

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

Jane M. Fink,

Appellant,

v.

Case No. 2014-MIS-04-0086

Belmont County Department of Job & Family Services,

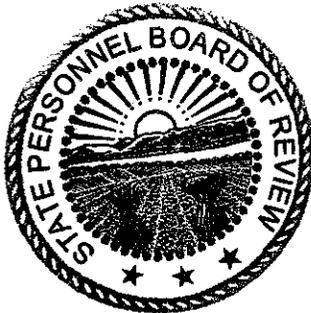
Appellee,

ORDER

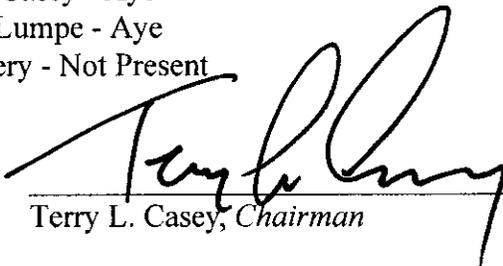
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 appeal is **DISMISSED** for failure to state a claim upon which relief can be granted, pursuant to R.C. 124.03, R.C. 124.13 (E), R.C. 325.19 (A), R.C. 4117.10 (A), and O.A.C. 124-1-02 (Q) and (Y).



Casey - Aye
Lumpe - Aye
Tillery - Not Present


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, May 20, 2015.


Erin E. Conroy
Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE May 27, 2015. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then **YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.**

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2014-MIS-04-0086

Transcript Costs: N/A Administrative Costs: \$25.00

Total Deposit Required: * \$25.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: June 4, 2015

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

Jane M. Fink

Case No. 2014-MIS-04-0086

Appellant

v.

February 25, 2015

Belmont County Department
of Job and Family Services

Appellee

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's April 18, 2014 filing of an appeal seeking to receive a payment of approximately \$11,000 to \$13,000 from Belmont County. Appellant asserts this amount constitutes the difference between the payout she received (when she cashed out her accrued vacation leave balance after resigning from Appellee's service) and the amount she believes was due her.

The record thereafter was extensively developed. This development included the issuance of a Procedural Order and the parties' respective filing of pleadings in response thereto. This development also included holding a pre-hearing and included Appellant's February 6, 2015 and Appellee's February 20, 2015 respective filing of merit briefs.

On or about December 14, 1998, Appellant began her service with Appellee as a full-time exempt Eligibility/Referral Supervisor 1. Due to a layoff situation, on or about February 13, 2013, Appellant displaced into the position of Nursing Home Case Manager. That position falls within the bargaining unit and Ohio Council #8, AFSCME Local 3073 serves as the unit's collective bargaining agent.

Appellant remained in the Nursing Home Case Manager position until her resignation from Appellee. Appellant provided notice of her resignation to Appellee via a letter dated March 10, 2014. Appellant's resignation was effective on or about March 28, 2014.

Appellant essentially asserts that, at the time of her resignation, Appellant's accrued vacation leave balance should have been paid out at a dual rate. That rate, she asserts, should have reflected a higher pay rate for her approximately 14 years of service as an Eligibility/Referral Supervisor 1 and a lower pay rate for her

approximately one year of service as a Nursing Home Case Manager in the bargaining unit.

Conversely, Appellee asserts that Appellant's payout was properly calculated based on Appellant's rate of pay at the time of Appellant's separation from service with Appellee. In other words, Appellee asserts that all of Appellant's vacation leave buyout is based on Appellant's rate of pay at the time of her resignation.

The Nursing Home Case Manager position (which Appellant encumbered at the time of her resignation) was governed by all applicable terms and conditions of the pertinent Collective Bargaining Agreement (CBA) entered into between Appellee and AFSCME Local 3073. Thus, we begin by reviewing that CBA for pertinent provisions.

