

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

Donnetta Loomis,

Appellant,

v.

Case No. 2015-ABL-06-0089

Department of Job & Family Services,

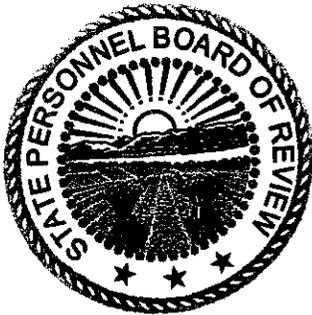
Appellee,

ORDER

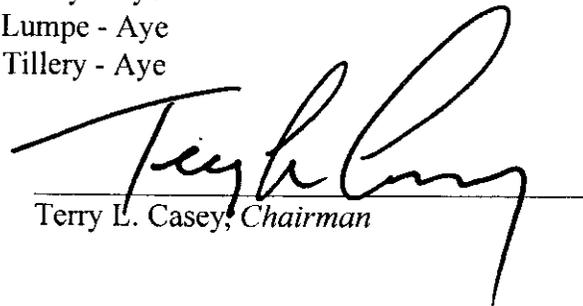
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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**, pursuant to the terms of the Placement Agreement executed by Appellant, OCSEA, and Appellee.



Casey - Aye
Lumpe - Aye
Tillery - Aye

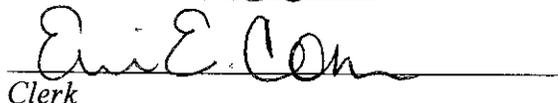


Terry L. Casey, *Chairman*

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-06-0089

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**

Donnetta Loomis

Case No. 2015-ABL-06-0089

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 Unemployment Contribution Assistant Supervisor (working title of Unemployment Contribution Examiner), effective June 26, 2015. The record in this matter was then extensively developed. This included holding two pre-hearings.

On January 5, 2016, Appellee filed Appellee's motion to dismiss, a memorandum in support, the affidavits of Human Capital Management Manager Nancy Jancso-Kosarek and Deputy Director Tiffany Richardson, and various supporting exhibits. On January 19, 2016, Appellant timely filed her memorandum *contra* to Appellee's motion to dismiss.

There are a number of issues that could be reviewed in this matter. However, it appears that, on or about July 16, 2015, Appellant (in conjunction with her union, AFSCME/OCSEA) and Appellee executed a "Placement Agreement" as a result of which Appellant was placed into a vacant Hearing Assistant position in Appellee's Office of Legal and Acquisition Services. (Please see Appellee's Exhibit G attached to Appellee's motion to dismiss.) In the Agreement, Appellant essentially waives whatever rights she may have possessed at that time or thereafter to challenge Appellee's aforementioned abolishment. Specifically, at the bottom of page 1., the Agreement reads:

OCSEA and Employee [Appellant] agrees [sic] to waive any and all rights they may currently or subsequently possess to obtain any reparation, restitution or redress for its members as a result of the events which formed the basis of the aforementioned Agreement, including the right to have the Agreement challenged through arbitration, or resort to administrative appeal or through the institution of legal action.

As can be seen from this mutually executed language, Appellant waived her right to pursue any challenge regarding the abolishment of her Unemployment Contribution Assistant Supervisor position in exchange for receiving her appointment to a Hearing Assistant position. No doubt, Appellant faced an uncomfortable choice and it is easy to understand why Appellant ultimately felt she had to sign the Agreement in order to receive this position, as she states on pages 2 and 3 of her Memorandum *Contra*.

Yet, Appellant was represented by OCSEA at the time she signed the Agreement and there is no evidence in the record that Appellant was the victim of fraud, duress, or other deception. Moreover, there is no evidence in the record that Appellee was required to offer Appellant the aforementioned Hearing Assistant position but Appellee did so, nonetheless.

Thus, I find there is merit to Appellee's assertion (set forth on pages 8 and 9 of its motion to dismiss) that this matter has been amicably and dispositively resolved. Accordingly, the instant appeal should be dismissed in accordance with the waiver-of-rights terms set forth in the parties' Placement Agreement.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal, pursuant to the terms of the Placement Agreement executed by Appellant, OCSEA, and Appellee.


James R. Sprague
Administrative Law Judge