knew of these people and was aware that they were appointed to jobs after signing such a posting. Additionally, the letter that Ms. Fossie refers to regarding non-union employee signing postings was entered into after the facts being complained of herein. Hence, the City stated that it will continue to post vacant jobs in the future per the collective bargaining agreement and have a separate posting for non-bargaining unit and members to sign, if no union members

are eligible.

Thus, in summary, the vacant secretarial position was posted by the City, citywide as was required by the collective bargaining agreement. As in this case, with no one to choose from to fill the position after the posting, via the collective bargaining agreement, the appointing authority needed to fill the position promptly and requested an appointment pursuant to O.R.C. Section 124.30 and O.A.C. Section 123:1-17-01(C). The Civil Service Commission heard that request and granted the appointment, and all collective bargaining agreements and civil service laws were complied with in this regard.

On April 9, 2013, the undersigned sent Ms. Fossie the Appellee's March 25, 2013 response, asking her to submit a reply to their response. On April 17, 2013, Ms. Fossie submitted her reply to the Appellee's response. In the Appellant's reply the Appellant did not disagree that the position of Building/Electrical department secretary was posted in most of the city's departments. However, what she did question were whether or not unclassified non-bargaining employees were permitted to sign for the union job posting for the classified union position of secretary in the Building/Electrical department.

On May 22, 2013, the Appellee sent a reply to the Appellant's reply and again reiterated their original argument that the position of secretary in the Building/Electrical department was properly filled by the appointing authority and all of the applicable laws were followed. Moreover, the Appellee agreed that the position was a bargaining unit position, which would first require posting the position under the City's collective bargaining agreement to fill the position, which was done. Further, the Appellee stated since no one signed the posting (after the only person to sign withdrew their name) no one was eligible to fill the job. After which, since the position was not going to fill pursuant to the collective bargaining agreement, the City must then resort to fill the position pursuant to the Civil Service Laws of the State, in particular O.R.C. Section 124.30 and O.A.C. Section 123:1-17-01(C).

Additionally, the Appellee asserted that although Ms. Fossie argued that it is her understanding that unclassified non-bargaining unit employees do not sign postings in the City, is not correct. The Appellee maintains that anyone, including Ms. Fossie could have signed the posting, as this has been done in the past.

CONCLUSIONS OF LAW

In essence, this Board does not have jurisdiction to investigate or review the merits of employment actions taken by a municipality. No section of the Ohio Revised Code grants the Board investigatory authority over a municipality, and municipal employees are not employees in the state service, as defined by R.C. 124.01(B). Accordingly, this Board may not consider whether or not the City of Lorain acted properly in its selection of a candidate to fill the position of Building/Electrical department secretary, or substitute its judgment for that of City in determining the best candidate to fill a position.

However, this Board does have investigatory authority over municipal civil service commissions pursuant to R.C. 124.40. That statute provides that the Board is authorized to conduct investigations when it has reason to believe:

... that a municipal civil service commission is violating or is failing to perform the duties imposed upon it by law, or that any member of a municipal civil service commission is willfully or through culpable negligence violating the law or failing to perform official duties as a member of the commission

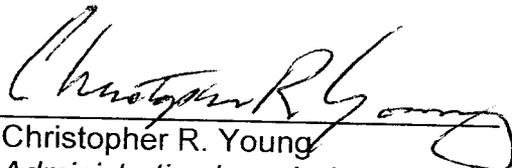
A municipal civil service commission, pursuant to R.C. 124.40, performs the same functions as does the Director of Administrative Services and the State Personnel Board of Review with respect to the civil service of a city. It has the responsibility to make sure that all appointments, discipline and removals are carried out correctly, and that employees have the same right to appeal to the municipal civil service commission as a state or county employee would have to appeal to this Board. See, *Brotherton v. Amherst Civil Service Commission* (Jan. 23, 1991), PBR 90-INV-08-0861; *aff'd Franklin Co. No. 91CVF04-2777*, unreported.

Information contained in the case file indicates that the Commission carried out its duties imposed upon it by law, and in consideration of the instant collective bargaining agreement, since after the initial posting the person who had applied withdrew her name from consideration, allowing the Commission to pick another candidate with the position of secretary. The evidence revealed that no other person had signed the posting at issue. Hence, since no bargaining unit member signed the posting, the Safety/Service Director could seek out other candidates and/or ask the Commission, which he did.

Moreover, as was explained by the Appellee anybody can sign for a job posting, whether that position is a classified bargaining unit employee, a classified non-bargaining unit employee and/or unclassified employee, but if the position is a bargaining unit position, the Commission must first have to pick someone who signed the posting who is a member of the bargaining unit member before they can pick someone outside of the bargaining unit. In this case at bar, this is exactly what happened.

With regard to each issue, the appears to have Commission taken deliberate steps to ensure that the process for filling the vacant secretarial position in the Building/Electrical department was completed in accordance with local civil service regulations, rules and the instant collective bargaining agreement.

Therefore, pursuant to a review of the information contained in the record and pertinent case law, I find no evidence to support a conclusion that the Lorain Civil Service Commission, or its individual members, violated or failed to perform the duties imposed upon it by law in approving the appointment of Ms. Sheryl Corbin to the position of Secretary in the Building/Electrical department. Accordingly, I respectfully **RECOMMEND** that the instant investigation be **TERMINATED**.


Christopher R. Young
Administrative Law Judge

CRY: