

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

JOEL PATRICK,

*Appellant,*

v.

Case No. 06-INV-02-0024

DEPARTMENT OF YOUTH SERVICES, CENTRAL OFFICE,

*Appellee.*

**ORDER**

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

After a thorough examination of the entire 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 has determined that the issues raised in the instant investigation request have now been rendered moot.

Wherefore, it is hereby **ORDERED** that the instant investigation request be **DISMISSED** as **MOOT**, pursuant to R.C. 124.56.

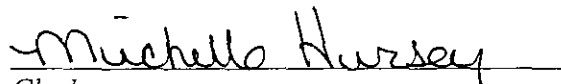
Tracy – Aye  
Lumpe – Aye  
Booth – Aye

  
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Roger W. Tracy, *Chairman*

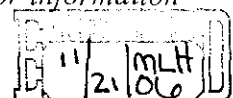
**CERTIFICATION**

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, NOVEMBER 21, 2006.

  
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*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**

Joel Patrick,

Case No. 06-INV-02-0024

*Appellant*

v.

August 10, 2006

Department of Youth Services, Central Office

Elaine K. Stevenson  
*Hearing Officer*

*Appellee*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for consideration due to Appellant's request for an investigation. In his investigation request, Appellant alleges that Appellee violated state law by changing its means of compensating overtime exempt employees for their overtime accruals, requiring its operations managers to take compensatory time for holidays they worked that must be used in six months or lost, and not complying with O.R.C. 119.03 by failing to hold public hearings concerning proposed changes in its compensation policy.

On July 21, 2006, Appellee filed its response to Appellant's request for an investigation, asserting that Appellant's allegations are without merit. Appellee's response and attached documentation indicate that, in accordance with O.R.C. 124.18(A), Appellee decided to change its overtime compensation schedule for its employees who are exempt from overtime under the Fair Labor Standards Act. Appellee's documentation also indicates that its holiday pay policy covering its operations managers provides for paying these employees for compensatory time they are unable to use during the six-month time period. Lastly, Appellee notes that since it did not adopt, amend, or rescind any of its administrative rules, the actions taken concerning its compensation policies do not fall within the scope of O.R.C. 119.03 rule making requirements. Appellant did not file a reply to Appellee's response.

This Board's investigatory jurisdiction is found in section 124.56 of the Ohio Revised Code. O.R.C. 124.56 states that the Board shall conduct an investigation when it has reason to believe that:


. . . any officer, board, commission, head of a department, or person having the power of appointment, layoff, suspension, or removal, has abused such power by making an appointment, layoff, reduction, suspension, or removal of an

employee under his or their jurisdiction in violation of this chapter of the Revised Code . . .

In order to invoke this Board's investigatory jurisdiction, Appellant must allege that Appellee has made an appointment, layoff, reduction, suspension, or removal in violation of Chapter 124. of the Revised Code. Where a request for an investigation alleges none of the above-referenced triggering devices, this Board is without jurisdiction to proceed with an investigation. (See, *State, ex rel. Carver v. Hull* (1994), 70 Ohio St.3d 570.)

Appellant's allegations pertain to a discretionary overtime compensation policy for overtime exempt employees, Appellee's holiday pay schedule for its operations managers, and the lack of public hearings regarding changes in these policies. Appellant's allegations do not pertain to an appointment, layoff, reduction, suspension, or a removal. Accordingly, this Board is without jurisdiction to proceed with an investigation.

Therefore, I respectfully **RECOMMEND** that the instant request for an investigation be **DISMISSED** for lack of jurisdiction, pursuant to section 124.56 of the Ohio Revised Code.

  
Elaine K. Stevenson  
Hearing Officer

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