

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

JANET L. UHER,

Appellant

v.

Case No. 05-REM-02-0066

OHIO VETERANS HOME,

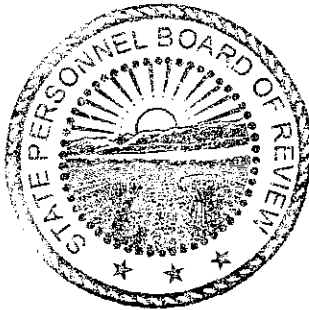
Appellee

ORDER

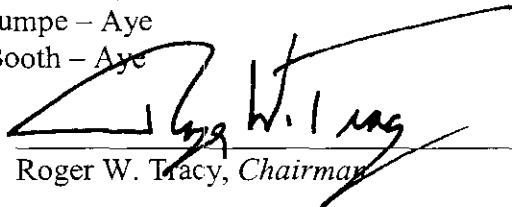
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Appellant's removal be **DISAFFIRMED** and that Appellant be **REINSTATED** with all back pay and benefits due her, subject to set off, pursuant to O.A.C. 124-3-01(A)(1) and (5).



Tracy – Aye
Lumpe – Aye
Booth – Aye

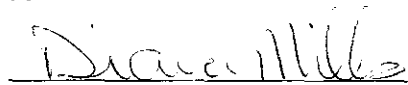


Roger W. Tracy, *Chairman*

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, May 9, 2006.



Clerk

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

ENTERED
MAY 9 2006

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

Janet L. Uher,

Case No. 05-REM-02-0066

Appellant

v.

February 23, 2006

Ohio Veterans Home,

Christopher R. Young

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for a motion hearing on January 23, 2006, at approximately 1:30 p.m. and concluded upon the submission of simultaneously filed post hearing briefs on February 17, 2006. Present at the hearing were the Appellee, the Ohio Veterans Home, present through its designee, Gregory Kowalski, the in-house counsel, and was represented by Nicole S. Moss and Quinn Dorgan, both Assistant Attorney Generals. The Appellant was present and was represented by Marilyn L. Widman, Attorney at Law. It should be noted that this case was scheduled for a motion hearing on or about November 18, 2005 which was continued until the January 23, 2006 date upon the Appellee's request of unavailable witnesses. The issue that was before the undersigned and the reason for having the motion hearing going forward was the question of whether the person who signed the instant 124.34 order of removal on behalf of Colonel Christine Cook, the Superintendent, did have the authority to do so. As a result the Appellee called two witnesses in the presentation of its motion, that being Colonel Christine Cook and Allen Bennett, and the parties then filed written simultaneous briefs on February 17, 2006, and lieu of closing remarks.

STATEMENT OF THE CASE

Appellee's first witness to be called to the witness stand was Colonel Christine Cook, the Superintendent of the Ohio Veterans Home in Sandusky, Ohio and who has been so employed in that position for approximately the last nine years. Ms. Cook testified she has the authority to hire and fire employees at the agency as that power was granted to her by the Board of Trustees by resolution, and offered

Appellee's Exhibit C to show this proof in this regard. She then identified Appellee's Exhibit C which stated:

The OVH Board of Trustees hereby affirms the Director's authority to structure the table of organization as necessary with the requisite authority to employ and discharge OVH employees in accordance with administrative rules, appropriate bargaining unit contracts and without exceeding budgetary appropriations.

Vacancies that exist within the table of organization approved by the Board of Trustees may be filled by the Director without further action of the Board. Vacancies will be filled within the guidelines of the Department of Administrative Services Division of Personnel Regulations and Collective bargaining agreements.

This resolution rescinds the hiring practices agreed upon the Fiscal Year 1994.

It was noted by the undersigned that this resolution noted as 12-97 was agreed to and voted on and unanimously passed on August 27, 1997. Moreover, Ms. Cook testified that she was present when the Board of Trustees did pass the above noted resolution. Ms. Cook then explained that Chapter 5907 of the Ohio Revised Code outlines and/or is the enabling statute of the Ohio Veterans Home. Furthermore, Ms. Cook testified she is not required by resolution to confer with the Board on personnel matters, but her normal practice is that she does.

