

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Matt Harper,

Appellant,

v.

Case No. 2015-INV-09-0181

Hamilton County Engineer,

Appellee,

ORDER

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

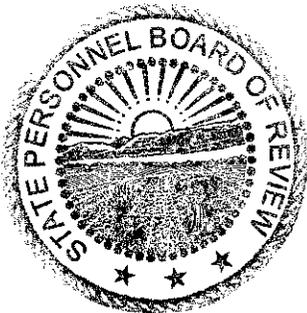
After a thorough examination of the entirety of the record, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

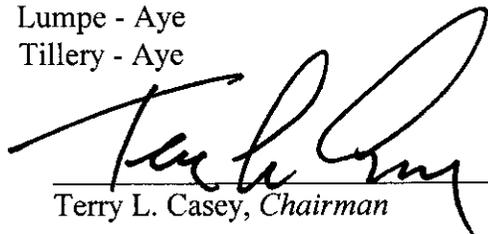
Wherefore, it is hereby **ORDERED** that the instant **REQUEST FOR AN INVESTIGATION** is **TERMINATED**, pursuant to R.C. Chapter 124. inclusive of R.C. 124.56.

Casey - Aye

Lumpe - Aye

Tillery - Aye

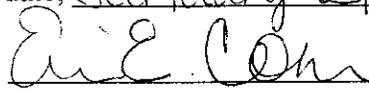



Terry L. Casey, *Chairman*

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, January 21, 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 January 28, 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-INV-09-0181

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: February 5, 2016

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

Matt Harper

Case No. 2015-INV-09-0181

Appellant

v.

December 18, 2015

Hamilton County Engineer

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 September 28, 2015 filing of a request for an investigation into certain promotional practices of Appellee, Hamilton County Engineer (HCE). Appellant appears to serve as a Highway Maintenance Worker with the HCE's Western Division.

In his request letter, Appellant sets forth six allegations. **Allegations four, five, and six** appear to be timely filed, since they appear to fall within O.A.C. 124-1-03 (F)'s time frame established for requests for investigations.

Accordingly, on October 7, 2015, this Board issued a letter to the HCE and included therein Appellant's investigation request document. This Board's letter to the HCE requested that Appellee file its response to allegations four, five, and six by November 12, 2015.

On November 9, 2015, Appellee timely filed its response. That response included a position statement and voluminous documentation. Appellee also noted that Appellant had what appeared to be an active three-day suspension in his file and that this discipline was one of several factors that impacted on Appellant's ability to be placed into the several positions that he apparently sought with the HCE.

On November 19, 2015, this Board issued a letter to Appellant and included therein Appellee's response documents. The letter to Appellant requested that

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Appellant file his reply to Appellee's response postmarked by December 14, 2015. On December 14, 2015, Appellant timely filed his reply to Appellee's response.

In his reply, Appellant continues to assert that the HCE manipulated the consideration process for various positions. He disagrees with the HCE's assertion that his discipline was still active and that it was necessary to consider same.

R.C. 124.56 is entitled "Investigation of violations" and contains this Board's investigative authority over County entities such as the HCE.

R.C. 124.56 states:

When the state personnel board of review or a municipal or civil service township civil service commission 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, the board or commission shall make an investigation, and if it finds that a violation of this chapter, or the intent and spirit of this chapter has occurred, it shall make a report to the governor, or in the case of a municipal or township officer or employee, the commission shall make a report to the mayor or other chief appointing authority, or in the case of a civil service township, the commission shall make a report to the board of township trustees, who may remove forthwith such guilty officer, board, commission, head of department, or person. The officer or employee shall first be given an opportunity to be publicly heard in person or by counsel in his own defense. The action of removal by the governor, mayor, or other chief appointing authority is final except as otherwise provided in this chapter of the Revised Code.

Effective Date: 08-09-1974

In this case, each side has provided substantial documentation to support its respective position and this Board has carefully and thoroughly reviewed same. Based on that review, it appears that reasonable minds can differ regarding whether Appellant's three-day suspension was, or could have been, considered regarding

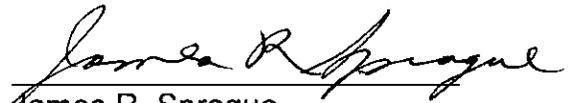
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the positions that Appellant may have sought and that are the subject of allegations four, five, and six.

Regardless of which argument is accepted (Appellant's or Appellee's), it appears that the time period in which Appellant's three-day suspension remains active will expire in mid-March 2016. From that time forward, if Appellant does not encounter any additional pertinent discipline, it appears that he will, once again, be able to apply for various positions that may arise with the HCE and for which positions he meets the minimum qualifications. Further, considering the size and scope of the HCE, it seems reasonable to presume that positions for which Appellant may have an interest will become available subsequent to mid-March 2016 and that Appellant could apply for one or more of those positions if he wished to do so.

Ultimately, the extant record does not support a finding that Appellee violated the provisions of R.C. Chapter 124. Moreover, the extant record does not support a finding that Appellee violated the intent and spirit of R.C. Chapter 124. Accordingly, the instant request for an investigation should be terminated.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **TERMINATE** the instant **REQUEST FOR AN INVESTIGATION**, pursuant to R.C. Chapter 124. inclusive of R.C. 124.56.


James R. Sprague
Administrative Law Judge