

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

Susan Burnham,

Appellant,

v.

Case No. 2013-INV-04-0115

Youngstown Civil Service Commission,

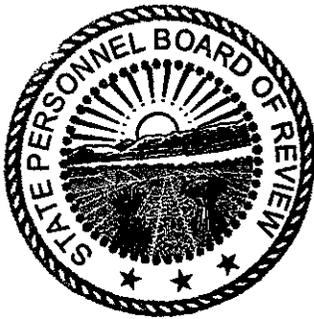
Appellee,

ORDER

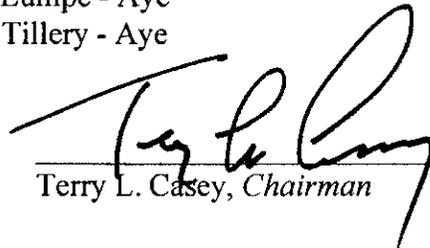
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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

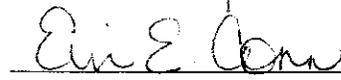


Terry L. Casey, *Chairman*

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, July 30, 2014.



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 Burnham

Case No. 2013-INV-04-0115

Appellant

v.

June 26, 2014

Youngstown Civil Service Commission,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration upon a thorough review of the record. Appellant filed a request for investigation with this Board on April 25, 2013, alleging that the Youngstown Civil Service Commission violated civil service laws regarding displacement rights arising from her layoff from her position as Public Health Nurse with the Youngstown City Health District and improperly denied her appeal to the Commission.

Appellee filed a response to Appellant's allegations on July 17, 2013, asserting that Appellant had been laterally reassigned and not laid off from her position as a Public Health Nurse. Appellee argued that an appointing authority has the power to reassign a worker from one position to another within the same classification and its actions did not constitute an abuse of discretion.

FINDINGS OF FACT

Based upon the information contained in the record, I make the following findings of fact:

On or about December 14, 2012, Appellant was notified by Erin Bishop, Acting Health Commissioner, that she would be laid off from her position as Public Health Nurse (Homeless Nurse), Position #7712, effective December 31, 2012. In the same notification, Ms. Bishop informed the Appellant of her displacement rights.

On or about December 19, 2012, Appellant notified Ms. Bishop that she wanted to exercise her displacement rights into the Public Health Nurse (Infant Immunization) position occupied by Anthea Mickens. On January 2, 2013, Appellant was instructed by Ms. Bishop to continue working as the Homeless Nurse until further notice.

On January 4, 2013, Ms. Bishop offered Appellant a position as Public Health Nurse (Group Home Inspection Program), Position #7705. Appellant was subsequently transferred into that position. Appellant filed an appeal with Appellee on January 5, 2013, alleging that her displacement rights had been violated; she filed a second appeal with Appellee on January 29, 2013.

On April 18, 2013, Appellee issued an Opinion finding that Appellant had no right to displace Ms. Mickens and denying her appeal. Appellee's Opinion notified Appellant of her statutory right to appeal its decision to the Court of Common Pleas.

CONCLUSIONS OF LAW

Initially, I note that Appellee is not Appellant's appointing authority; any potential violation of displacement rights resulted from actions taken by the Youngstown City Health District. This Board does not have the authority to review employment actions taken by a municipal entity and Appellant's proper avenue of appeal for those alleged violations was to Appellee.

This Board does, however, have investigatory authority over Appellee pursuant to section 124.40 of the Ohio Revised Code. That statute, in pertinent part, reads as follows:

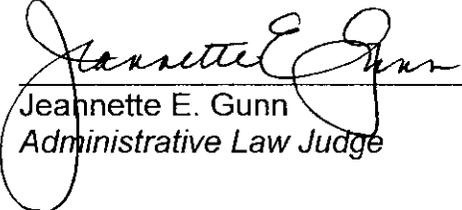
Whenever the board has reason to believe that a municipal civil service commission is violating or is failing to perform the duties imposed upon it by law, or that any member of such municipal civil service commission is willfully or through culpable negligence violating the law or failing to perform his duties as a member of the commission, it shall institute an investigation, and if, in the judgment of the board, it finds any such violation or failure to perform the duties

imposed by law, it shall make a report of such violation in writing to the chief executive authority of such city, which report shall be a public record.

A municipal civil service commission, pursuant to R.C. 124.40, performs the same functions as does the Director of Administrative Service 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.

As previously noted, this Board does not have the authority to substitute its judgment on the merits of the matter appealed to Appellee; the Board's jurisdiction extends only to a review of whether or not Appellee and/or its members have carried out its statutory responsibilities. Evidence in the record indicates that Appellee reviewed Appellant's appeal in a timely fashion, considered the issues she raised and issued a final, appealable Opinion outlining its determination. Appellant was notified of her right to appeal a disagreement with the Commission's determination to the Court of Common Pleas.

Therefore, I find that Appellee properly carried out the duties imposed upon it by law, and I respectfully **RECOMMEND** that the instant investigation be **TERMINATED**.


Jeannette E. Gunn
Administrative Law Judge