

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

Michael Boeckermann,

*Appellant,*

v.

Case No. 2015-MIS-07-0092

University of Cincinnati,

*Appellee,*

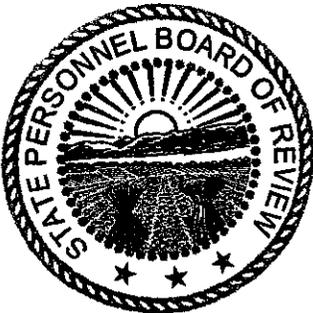
**ORDER**

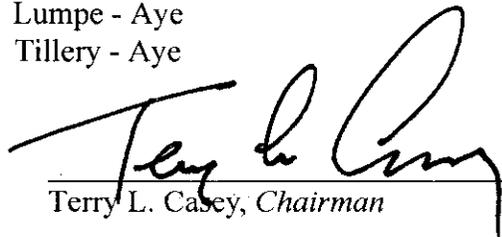
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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. *The parties should note that this Board has carefully reviewed Appellant's objections. However, the parties should also understand that this Board cannot provide advisory opinions on the issues that may come before this Board from time to time.*

Wherefore, it is hereby **ORDERED** that the instant appeal is **DISMISSED** since it appears that Appellee is in full compliance with the applicable provisions set forth in R.C. 124.134 and R.C. 9.44.

Casey - Aye  
Lumpe - Aye  
Tillery - Aye

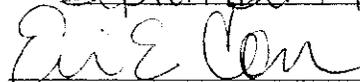


  
Terry L. Casey, *Chairman*

**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, September 14, 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 September 21, 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 Number: 2015-MIS-07-0092

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: September 29, 2015

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

Michael Boeckermann

Case No. 2015-MIS-07-0092

*Appellant*

v.

July 17, 2015

University of Cincinnati

*Appellee*

James R. Sprague

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's July 9, 2015 filing of an appeal regarding his concern that he is not receiving the requisite vacation leave credit that he expects; given his approximately 31 and one-half years of prior service with the Green Township Fire Department (GTFD). Appellant retired from the GTFD in January, 2015, under the Ohio Police and Fire Pension Fund (the Police and Fire Fund). Appellant is currently employed by Appellee in the position of Fire Inspector under the Department of Public Safety, where he has served since February 9, 2015.

Appellant points to the vacation accrual provisions found in R.C. 124.134 (set forth in pertinent part, below) to bolster his argument that he should be accruing vacation leave at a rate taking into account his nearly 32 years of prior service with one of the political subdivisions of the state.

R.C. 124.134 (A) reads, in pertinent part:

**124.134 Vacation leave - employees exempt from collective bargaining.**

(A) Each full-time permanent state employee paid in accordance with section 124.152 of the Revised Code and those employees listed in divisions (B)(2) and (4) of section 124.14 of the Revised Code shall be credited with vacation leave with full pay according to length of service and accruing at a corresponding rate per biweekly pay period, as follows: Length of Service Accrual Rate Per Pay Period

Less than 4 years 3.1 hours

4 but less than 9 years 4.6 hours

9 but less than 14 years 6.2 hours

14 but less than 19 years 6.9 hours

19 but less than 24 years 7.7 hours

24 years or more 9.2 hours

Fifty-two weeks equal one year of service.

**The amount of an employee's service shall be determined in accordance with the standard specified in section 9.44 of the Revised Code.** Credit for prior service, including an increased vacation accrual rate and longevity supplement, shall take effect during the first pay period that begins immediately following the date the director of administrative services approves granting credit for that prior service. No employee, other than an employee who submits proof of prior service within ninety days after the date of the employee's hiring, shall receive any amount of vacation leave for the period prior to the date of the director's approval of the grant of credit for prior service. ... (emphasis added) (original spacing adjusted)

R.C. 9.44, which R.C. 124.134 references, states:

**9.44 Prior public service counted in computing vacation leave.**

(A) Except as otherwise provided in this section, a person employed, other than as an elective officer, by the state or any political subdivision of the state, earning vacation credits currently, is entitled to have the employee's prior service with any of these employers counted as service with the state or any political subdivision of the state, for the purpose of computing the amount of the employee's vacation leave. The anniversary date of employment for the purpose of computing the amount of the employee's vacation leave, unless deferred pursuant to the appropriate law, ordinance, or regulation, is the anniversary date of such prior service.

(B) To determine prior service for the purpose of computing the amount of vacation leave for a person initially employed on or after July 5, 1987, by:

(1) A municipal corporation, the person shall have only prior service within that municipal corporation counted;

(2) A township, the person shall have only prior service with a township counted.

(C) An employee who has retired in accordance with the provisions of any retirement plan offered by the state and who is employed by the state or any political subdivision of the state on or after June 24, 1987, shall not have prior service with the state, any political subdivision of the state, or a regional council of government established in accordance with Chapter 167. of the Revised Code counted for the purpose of computing vacation leave. (emphasis added)

Appellant retired from Green Township, which is considered to be a political subdivision of the state for the purposes of retirement governed by R.C. Chapter 124. Additionally, Appellant retired from Green Township in accordance with the provisions offered by the Police and Fire Fund, a state retirement system.

Appellant was then hired by Appellee. As a state university, Appellee is considered to be a part of the state or one of its political subdivisions for the purposes of retirement governed by R.C. Chapter 124. Appellant's date of hire with Appellee occurred subsequent to June 24, 1987. Moreover, Appellant's position with Appellee does not fall under collective bargaining; thus, no collective bargaining agreement is present to alter R.C. 9.44's restrictions on Appellee.

Accordingly, in Appellant's present circumstances, Appellee is *not* to count Appellant's prior service with Green Township for the purpose of computing the vacation leave that he is to receive from Appellee.

Because Appellee has hired Appellant to serve as a Fire Inspector, it seems self-evident that Appellee respects Appellant's qualifications as well as the experience in the fire inspection field that Appellant "brings to the table". However, Appellee is not permitted to count Appellant's prior years of service with Green Township in computing the rate at which Appellant is to accrue vacation leave.

#### RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant appeal, since it appears that Appellee is in full compliance with the applicable provisions set forth in R.C. 124.134 and R.C. 9.44.



James R. Sprague  
Administrative Law Judge