R.C. 4117.10 (A) (with which this Board is well familiar) is entitled "Terms of agreement" and establishes the limitations of this Board over collective bargaining subject matter, as set forth, below:

An agreement between a public employer and an exclusive representative entered into pursuant to this chapter governs the wages, hours, and terms and conditions of public employment covered by the agreement. If the agreement provides for a final and binding arbitration of grievances, public employers, employees, and employee organizations are subject solely to that grievance procedure and the state personnel board of review or civil service commissions have no jurisdiction to receive and determine any appeals relating to matters that were the subject of a final and binding grievance procedure. Where no agreement exists or where an agreement makes no specification about a matter, the public employer and public employees are subject to all applicable state or local laws or ordinances pertaining to the wages, hours, and terms and conditions of employment for public employees. ... (emphasis added)

Section 26 of the CBA addresses, among other things, an employee's eligibility to accrue and use vacation leave. Section 26 does not address payouts concerning accrued vacation leave balances.

Section 20.1 of the CBA does address vacation leave balance payout *upon retirement*. Yet, the CBA does not appear to address such payouts *upon resignation*.

It appears at least questionable that the CBA covers the subject matter of the instant appeal. Therefore, it is reasonable to proceed and review pertinent Revised Code provisions speaking to this topic.

R.C. 124.13 is entitled "Vacation leave" and states, at Section (E):

Upon separation from state service, an employee shall be entitled to compensation at the employee's current rate of pay for all lawfully accrued and unused vacation leave to the employee's credit at the time of separation up to three years. In case of transfer of an employee from one state agency to another, or between a county and the state, the employee may elect to be compensated at the employee's current rate of pay for accrued and unused vacation leave at the time of transfer by the releasing agency or to retain the accrued and unused vacation leave. In case of death of an employee, such unused vacation leave shall be paid in accordance with section 2113.04 of the Revised Code, or to the employee's estate. **Notwithstanding section 325.19 of the Revised Code, county department of job and family services employees shall receive vacation benefits as provided in this section.** (emphasis added)

R.C. 325.19 is entitled "Vacation leave – holiday pay" and states, at Section (A) (1):

The granting of vacation leave under division (A)(1) of this section is subject to divisions (A)(2) and (3) of this section. **Each full-time employee** in the several offices and departments of the county service, including full-time hourly rate employees, **after service of one year with the county or any political subdivision of the state, shall have earned and will be due upon the attainment of the first year of employment, and annually thereafter, eighty hours of vacation leave with full pay.** ... (emphasis added)

O.A.C. 124-1-02 ("Definitions") contains the definitions applicable to O.A.C. Chapter 124. O.A.C. 124-1-02 (Q) and O.A.C. 124-1-02 (Y) define "pay" and "reduction in pay" respectively as set forth, below:

(Q) "Pay" means the annual, non-overtime compensation due an employee including, when applicable, the cost of the appointing authority's insurance or other contributions, longevity pay, supplemental pay and hazard pay.

(Y) "Reduction in pay" means an action which diminishes an employee's pay. When the conditions entitling an employee to supplemental pay end, the ending of supplemental pay shall not be considered a reduction, nor shall a change in the cost of an appointing authority's insurance or other contributions be considered a reduction.

It is understandable that Appellant would like to collect a vacation leave buyout based mostly on her higher level of pay that she earned *for many years*. It is also understandable that the buyout she did receive might seem skewed, since that buyout was essentially based on the lower rate of pay that she earned during her *much shorter service time in her final position* with Appellee.

Yet, it appears that Appellee's calculation of its payout was based on Appellant's "current rate of pay" (as required by R.C. 124.13 (E)) taking into account Appellant's "annual, non-overtime compensation" (as set forth in O.A.C. 124-1-02 (Q)). Accordingly, the undersigned cannot find error in Appellee's actions regarding its payout of Appellant's accrued vacation leave balance, following Appellant's resignation from her Nursing Home Case Manager position.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant appeal, for failure to state a claim upon which relief can be granted, pursuant to R.C. 124.03, R.C. 124.13 (E), R.C. 325.19 (A), R.C. 4117.10 (A), and O.A.C. 124-1-02 (Q) and (Y).



James R. Sprague
Administrative Law Judge