STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Richard Shaffer,

Appellant,

v. Case Nos. 2014-INV-09-0251
2014-MIS-09-0252

Department of Rehabilitation & Correction,

Appellee,

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 the instant appeals are **DISMISSED**.

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.

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 Numbers: 2014-INV-09-0251 and 2014-MIS-09-0252

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

Richard Shaffer	Case Nos. 14-INV-09-0251 14-MIS-09-0252
Appellant	
v.	April 3, 2015
Department of Rehabilitation & Correction, Mansfield Correctional Institution	
Appellee	Jeannette E. Gunn *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration pursuant to Appellee's Motion to Dismiss, filed with this Board on February 6, 2015. Appellee alleges that this Board is without jurisdiction to consider either Appellant's request for an investigation of its hiring processes or Appellant's denial of a promotion. Appellant filed no memorandum *contra*.

Information contained in the record indicates that Appellant filed an appeal with this Board on September 15, 2014, requesting an investigation of Appellee's hiring process as it related to Appellee's September 2014 reposting of a Building Maintenance Superintendent 1 position. Because the materials submitted by Appellant also appeared to contain an allegation that he had been improperly denied a promotion to the Building Maintenance Superintendent 1 position, Appellant's request was designated as two separate appeals, SPBR Case No. 14-INV-09-0251 and 14-MIS-09-0252.

CONCLUSIONS OF LAW

Appellee correctly states that this Board has no jurisdiction to investigate an individual's failure to be promoted. See *Ketron v. Ohio Dept. of Transportation* (1991), 61 Ohio App.3d 657; *Singh v. Ohio Dept. of Transportation* (1982), 7 Ohio

App.3d 269. Accordingly, this Board will not substitute its judgment for that of Appellee in determining the best candidate to fill a position.

In this matter, however, Appellant did not allege simply that he had been denied a promotion to which he was otherwise entitled; he also requested that the Board examine the hiring process utilized by Appellee to fill the vacant Building Maintenance Superintendent 1 position (position number 20020185) at the Mansfield Correctional Institution, originally posted in June 2014. Appellee argues that this Board also lacks jurisdiction to investigate its hiring processes, as it does not constitute one of the "triggering events" outlined in R.C. 124.56.

R.C. 124.56 provides that the State Personnel Board of Review shall make an investigation when it:

> . . . has reason to believe that any officer, board, commission, head of a department, or person having the power of appointment, layoff, suspension, or removal, has abused such power by making an appointment, layoff, reduction, suspension, or removal of an employee under his or their jurisdiction in violation of this chapter of the Revised Code . . . .

I find that Appellant's allegation of improprieties in Appellee's hiring process is sufficient to suggest a potential abuse of power in Appellee's appointment of an employee to the Building Maintenance Supervisor 1 position, thereby triggering the Board's jurisdiction pursuant to R.C. 124.56 and providing it with the authority to conduct a limited investigation into the process used to fill the position, specifically Appellee's reposting of the position in September 2014.

Appellee's Policy 34-PRO-04, which outlines Appellee's internal procedures for the evaluation and selection of applicants for all DRC positions except those which are unclassified, require assessment, or are subject to contractual obligations, states in Section VI(A)(2) that position applications must initially be reviewed by the appropriate individual to ensure that applicants meet the minimum qualifications for the position. Section VI(A)(3)(a) of DRC Policy 34-PRO-04 permits, but does not require, Appellee to select a candidate by making a merit selection following the scoring of applications. Appellee may also select a candidate, as provided by Section VI(A)(4), after conducting applicant interviews and making a written recommendation to fill the position.

The decision of how best to examine applicants for a position is left to the discretion of the appointing authority. *State, ex rel. King v. Emmons, et al.*, supra. An appointing authority may employ a variety of methods of competitive examination, including the review of an employment application, to determine an applicant's eligibility for appointment to a position. Information contained in the record indicates that for both the June 2014 and September 2014 posting of the Building Maintenance Superintendent 1 position examined herein, Appellee collected and reviewed the position applications submitted by candidates, reviewed them to determine whether or not the candidates met the minimum qualifications of the position, and assigned screening points to create an applicant pool.

Appellee conducted applicant interviews before making its recommendation from the June posting. Following its applicant interviews, Appellee recommended a single candidate, Charles Johnson, for the Building Maintenance Superintendent 1 position. Although Mr. Johnson's position application had been initially identified as containing sufficient information to demonstrate that he met the minimum qualifications of the Building Maintenance Supervisor 1 position, it was discovered after his recommendation for the position that it was inadequate to do so. Mr. Johnson's recommendation for the position was subsequently disapproved.

Appellee's Policy 34-PRO-04 does not make provision for a specific course of action to be followed when a candidate's recommendation is disapproved. In this instance, the interview committee fully discharged its duties under Section VI(A)(5) by making a recommendation to the appointing authority. After the candidate's recommendation was disapproved, the appointing authority made the determination to repost the position in September 2014. Appellee made a merit selection from among the qualified applicants responding to the reposting, again choosing to recommend Mr. Johnson for the position. A review of the information contained in Mr. Johnson's amended September 2014 position application indicated that he met the minimum qualifications for the position.

I find that Appellee acted in compliance with its internal procedures in hiring a candidate to fill the position of Building Maintenance Supervisor 1. Had Appellee proceeded with the original recommendation of the interview committee and placed Mr. Johnson in the Building Maintenance Superintendent 1 position without sufficient documentation to establish his qualification for the position, its actions would have been improper and could have resulted in a recommendation from this

Board that Mr. Johnson's appointment be rescinded and the position be reposted. Appellee, however, determined prior to the appointment that Mr. Johnson's application lacked the proper information to establish that he met the minimum qualifications of the position and properly disapproved the recommendation for personnel selection. Accordingly, I find that no abuse of power took place with regard to Appellee's June 2014 posting of the Building Maintenance Superintendent 1 position.

I further find that the September 2014 reposting of the position did not constitute an abuse of the power of appointment by Appellee. As previously noted, this Board lacks jurisdiction to consider an appeal of a denial of promotion and will not substitute its judgment for that of Appellee in determining the best candidate to fill a position. This Board must, instead, defer to Appellee's evaluation of the experience and skills of the applicants, and to Appellee's determinations as to which candidate is most qualified in regard to other applicants for a position. An appointing authority has discretion in whom it hires. Appellee chose a candidate from among the eligible individuals who applied for the Building Maintenance Superintendent 1 position after reviewing the applications submitted by those candidates.

Therefore, I respectfully **RECOMMEND** that the instant appeals be **DISMISSED**.

Jeannette E. Gunn
Administrative Law Judge