Ms. Cook then identified Appellee's Exhibit B as a document which purported to be a delegation of authority for certain individuals to sign personnel actions instead of herself. It was noted by the undersigned that the document read as follows:

The Appointing Authority for the Ohio Veterans Home is Col. Christine M. Cook, Director. The following individuals currently have signature authority for the Appointing Authority on personnel actions:

Steven J. Matune, Deputy Director

Alan K. Bennett, Human Resources Administrator

Barbara A. Egbert, Human Resources Manager

It was noted that all the above individuals signed Appellee's Exhibit B that purported to be Ms. Christine Cook's signature signed by each individual, followed by their initials, and their signatures attached thereto. Ms. Cook then testified she first saw this in 1997 and in 1998 and she directed this document to be generated. She testified she frequently goes on National Guard duty and this was used to make sure of the processing of payroll and/or any personnel actions, such as the instant dismissal of the Appellant in this case which could still be carried out in her absence. However, it was noted by the undersigned that the document which purports to the delegation of authority for personnel actions is not dated, nor time stamped, nor even signed by Colonel Christine Cook herself, evidencing that she agreed to do this at the time. Further, Ms. Cook testified Mr. Allen K. Bennett, the Human Resources Administrator was only hired a couple of years ago, contradicting her previous testimony that she first saw this document in 1997 or 1998. Moreover, Ms. Cook testified that this document is kept in Mr. Matune's office and her office as well. Additionally, Ms. Cook testified she was aware of the Appellant's impending disciplinary action, however, she did not have contact either by fax or phone when apparently another individual, later who became known as Mr. Allen K. Bennett, the Human Resources Administrator, had signed on her behalf removing the Appellant on the 124.34 order of removal in question.

Ms. Cook then identified Appellee's Exhibit A as the instant 124.34 order of removal of Ms. Janet L. Uher and noted that was Mr. Allen Bennett's signature on her behalf. Ms. Cook testified on or about February 18, 2005, she was on vacation in Aruba for approximately ten to fourteen days as a reason why Mr. Bennett signed the instant 124.34 order of removal. Again, she reaffirmed she would usually have one of the three individuals named on Appellee's Exhibit B sign in her absence for things such as payroll, vouches and/or receipts and/or personnel actions.

On cross-examination, the witness again reiterated that the document previously identified as Appellee's Exhibit B, the purported delegation of authority was not dated, and she could not recall if she was present when the below named individuals on Appellee's Exhibit B actually signed the document. Ms. Cook then testified she did not type Appellee's Exhibit B, as that was most likely done by someone else, but could recall whom. Moreover, Ms. Cook testified she recalled

having this document updated a couple of times and kept it up to date. Further, Ms. Cook testified that her signature is not present on the document.

Ms. Cook was then questioned about her statement that as the Superintendent she could not delegate responsibility, or in her mind that this could not be done as she is at the head of the organization, but that she can delegate authority in her understanding. Ms. Cook testified that Appellee's Exhibit B is a reflection of a delegation of authority, not a delegation of responsibility. Ms. Cook then testified it is her requirement to be briefed on any matter that comes up, and that she usually receives a monthly report from the Human Resources Department on the same. When questioned about a five-day work week, how many times is she actually in the office, testified that it has been very inconsistent of late as they are trying to open a Georgetown office in Southern Ohio and that she has left a lot of decisions to be made by the Executive and/or Senior Staff. Ms. Cook also testified she would consider the Senior Staff and Executive Staff to be the Deputy Director, Mr. Steve Matune. With regards to Appellee's Exhibit A, the instant 124.34 order of removal of Ms. Janet Uher, Ms. Cook testified she was aware of the situation.

Upon questioning by the undersigned, Ms. Cook testified in the negative that there was no resolution issued and/or given by the Board of Trustees and/or voted on to evidence that she as a Superintendent could delegate her signature authority. Further, Ms. Cook testified and agreed she did not sign Appellee's Exhibit B, nor was it dated.

The next witness to testify was Mr. Allen Bennett, the Human Resources Administrator at the Ohio Veterans Home since November 2003. When questioned, Mr. Bennett testified he has seen Appellee's Exhibit B before and believed it to be his authorization to sign on the behalf of the Superintendent. Furthermore, Mr. Bennett testified he recalled signing this document in the beginning of November 2003 and that he typically processes approximately twenty-five to fifty documents per month that he signs on behalf of the appointing authority. However, he testified this was in fact the first time he had ever signed on behalf of the appointing authority and/or the Superintendent, Colonel Christine Cook on a removal order, but that he had signed on two or three 124.34 orders of involuntary disability separations.

On cross-examination, Mr. Bennett testified that he again sometime in October 2005 has signed another delegation of authority much like that of Appellee's Exhibit

B, when Ms. Terry Hatcher came on board as the Deputy Director of Human Resources. Further, when questioned, Mr. Bennett testified regarding Exhibit B that the two other signatures, those being of Steve Matune and Barbara Egbert were currently affixed to the document when he affixed his signature to the same. Further, Mr. Bennett testified he did not have direct contact with Colonel Christine Cook when he signed on her behalf as she was out of the country at that time. Further, Mr. Bennett testified as far as he knew he could act on Colonel Cook's behalf without first consulting her.

