STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Carl E. Lynch Jr,

Appellant,

v.

Department of Public Safety,

Appellee.

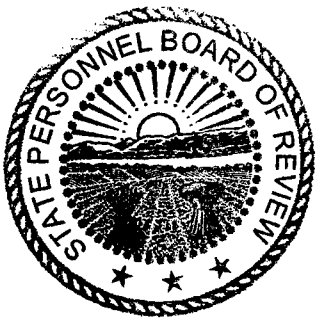
Case Nos. 2013-TFR-04-0087
2013-REM-04-0088
2013-RED-04-0089

ORDER

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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 Appellee's motion is **GRANTED** and the three instant appeals are **DISMISSED**, pursuant to Ohio Administrative Code 124-11-07 (A) (2) and (C), as well as Ohio Revised Code Sections 124.03, 124.32, 124.33, and 124.34.



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, October 09, 2013.

Clerk

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

10/9/13 EC

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Carl E. Lynch, Jr.	Case Nos. 2013-TFR-04-0087 2013-REM-04-0088 2013-RED-04-0089
Appellant	
v.	August 29, 2013
Department of Public Safety	
Appellee	James R. Sprague *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes come on due to Appellant's April 8, 2013 filing of three appeals with this Board. On July 9, 2013, this Board conducted a pre-hearing, attended by Appellant and counsel for Appellee. On August 14, 2013, Appellee filed Appellee's motion to dismiss, along with a memorandum in support, accompanying sworn affidavit, and pertinent documentation. Appellant was provided with the requisite time to file a memorandum *contra* but, to date, has not done so.

As established at pre-hearing, on October 18, 2010, Appellant was promoted to an asserted unclassified Administrative Assistant (AA) 4 position. (AA 4 is now called "Program Administrator 3".) Appellant's rate of pay commensurately increased from approximately $26.84 per hour to approximately $28.91 per hour.

As a condition of receiving this promotion, Appellant executed an "Unclassified Service Explanation and Acknowledgment per O.R.C. 124.12" acknowledgment and waiver form on October 8, 2010. On March 22, 2013, Appellant was provided with notice that Appellee was revoking his unclassified appointment. Appellant then properly exercised his fallback rights under R.C. 124.11 (D) (2), returning to his classified position of Public Inquiries Officer (PIO) (now called "Customer Service Manager 1" but with no change in duties), where he remains today.

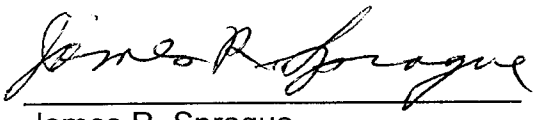
O.A.C. 124-11-07 (A) (2) indicates that when a properly filed and properly supported motion to dismiss is filed, the opposing party's response must

affirmatively set forth facts showing there is a genuine issue in dispute. O.A.C. 124-11-07 (C) establishes a 10-day time frame for an opposing party to file a response to a dispositive motion such as the instant motion to dismiss.

Appellant has not filed a memorandum *contra* and has, thus, failed to comply with the requirements set forth in O.A.C. 124-11-07 (A) (2) and (C). Accordingly, the three instant appeals should be dismissed.

Further, it appears Appellee's motion to dismiss has merit. This is because it appears Appellant waived whatever claim he may have had regarding the potential classified nature of his AA 4 position. Additionally, it appears Appellant's transfer appeal may have been untimely filed. Finally, it appears Appellee timely and properly allowed Appellant to exercise his fallback rights to his former position.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the three instant appeals, pursuant to O.A.C. 124-11-07 (A) (2) and (C), as well as R.C. 124.03, R.C. 124.32, R.C. 124.33, and R.C. 124.34.



James R. Sprague
Administrative Law Judge

JRS: