

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

Beverly Gardner,

Appellant,

v.

Case No. 2015-RED-06-0070

Lorain County Board of Commissioners,

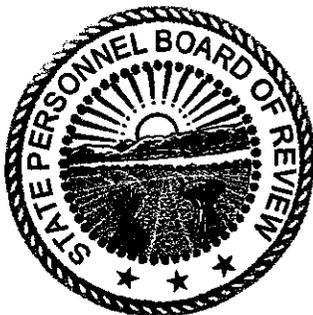
Appellee,

ORDER

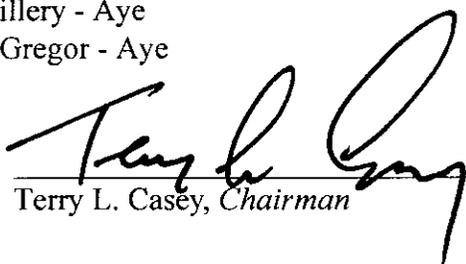
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 appeal is **DISMISSED**, since Appellant has not been reduced in pay, pursuant to R.C. 124.03, R.C. 124.34, O.A.C. 124-1-02 (Q) and (Y), and O.A.C. 124-1-03 (E).



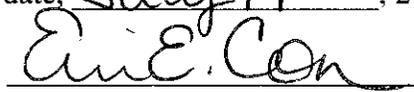
Casey - Aye
Tillery - Aye
McGregor - Aye


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, July 14, 2016.


Eric E. Con
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 July 21, 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-RED-06-0070

Transcript Costs: \$45.00 Administrative Costs: \$25.00

Total Deposit Required: * \$70.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: July 29, 2016

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

Beverly Gardner

Case No. 2015-RED-06-0070

Appellant

v.

June 13, 2016

Lorain County Board of Commissioners

Appellee

James R. Sprague
Chief Administrative Law Judge
Raymond M. Geis
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came to be heard on April 26, 2016. Present at the hearing was Appellant, who appeared *pro se*. Appellee, Lorain County Board of Commissioners (BOC), was present through its designee, Beverly Varady, BOC Payroll Specialist, and was represented by Eugene P. Nevada, Attorney at Law.

This cause comes on due to Appellant's June 1, 2015 filing of an appeal. Appellant has alleged that she was denied a merit raise that should have been given to her effective on or about December 17, 2014. *Both the questions of whether Appellant timely filed the instant appeal and whether Appellant experienced a "reduction in pay" will be discussed further, below.*

Appellant was placed with her current agency as a result of a settlement achieved during the pendency of Appellant's 2011 layoff case (*i.e.* SPBR Case No. 2011-LAY-12-0377). Appellant has alleged that she was denied this raise; because Lorain County Administrator Jim Cordes held a lingering resentment against Appellant. Appellant further asserts this resentment came about because the terms of Appellant's afore-mentioned settlement required another employee to relocate to another County agency.

At the conclusion of the April 26, 2016 hearing, Appellee was instructed to supplement the record by filing pertinent page(s) from Appellee's Class Plan, in order to show the Pay Range assigned to Appellant's classification. Appellee was also instructed to file a copy of Appellant's Position Description and/or a copy of the Classification Specification assigned to Appellant's position. Further, Appellee was provided with the option to file relevant commentary on its supplementation. Appellant was provided with the opportunity to file an optional response to Appellant's submission.

On May 23, 2016, Appellee filed its Post Hearing Submission. On June 6, 2016, Appellant filed her optional commentary regarding Appellee's Post Hearing submission. The instant record was then closed.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

Appellant is an employee of the Lorain County Solid Waste Management District (District). She has been employed at the District as its sole Administrative Assistant (AA) since she reached a settlement with the BOC concerning her 2011 layoff appeal. She filed that appeal with this Board after she was laid off from her position with the Lorain County Workforce Development Agency.

In a Memo dated October 23, 2014, District Director Keith Bailey requested that County Administrator Jim Cordes provide Appellant with a pay raise from \$17.67 per hour to \$19.00 per hour. In his Memo, Director Bailey delineated several reasons for this request. These included but were not limited to Appellant taking on further temporary and permanent job duties.

On December 17, 2014, the BOC resolved to provide approximately 21 BOC employees (including three of the employees of the District but not Director Bailey or Appellant) with raises. (Please see BOC Resolution No. 14-807) Appellee has indicated that these raises resulted either from changes in Classification for the affected employees (due to increase duties) or from discretionary merit raises.

Discourse then ensued between Appellant and Director Bailey and also between Director Bailey and Administrator Cordes. In March, 2015, Director Bailey was given a pay increase. (Please see BOC Resolution No. 15-172)

On or about May 13, 2015, Appellant wrote a letter to Director Bailey requesting to be informed in writing as to reason Appellant had not received a merit increase. Yet, as of the date of hearing, Appellant had not received a written response from him.

It appears that at the beginning of CY 2015, Appellant's pay may have been increased pursuant to a BOC three percent across-the-board wage increase. Appellant indicated that her current pay falls somewhere in the range of \$18.56 per hour to \$18.76 per hour.

At hearing, Appellant also offered into evidence a December 3, 2015 dated Memo from Director Bailey to Administrator Cordes. In that Memo, Director Bailey, again, requests a merit raise for Appellant.

The thrust of Appellant's concern in this appeal is that Appellant did not and has not received the "merit" pay raise that numerous other BOC employees (including three other District employees) received on or about December 17, 2014. Appellant declared that she has been assigned different and additional duties (as have many of her peers) yet she received no merit increase in December 2014. She stated that this was despite the express written request and justification that Director Bailey sent to Administrator Cordes. (Please see Director Bailey's December 5, 2015 Memo referenced, above)

Appellant further asserts that Administrator Cordes may have hard feelings toward Appellant. Appellant opined this was because the person whose position Appellant took (as part of the settlement of her previous SPBR case) was apparently required to take a position with another agency under the BOC.

Appellant also indicated that, as the District's and Director Bailey's AA, she continues to have some interaction with Administrator Cordes. Appellant characterized her interaction with the Administrator as what might be termed distant and even frosty.

We note for the record that Appellant continues to assert that she did not claim that her pay was reduced. What she asserts is that she did not receive a raise to which she believes she was entitled.

Findings

Based on the testimony presented at hearing, upon the evidence admitted hearing, and upon the parties' respective supplementations of the record following the conclusion of hearing, I make the following Findings:

First, I incorporate, herein, any finding set forth, above, whether express or implied.

Next, I find that Appellant did not receive what appears to be a discretionary merit raise that the BOC provided to a number of its employees **on or about December 17, 2014**. Also, Appellant's classification did not change.

I further find the BOC provided Appellant and others with a discretionary raise around the beginning of CY 2015 and that her pay has not declined since.

Moreover, Appellant's pay appears to correctly fall within the pay band set forth in Pay Grade 5, which is the Pay Grade assigned to Appellant's "Administrative Assistant" classification and position. (Please see Appellee's Supplemental Exhibit 1 at pages 1 through 2)

Appellant filed her instant appeal with this Board on June 1, 2015. As will be discussed further, below, this is well past the 90-day appeal time for appeals from an "alleged reductions in pay or position", as set forth in O.A.C. 124-1-03 (E).

CONCLUSIONS OF LAW

This case presents this Board with two questions. First, did Appellant timely file the instant appeal? Secondly, did Appellant experience a "reduction in pay" as that term is defined in O.A.C. 124-1-02 (Y)? Based on the findings set forth, above, and for the reasons, below, this Board should find that Appellant timely filed the instant appeal and further find that Appellant did not experience a reduction in pay.

Did Appellant timely file her appeal?

Let us, first, turn to the question of whether Appellant timely filed the instant appeal. Appellant first received notice that her pay would not be increased commensurate with other employees pursuant to the BOC's December 17, 2014 resolution. On or about June 1, 2015, Appellant filed her appeal from not receiving a raise commensurate with the BOC's issuance of that resolution.

O.A.C. 124-1-03 (E) sets forth the time limit for filing an alleged reduction in pay or position and states:

E) Appeals from alleged reductions in pay or position which do not involve a "section 124.34 order" shall be filed within ninety days after receipt of notice of the reduction or if no notice is given, within ninety days of the actual imposition of the reduction. *The appeal time may be extended within the discretion of the board.* (emphasis added)

Clearly, Appellant filed the instant appeal well after the 90-day deadline set forth in O.A.C. 124-1-03 (E). Yet, as reflected in the record, Appellant attempted several times in the interim to determine when or, indeed, whether Appellant would be receiving a raise for what she (and Director Bailey) have stated were increased duties that Appellant was performing. Moreover, on or about May 15, 2015, Appellant wrote to Director Bailey and requested a written explanation as to why Appellant had not received a merit increase but got no written response and, within three weeks thereafter, filed her appeal.

Thus, it can be argued, Appellant pursued logical internal steps to determine when and, indeed, if she would be receiving a merit raise. When she had exhausted her internal options to gain information, she filed her appeal. Since O.A.C. 124-1-03 (E) provides this Board with the discretion to extend the appeal

time for an alleged reduction in pay, this Board is authorized to consider Appellant's appeal to be timely filed, and we so recommend.

Was Appellant "reduced in pay"?

O.A.C. 124-1-02 (Q) defines "pay" as follows:

(Q) "Pay" means the annual, non-overtime compensation due an employee including, when applicable, the cost of the appointing authority's insurance or other contributions, longevity pay, supplemental pay and hazard pay.

O.A.C. 124-1-02 (Y) defines "reduction in pay" as follows:

(Y) "Reduction in pay" means an action which diminishes an employee's pay. When the conditions entitling an employee to supplemental pay end, the ending of supplemental pay shall not be considered a reduction, nor shall a change in the cost of an appointing authority's insurance or other contributions be considered a reduction.

The record reflects that Appellant's weekly gross pay has not diminished since the BOC issued its December 14, 2014 resolution. Moreover, Appellant's pay increased with a subsequent across-the-board increase provided by the BOC.

It is true that Appellant's rate of pay is not as high as it would have been, had she received a raise in the BOC's December 17, 2014 resolution. It may also be that Appellant's pay is not at the level she believes is commensurate with the qualitative level of duties that she is performing.

It is clear from the record that Appellant has taken on additional duties. Further, as can be seen by Director Bailey's October 23, 2015 and December 3, 2015 Memos, Appellant is a highly valued staff member of the Lorain County Solid Waste Management District.

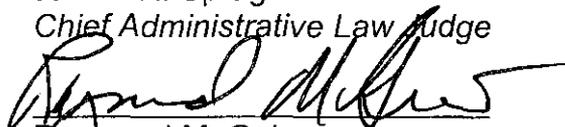
However, this Board should find that Appellant has not experienced a "reduction in pay", as that term is defined in O.A.C. 124-1-02 (Y). For this reason, the instant appeal should be dismissed.

RECOMMENDATION

Therefore, we respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant appeal, since Appellant has not been reduced in pay, pursuant to R.C. 124.03, R.C. 124.34, O.A.C. 124-1-02 (Q) and (Y), and O.A.C. 124-1-03 (E).



James R. Sprague
Chief Administrative Law Judge



Raymond M. Geis
Administrative Law Judge