

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Dan Fodor,

Appellant,

v.

Case Nos. 2015-RED-10-0188
2015-MIS-10-0189

Bureau of Workers Compensation,

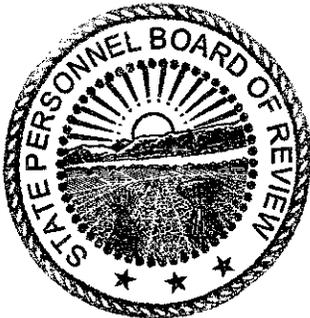
Appellee,

ORDER

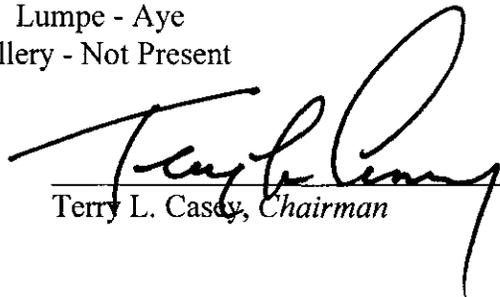
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, 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 two instant appeals are **DISMISSED** for lack of jurisdiction over their subject matters, pursuant to R.C. 124.03, R.C. 124.152, R.C. 124.34, and O.A.C. 124-1-02 (Y).



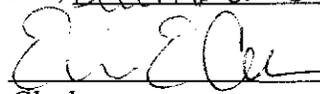
Casey - Aye
Lumpe - Aye
Tillery - Not Present


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, December 04, 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 December 11, 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 Numbers: 2015-RED-10-0188 and 2015-M IS-10-0189

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: December 21, 2015

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

Dan Fodor

Case Nos. 2015-RED-10-0188
2015-MIS-10-0189

Appellant

v.

October 23, 2015

Bureau of Workers Compensation

James R. Sprague
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

These causes come on pursuant to Appellant's filing of two appeals. The subject of those appeals concerns Appellant's not receiving an increase in his former "Step 7" (now new "Step 8") hourly rate for Pay Range 15, which is the Pay Range assigned to Appellant's classification and position.

This follows the passage and signing of the FY 2016/2017 general operating Biennial Budget (aka H.B. 64). Pursuant to that enactment, the Department of Administrative Services added a new step (Step 7) to Pay Rate Schedule E1 for Pay Ranges 12, 13, 14, 15, and 16.

Employees such as Appellant achieved the former Step 7 level of pay (when it was offered a number of years ago) as a result of recognition by each employee's respective appointing authority that the employee had provided exemplary service for the designated time period. Only employees so designated were allowed to be assigned to former Step 7. *Appellant has been enjoying the pay differential that being assigned to former Pay Range 7 yielded since, by his own estimation, sometime in CY 2003.*

Each employee (such as Appellant) whose position fell within any Pay Range eligible to utilize (the newly created) Step 8 did receive a pay increase for parity with collective bargaining positions. *However, the hourly rate (minus longevity and other supplements) for those new Step 8 (former Step 7) employees now falls below the actual dollar rate for those new Step 7 employees.* In other words, according to Appellant, his pay now falls in new Step 8 but is below the pay of similar Pay Range 15 employees who are now in new Step 7.

R.C. 124.152 generally governs the former Step 7 program. Pursuant to modifications effectuated by H.B. 64, R.C. 124.152 now reads, in pertinent part:

124.152 [Effective 9/29/2015] Salary schedules.

(A)

(1) Except as provided in divisions (A)(2) and (3) of this section, each exempt employee shall be paid a salary or wage in accordance with schedule E-1 or schedule E-2 of division (B) of this section.

(2) Each exempt employee who holds a position in the unclassified civil service pursuant to division (A)(26) or (30) of section 124.11 of the Revised Code may be paid a salary or wage in accordance with schedule E-1, schedule E-1 for step eight only, or schedule E-2 of division (B) or (C) of this section, as applicable.

(3)

(a) Except as provided in division (A)(3)(b) of this section, each exempt employee who was paid a salary or wage at step 7 in the employee's pay range on June 28, 2003, in accordance with the applicable schedule E-1 of former section 124.152 of the Revised Code and who continued to be so paid on June 29, 2003, shall be paid a salary or wage in the corresponding pay range in schedule E-1 for step eight only of division (C) of this section for as long as the employee remains in the position the employee held as of July 1, 2003. Such an employee is not eligible to be paid a salary or wage at step 7 in schedule E-1 for as long as the employee remains in the position the employee held as of July 1, 2003.

(b) Except as provided in division (A)(3)(c) of this section, if an exempt employee who is being paid a salary or wage in accordance with schedule E-1 for step eight only of division (C) of this section moves to another position, the employee shall not receive a salary or wage for that position or any other position in the future in accordance with that schedule.

(c) If an exempt employee who is being paid a salary or wage in accordance with schedule E-1 for step eight only of division (C) of this section moves to another position assigned to pay range 12 or above, the appointing authority may assign the employee to be paid a salary or wage in the appropriate pay range for that position in accordance with the schedule E-1 for step eight only of division (C) of this section, provided that the appointing authority so notifies the director of administrative services in writing at the time the employee is appointed to that position.

As can be seen, R.C. 124.152 leaves no real room for debate about the General Assembly's intent regarding where former Step 7 employees are to be placed and as to what pay rate they are to be assigned.

Since it appears that Appellee has complied with the provisions found in R.C. 124.152, Appellee's actions cannot be seen as reducing Appellant's pay. Thus, Appellee's actions do not violate either R.C. 124.34 or O.A.C. 124-1-02 (Y) ("reduction in pay"). Accordingly, the two instant cases should be dismissed.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the two instant appeals for lack of jurisdiction over their subject matter, pursuant to R.C. 124.03, R.C. 124.152, R.C. 124.34, and O.A.C. 124-1-02 (Y).



James R. Sprague
Administrative Law Judge