

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

Gina Taylor,

Appellant,

v.

Case No. 2015-ABL-06-0088

Department of Job & Family Services,

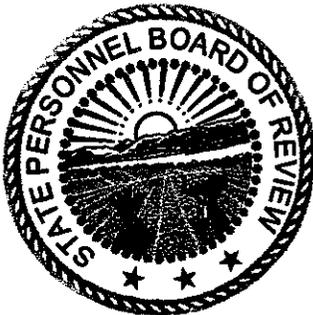
Appellee,

ORDER

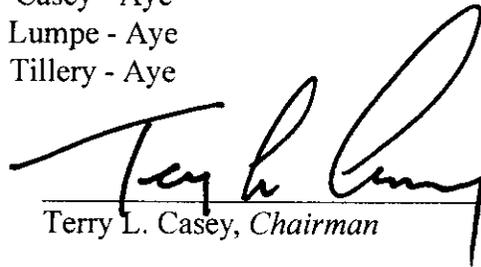
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellee's motion is **GRANTED** and the instant appeal is **DISMISSED** for lack of a justiciable issue, pursuant to R.C. 124.03 and R.C. 124.328.



Casey - Aye
Lumpe - Aye
Tillery - Aye

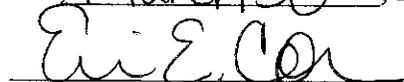


Terry L. Casey, *Chairman*

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 30, 2016.



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 April 6, 2016. 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: 2015-ABL-06-0088

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: April 14, 2016

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

Gina Taylor

Case No. 2015-ABL-06-0088

Appellant

v.

January 22, 2016

Department of Job and Family Services

James R. Sprague

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's timely filing of an appeal from the abolishment of her position of Program Delivery Supervisor in the Lima Processing Center, effective June 26, 2015. Appellant earned \$28.11 per hour in that position.

Pursuant to Appellant's stated notification that she wished to exercise her displacement rights, effective June 29, 2015, Appellant was able to displace into a Program Delivery Supervisor position in Appellee's Hancock County Ohio Means Jobs Center, still at a rate of \$28.11 per hour, with no apparent break in service. Appellant still worked the day shift, but now worked a five-day week instead of the optional four-day week previously allowed.

Following Appellant's filing of her appeal, the record in this matter was extensively developed. This included holding two pre-hearings.

On November 13, 2015, Appellee filed Appellee's motion to dismiss, a memorandum in support, the affidavit of Deputy Director Tiffany Richardson, and various supporting exhibits. On December 21, 2015, Appellant filed her memorandum *contra* and a request for an extension of time to supplement same.

On December 22, 2015, this Board issued a Procedural Order granting Appellant's request. On January 5, 2016 (January 4, 2016 at 11:59 p.m.), Appellant timely filed her supplementation of her memorandum *contra* and requested an extension of time, in order to file a second supplementation of her memorandum *contra*.

On January 6, 2016, this Board issued a Procedural Order granting Appellant's second request. On January 20, 2016 (January 19, 2016 at 11:59 p.m.), Appellant timely filed her second supplementation of her memorandum *contra*.

In its motion to dismiss, Appellee asserts that Appellant has suffered no harm that would provide Appellant with an issue that would be justiciable before this Board. Specifically, Appellee asserts that Appellant is earning the same rate of pay in the same class for the same appointing authority in the same layoff district as she did before the abolishment of her position. Appellee also asserts that Appellant is working the same shift as she did before the abolishment.

Yet, Appellant asserts that she must now work a five-day week instead of a four-day week and that her commute is considerably longer now than before the abolishment, costing her considerably more time and money to get to and from work than previously. Further, she asserts, she is not doing the duties she previously performed. (Parenthetically, I note that Appellee also asserts that the abolishment of Appellant's position was both procedurally and substantively compliant. Appellant contests these assertions.)

This Board has held that there is no justiciable issue present in an appeal where the affected employee may have suffered an adverse impact, yet where the potential remedy for that impact lies beyond the authority of this Board to grant. On page 6 of its memorandum in support, Appellee has cited a number of recent cases in which this Board has adopted or reaffirmed that legal principle.

In this case, *Appellant is still making the same rate of pay in the same class for the same agency in the same layoff district.* Yet, assume for the sake of argument that Appellee was unable to bear its burden of proof in this matter or that Appellant was able to demonstrate bad faith on the part of Appellee.

The remedy that this Board could then offer Appellant under those circumstances would basically place Appellant in the same circumstances she presently faces. Moreover, it is questionable whether this Board could restore a four-day work week to Appellant; since there is no legal requirement that an Appellee must offer an employee in Appellant's classification and/or position a four-day work week.

It is understandable that Appellant is concerned about the increase in time and money that her increased commute may cost her. It is also understandable that Appellant wishes to serve in what was her previous position (prior to its abolishment) with its attendant duties. Yet, this Board is simply not empowered to offer such resolution to Appellant.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal, for lack of a justiciable issue, pursuant to R.C. 124.03 and R.C. 124.328.

Gina Taylor
Case No. 2015-ABL-06-0088
Page 3



James R. Sprague
Administrative Law Judge