FINDINGS OF FACT

There were no real discrepancies in the testimony of both of Appellee's witnesses and or the facts surrounding the signature affixed to the instant O.R.C. section 124.34 Order of Removal being Mr. Allen Bennett's issued to the Appellant.

CONCLUSIONS OF LAW

The question before this Board of Review is whether the Superintendent, Colonel Christine Cook, of the Ohio Veterans Home, had the power to delegate her signature authority, as the appointing authority to Mr. Allen Bennett, or anyone for that matter, without the express authorization and/or consent of the Ohio Veterans Home Board of Trustees in contemplation of Ohio Revised Code Section 5907.02. After careful consideration on this matter, the undersigned answers this question in the negative.

As was previously mentioned the facts of this case are relatively undisputed. Further, the evidence revealed that the Appellee in this case is governed by a Board of Trustees (hereinafter BOT) pursuant to O.R.C. section 5907.02. In 1997, also pursuant to O.R.C. section 5907.02, the BOT appointed Col. Christine Cook as the superintendent of the Ohio veterans' home located in Sandusky, Ohio. Further, evidence at the hearing was put forth by the Appellee that it on August 27, 1997, (Appellee's Exhibit C), passed a resolution that Col. Christine Cook, as Director, had the requisite authority to employ and discharge employees in accordance with administrative rules. However, there was not any evidence put forth by the Appellee to indicate that Col. Christine Cook could further delegate her authority to hire and

fire employees to others at the Ohio Veterans Home by the BOT, via with its advice and consent.

Ohio Revised Code section 5907.02 states in pertinent part:

The board shall appoint a superintendent of the Ohio veterans' home agency upon any terms that are proper, and the superintendent, **with the advice and consent of the board**, shall employ aides, assistants, and employees, and perform other duties that may be assigned to the superintendent by the board or become necessary in the carrying out of the superintendent's duties.

The Appellee offered at the hearing that pursuant to an undated and unsigned document by Col. Christine Cook in an "authorization of signature authority" form gave Mr. Bennett the right to sign her signature on personnel actions, including orders of removals of employees. (See Appellee's Exhibit B) This evidence that was offered at the hearing was simply not reliable, as it was not even signed by Col. Christine Cook herself. Further, the Appellee in its closing remarks now puts forth the proposition that resolution # 12-97, "in essence it gave a blanket consent to each and every act by the superintendent." Again, the facts and/or the law do simply not support this proposition. While the BOT did pass resolution #12-97 giving the Superintendent the power by herself to basically hire and fire employees, it did so in that she was performing this duty in accordance with the administrative rules. Further, resolution #12-97 does not state the Superintendent has blanket authority to do whatever, nor does it state others within the agency can assume these duties, as well.

Additionally, the undersigned has reviewed Ohio Revised Code Section 124.06 that bears on the above issue as well in two different ways. First, R.C. Section 124.06 is a statutory prohibition preventing appointing authorities from removing a classified employee contrary to the civil service laws. Secondly, it also prohibits appointing authorities from adopting policies or procedures that are contrary to the administrative rules. It provides

No person shall be appointed, removed, transferred, laid off, suspended, reinstated, promoted, or reduced as an officer or employee in the civil service, in any manner or by any means

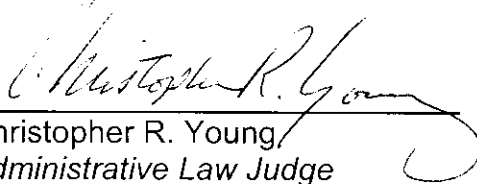
other than those prescribed in this chapter, and the rules of the director of administrative services...(Emphasis added).

Thus, the BOT, as well the Superintendent, is not permitted to establish his/her/their own procedures for removing classified civil service employees where such procedures conflict with and are contrary to the Ohio Revised Code Chapter 124 and the rules of the Ohio Administrative Code.

As such, appointing authorities are not given the statutory authority to create their own civil service rules or procedures, such as delegating signature authority to someone who is not expressly allowed to do the same. See *State ex rel. Lucas County Board of Commissioners v. Ohio Environmental Protection Agency* (200), 88 Ohio St. 3d 166, 177, 2000.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that Allen Bennett did not have the signature authority sign the instant O.R.C. section 124.34 order of removal on behalf of the Superintendent, and that the instant O.R.C. section 124.34 order of removal be **DISAFFIRMED**. As such, the Appellant should receive back pay and other pertinent benefits due her, subject to any monetary set off, from the effective date of Appellant's instant removal until she was served with the subsequent order of removal on November 10, 2006, under SPBR Case No. 05-REM-11-0444. It should be noted that under SPBR Case No. 05-REM-11-0444 a hearing on the merits of the removal will be scheduled.


Christopher R. Young
Administrative Law Judge