STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Darryl Morrison,

Appellant,

v.

Case Nos. 2014-RED-12-0297
2014-MIS-12-0298

Department of Public Safety,

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** since Appellant has not been reduced and since Appellee performed properly in paying out Appellant's accumulated sick leave balance, pursuant to R.C. 124.03, R.C. 124.384, and O.A.C. 124-1-02 (Y).

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, June 04, 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 June 11, 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-RED-12-0297 and 2014-MIS-12-0298

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 19, 2015

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Darryl Morrison	Case Nos. 2014-RED-12-0297 2014-MIS-12-0298
Appellant	
v.	April 10, 2015
Department of Public Safety	
Appellee	James R. Sprague *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes came on due to Appellant's December 10, 2014 filing wherein Appellant questioned why Appellee, Department of Public Safety (DPS), paid out only 55 percent of Appellant's accumulated sick leave balance, following Appellant's retirement, effective November 29, 2014. The records reflect that Appellant's last date of work was November 28, 2014. Further, the records appear to reflect that Appellant chose to retire at this time so that he could take advantage of certain significant OPERS retiree healthcare coverage options, since those options expired shortly thereafter.

On January 29, 2015, a pre-hearing was held in these matters. On March 23, 2015, DPS filed: a motion to dismiss; a memorandum in support; the affidavit of Daniel DeNiro, a DPS Human Capital Management Manager; and two pertinent exhibits. On April 7, 2015, Appellant filed: a motion to award; a memorandum in support; and a response to the Administrative Law Judge's directive.

Appellant asserts that he should have received a payout of 80 percent of his allowable sick leave balance upon his retirement. However, he only received 55 percent of that balance and, accordingly, seeks the dollar amount that this 25 percent differential represents.

Conversely, DPS has asserted that, because Appellant chose to retire, he was only eligible for the 55 percent payout of his allowable sick leave balance upon his retirement. There is no dispute that Appellant did receive his 55 percent cash-

out and the parties disagree only about Appellant's assertion regarding the additional 25 percent differential.

R.C. 124.384 is entitled "Accumulated sick leave". R.C. 124.384 (A) states, in pertinent part:

> (A) Except as otherwise provided in this section, employees whose salaries or wages are paid by warrant of the director of budget and management and who have accumulated sick leave under section 124.38 or 124.382 of the Revised Code shall be paid for a percentage of their accumulated balances, upon separation for any reason, including death but excluding retirement, at their last base rate of pay at the rate of one hour of pay for every two hours of accumulated balances. An employee who retires in accordance with any retirement plan offered by the state shall be paid upon retirement for each hour of the employee's accumulated sick leave balance at a rate of fifty-five per cent of the employee's last base rate of pay. ... (emphasis added)

R.C. 124.384 (A) generally governs cash-outs for separating employees and expressly sets forth a 55 percent rate for cash-outs of retiring state employees. Because Appellant retired, it appears that he would be eligible for a 55 percent rate for his sick leave cash-out.

R.C. 124.383 ("Options with respect to sick leave credit remaining at end of year") governs sick leave balance cash-out for state employees in active service and states:

> (A) The director of administrative services shall allow a full-time or part-time employee who is credited with sick leave pursuant to division (B) of section 124.382 of the Revised Code to elect one of the following options with respect to sick leave credit remaining at the end of the year:
>
> (1) Carry forward the balance;
>
> (2) Receive a cash benefit as established by the director [sic]. An employee serving in a temporary work level who elects to convert

> unused sick leave credit to cash shall do so at the base rate of pay of the employee's normal classification.
>
> (3) Carry forward a portion of the balance and receive a cash benefit for the remainder. The cash benefit shall be calculated in the manner specified in division (A) (2) of this section.
>
> (B) The director of administrative services shall establish procedures to allow employees to indicate the option that will be selected. Included within the procedures shall be the final date by which notification is to be made to the director concerning the option selected. Failure to comply with the date will result in the automatic carry forward of unused balances.
>
> (C) Cash benefits shall be paid in the first pay the employee receives in December.
>
> (D) Balances carried forward are excluded from further cash benefits provided under this section.
>
> (E) An employee who separates *during the year* shall not be eligible for cash benefits provided under this section. (emphasis added)

O.A.C. 123: 1-32-08 ("Conversion or carry-forward of sick leave or personal leave credit at year's end for employees paid by warrant of the director of budget and management.") states, in pertinent part:

> A) Conversion or carry-forward of sick leave credit or personal leave credit at year end. An employee whose wage or salary is paid by warrant of the director of budget and management shall have, pursuant to the following provisions, the option to convert to cash benefit payable on the first payday in December or carry forward the balance of any unused sick leave credit or personal leave credit at year's end.
>
> (1) Sick leave credit conversion or carry-forward. An employee who accrues sick leave pursuant to section 124.382 of the Revised Code and rule 123:1-32-01 of the Administrative Code shall have at year's end the following options with regard to the portion of sick leave credit:

(a) Carry forward the balance of sick leave credit.

(b) Receive a cash benefit conversion for the unused balance of sick leave credit. An employee serving in a temporary work level or an interim appointment who elects to convert unused sick leave to cash shall do so based on the base rate of pay of his or her normal classification. Unused sick leave shall be converted at a rate based on the amount of sick leave remaining as of the last day of the pay period preceding the first paycheck the employee receives in December as described below:

(i) An employee who did not use sick leave during or subsequent to the pay period preceding the first paycheck the employee receives in December may convert up to eighty hours of unused sick leave at a rate equal to eighty per cent of the employee's base rate of pay. ... (emphasis added)

Appellant posits that he separated following the sick use year. Moreover, he asserts, because he did not use sick leave the during the pertinent pay periods, he should be eligible for the full 80 percent cash-out of his pertinent sick leave. Appellant disagrees with the Department of Administrative Services' (DAS) pronouncement that the sick leave use year here ended on the last day of the last pay period in November, namely November 29, 2014. (Please see R.C. 124.383 (E), highlighted, above)

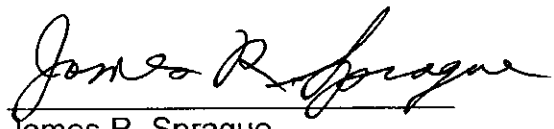
Appellant retired in accordance with a retirement plan offered by OPERS. Appellant was paid for his accumulated sick leave balance. He received 55 percent of his last base rate of pay. Thus, I find that DPS (though DAS) has complied with the pertinent provisions set forth in R.C. 124.384.

Further, I do not find the provisions of O.A.C. 123: 1-32-08 to be in conflict with or inconsistent with the pertinent provisions in R.C. 124.384. Even if they were, R.C. 124.384 would still prevail, since an Ohio Administrative Code provision can neither enlarge, abridge, nor supercede a pertinent Revised Code provision.

It is understandable that Appellant could read these provisions separately and believe that he was entitled to an 80 percent cash-out. Nonetheless, when carefully examined, R.C. 124.384 is clear that, for a state employee separating from state service through a pertinent state retirement plan, the new retiree is to receive

a sick leave balance payout of 55 percent of the retiree's last base rate of pay.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the two instant appeals since Appellant has not been reduced and since Appellee performed properly in paying out Appellant's accumulated sick leave balance, pursuant to R.C. 124.03, R.C. 124.384, and O.A.C. 124-1-02 (Y).



James R. Sprague
Administrative Law Judge