

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

JAMES J. DOWNING,

Appellant,

v.

Case No. 06-INV-03-0066

CUYAHOGA COUNTY BOARD OF COMMISSIONERS,

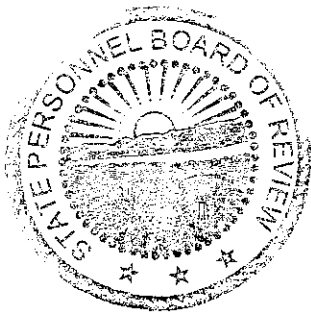
Appellee.

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 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 request for an investigation be **TERMINATED**, pursuant to O.R.C. § 124.56.



Lumpe – Aye
Booth- Aye
Tracy – Aye

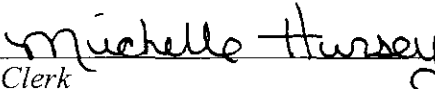


J. Richard Lumpe, *Chairman*

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, July 10, 2007.



Clerk

7/10/07

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

James J. Downing,

Case No. 06-INV-03-0066

Appellant

v.

April 26, 2007

Cuyahoga County Board of Commissioners,

Appellee

Marcie M. Scholl
Administrative Law Judge

REPORT AND RECOMMENDATION

Appellant requested that this Board investigate the propriety of Appellee promulgating a new salary schedule and placing Appellant in a step which was lower than the Appellant's step in the prior salary schedule.

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Section 124.56 of the Ohio Revised Code governs this Board's investigative authority. That statute states as follows:


When the state personnel board of review or a municipal or civil service township civil service commission 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, the board or commission shall make an investigation, and if it finds that a violation of this chapter, or the intent and spirit of this chapter has occurred, it shall make a report to the governor, or in the case of a municipal or township officer or employee, the commission shall make a report to the mayor or other chief appointing authority, or in the case of a civil service township, the commission shall make a report to the board of township trustees, who may remove forthwith such guilty officer, board, commission, head of department, or person. The officer or employee shall first be given an opportunity to be publicly heard in person or by counsel in his own defense. The action of removal by the governor, mayor, or other chief appointing authority is final except as otherwise provided in this chapter of the Revised Code. (Emphasis added).

As can be seen from reading the above statute, this Board has only the authority to investigate an allegation that an appointing authority has abused its power in certain situations. Those situations are making an appointment, layoff, reduction, suspension or removal. There is no allegation present that Appellee has made an appointment, layoff, suspension or removal in violation of Chapter 124. of the Ohio Revised Code, only that Appellee may have improperly reduced Appellant. Appellant has also filed a reduction appeal with this Board based on the same allegations and that appeal is proceeding under a different case number. Therefore, the question of whether the Appellee's action constitutes a reduction will be addressed in the pending reduction appeal and therefore is not subject to an investigation since it is an appealable issue.

In the case of *Solsman v. Ohio Dept. of Admin. Services* (Oct. 16, 1995) Franklin Co., No. 94-CVF07-5199, unreported, the Court held:

While it is true that state administrative agency hearings must accord the parties procedural fairness, it is also true that tribunals have the authority to determine their jurisdiction; no state board or commission can be compelled to expend its limited time and resources in reviewing every matter brought before it without regard to the statutory propriety of its authority to hear the issues.

Therefore, since Appellee's actions are being reviewed pursuant to the reduction appeal filed by Appellant, it would be redundant to expend this Board's limited time in also investigating Appellee to determine if Appellant was improperly reduced. Thus, this investigation is **TERMINATED**.



Marcie M. Scholl
Administrative Law Judge