

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

Elaine Denault,

*Appellant,*

v.

Case No. 2013-LAY-02-0065

Dayton & Montgomery County Public Health,

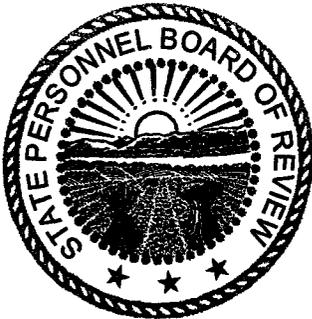
*Appellee,*

**ORDER**

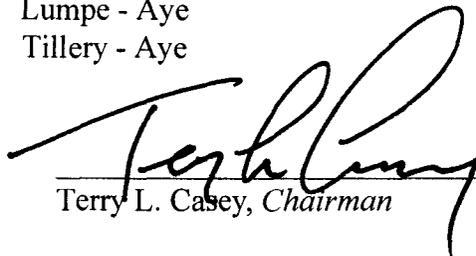
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellant's layoff is **AFFIRMED**.



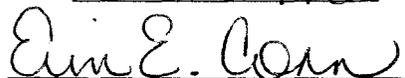
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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, March 13, 2014.

  
Erin E. Corn  
*Clerk*

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

3/14/14ec

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

Elaine Denault

Case No. 2013-LAY-02-0065

*Appellant*

v.

January 24, 2014

Dayton & Montgomery County Public Health,

Jeannette E. Gunn

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on to be heard on May 13, 2013. Appellant was present at the hearing and appeared *pro se*. Appellee was present through its designee, in-house counsel Michael Matis and was represented by Assistant Prosecuting Attorney Julie F. Droessler.

The subject matter jurisdiction of this Board was established pursuant to R.C. 124.03 and R.C. 124.328.

**STATEMENT OF THE CASE**

Jennifer Smith testified that she is employed by Appellee as the Bureau Supervisor of Human Resources, Records and Distribution. She confirmed that when a layoff occurs, she is responsible for the calculation of retention points for affected individuals.

The witness recalled that Appellant was employed by Appellee as Bureau Supervisor of Maternal Child Health at the time of her job abolishment and subsequent layoff. She explained that because the position occupied by Appellant was the only position in its classification series, Appellant was not able to displace within the same classification series. Ms. Smith observed that Appellant was not able to laterally displace into a different Bureau Supervisor position because each Bureau Supervisor position requires different core competencies and occupies its

own unique classification series. The witness recalled that she and Appellant had discussed Appellant's career growth options and Appellee's unique classification series structure for Bureau Supervisor positions approximately a year prior to the layoff.

Ms. Smith testified that at the time of the layoff she suggested that Appellant consider applying for a Public Health Nurse Coordinator position in a lower pay range, which was going to be vacated due to retirement. She noted that Appellee's Home Care division had also been affected by a lack of funds, and several individuals in that division had been affected similarly. The witness observed that, while not ideal, the Public Health Nurse Coordinator position would have allowed Appellant to continue her employment with Appellee; Appellant elected not to apply for the Public Health Nurse Coordinator position.

Appellant testified that she believed that she was qualified to perform the duties of either the Director of Nursing position or the Bureau Supervisor of Communicable Disease position. She recalled that she interviewed, along with other candidates, for the Director of Nursing position in January or February 2013, but was not chosen to fill the position. Appellant stated that she believed the job duties listed for her position and for the Bureau Supervisor of Communicable Disease position were essentially the same, but were performed in different clinics. She noted that the education levels required for both positions were the same.

Appellant confirmed that she was told that she could not displace into the Bureau Supervisor of Communicable Disease position because it was in a different classification series. She acknowledged that Ms. Smith had explained to her in a 2011 discussion that her position and the Bureau Supervisor of Communicable Disease position were separate and unique positions.

Appellant noted that she did not receive a payout for sick time or personal leave when she was laid off and indicated that she believed she should have been able to convert her leave to cash. She acknowledged that she did receive a payout for accrued vacation time.

Beatrice Harris testified that she is employed by Appellee as Director of the Division of Disease Prevention and confirmed that she supervised Appellant prior to her layoff. She confirmed that she is familiar with the structure of Appellee's office and with the Bureau Supervisor positions discussed at record hearing, and stated

that there is a different body of knowledge required for each of the two positions. Ms. Harris stated that the position previously occupied by Appellant focused primarily on non-mandated wellness programs, while the Bureau Supervisor of Communicable Diseases oversaw a much broader scope of mandated programs.

Michael Matis testified that he is employed by Appellee as its in-house legal counsel. He confirmed that Appellee's employees are paid by Montgomery County from various sources of funding and not by warrant of the State. The witness noted that Appellee maintains its own classification plan which differs from the general county classification plan used in Montgomery County and that Appellee is not required to submit its classification plan to the Department of Administrative Services.

The witness observed that the determination that layoffs would be necessary was made in the second half of 2010 and all Public Health employees were made aware at that time that a layoff would take place. Mr. Matis stated that the Board of Health's policies provide that cash conversion for unused sick leave and personal time is not available.

### **FINDINGS OF FACT**

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

Appellant stipulated at record hearing that she did not challenge either the rationale upon which her job abolishment was premised, the notification process utilized by Appellee to inform her of her job abolishment and subsequent displacement rights, or Appellee's calculation of her retention points. Appellant did question whether or not retention points were posted correctly.

Uncontroverted evidence was presented to establish that Appellant was the only individual occupying a position classified as Bureau Supervisor of Maternal and Child Health, and that there were no other classifications in that classification series. Appellant held no other positions within the last three years of her employment with Appellee. Appellant's position was abolished, and she was subsequently laid off from employment with Appellee, effective March 1, 2003.

Pursuant to R.C. 3709.13, the Board of Health is the appointing authority for Appellee and has the responsibility for determining the duties and salaries of its employees. All employees of the board, other than the commissioner, are in the classified service of the state. The board maintains its own classification plan, which is specific to Appellee.

### **CONCLUSIONS OF LAW**

Layoffs and abolishments within the classified civil service of the state are undertaken pursuant to the provisions of sections 124.321 to 124.327 of the Revised Code. R.C. 124.324(A) provides that a laid-off employee has the right to displace another employee with fewer retention points within the laid-off employee's classification; within the laid-off employee's classification series; or in the classification held by the laid-off employee immediately prior to the one from which he or she was laid off, provided that the laid-off employee last held that classification within the three years prior to the date of layoff.

Testimony and evidence presented at record hearing clearly established that Appellant was the only employee in her classification, and that there were no other classification titles within the series. The record also indicated that Appellant had held no other positions in a different classification within the three years prior to her layoff. Accordingly, I find that Appellant had no displacement rights which she could have exercised to "bump" into another position of employment with Appellee. Appellant had the option to apply for other available positions of employment with Appellee, and did so, however, Appellee was under no obligation to place her in the vacancies.

Appellant noted at record hearing that she believed Appellee should have posted the retention points of other individuals within the agency. Ohio Administrative Code Section 123:1-41-20 requires that an appointing authority post the retention points of employees in the classification and lower classifications in the series affected by a pending layoff. As noted above, Appellant was the only employee in her classification and classification series; I find that Appellee complied with the requirements of O.A.C. 123:1-41-20.

Therefore, based upon the information contained in the record and the applicable statutory provisions, I find that Appellee properly administered

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Appellant's displacement rights and her layoff from employment with Appellee. I respectfully **RECOMMEND** that Appellant's layoff be **AFFIRMED**.

  
Jeannette E. Gunn  
Administrative Law Judge