

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

DAVID T. DOBNIKAR,

Appellant

v.

Case No. 05-REM-01-0038

CUYAHOGA COUNTY SOLDIERS AND SAILORS
MONUMENT COMMISSION,

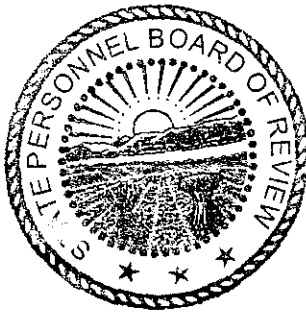
Appellee

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 record and 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 be **DISMISSED** for lack of subject matter jurisdiction, pursuant to R.C. 124.03 and R.C. 345.10.



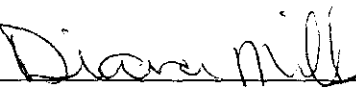
Tracy – Aye
Lumpe – Aye
Booth – Aye


Roger W. Tracy, *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 the foregoing is ~~(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, August 3, 2005.


Diana Mill
Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.



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

DAVID T. DOBNIKAR,

Case No. 05-REM-01-0038

Appellant

v.

June 21, 2005

CUYAHOGA COUNTY SOLDIERS AND
SAILORS MONUMENT COMMISSION,

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 January 31, 2005 filing of an appeal from his removal from his position with Appellee, Cuyahoga County Soldiers and Sailors Monument Commission. On May 13, 2005, Appellee filed in facsimile form and on May 16, 2005 Appellee filed in hard copy form Appellee's Motion to Dismiss for Lack of Subject Matter Jurisdiction. On June 3, 2005, Appellant filed a request for a copy of O.A.C. Chapter 124, which constitutes this Board's Administrative Rules. On June 17, 2005, Appellant filed his Response to various of Appellee's pleadings in the record.

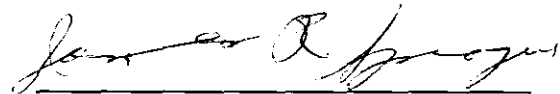
In its motion to dismiss, Appellee asserts that Appellant's position fell within the unclassified service by operation of R.C. 345.10. That provision provides the Board of a Monument Commission with the authority to hire various personnel, to fix their respective compensation, and to remove those individuals at any time by a majority of the Board. Other than the restriction that the Board of a Monument Commission act as a body politic in its action to remove an employee, R.C. 345.10 places no other restriction on the Board concerning such actions. Since R.C. 345.10 does not require either cause or good cause as a basis for removal, it is quite reasonable to read R.C. 345.10 as placing the employees of a Monument Commission in the unclassified service.

R.C. 124.03, this Board's principal source of authority, provides that this Board may hear appeals from employees in the classified service. Since it appears that the General Assembly has designated the respective positions of the employees of a Monument Commission as unclassified, this Board lacks jurisdiction over a

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removal appeal filed by an employee of a Monument Commission, such as is Appellant. Accordingly, this appeal should be dismissed for lack of jurisdiction over its subject matter.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **GRANT** Appellee's motion and **DISMISS** the instant appeal for lack of jurisdiction over its subject matter, pursuant to R.C. 124.03 and R.C. 345.10.



JAMES R. SPRAGUE
Administrative Law Judge

JRS: