

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

FRED BILLEY,

*Appellant*

v.

Case No. 06-OSH-01-0005

CITY OF LAKEWOOD,

*Appellee*

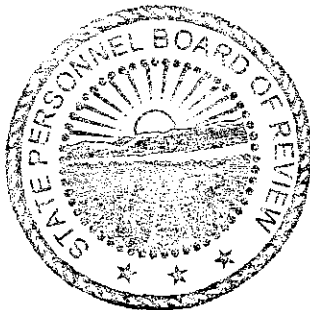
**ORDER**

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 this 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** as moot.

Tracy – Aye  
Lumpe – Aye  
Booth – Aye



  
Roger W. Tracy, *Chairman*

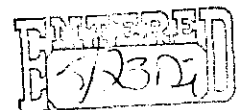
**CERTIFICATION**

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 23, 2006.

  
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**

Fred Billey,

Case No. 06-OSH-01-0005

*Appellant*

v.

April 3, 2006

City of Lakewood,

Elaine K. Stevenson

*Appellee*

*Hearing Officer*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This matter came on for consideration due to Appellant's January 9, 2006 filing of an appeal with the State Personnel Board of Review pursuant to section 4167.13(B)(1) of the Ohio Revised Code. On February 13, 2006, Appellee filed its response to Appellant's appeal. On February 8 and 24, 2006, and on March 10, 2006, Appellant submitted additional information.

**FINDINGS OF FACT**

Based upon a thorough review of the information contained in the record, I make the following findings of fact:

1. Appellant is a non-exempt employee of the City of Lakewood, and a member of Local 1043, Ohio Council, American Federation of State, County and Municipal Employees, AFL-CIO (AFSCME).
2. The City of Lakewood and AFSCME have signed a collective bargaining agreement pursuant to Chapter 4117. of the Ohio Revised Code.
3. In November or early December 2005, Appellant filed a complaint with the Bureau of Workers Compensation (BWC), Division of Safety and Hygiene, Public Employment Risk Employment Program, pursuant to O.R.C. 4167.10(B)(1).
4. Appellant's complaint filed with BWC alleges violations of occupational safety and health standards by the City of Lakewood.

5. On December 12, 2005, Appellee discovered that Appellant removed and duplicated documents from his supervisor's office without his supervisor's permission on December 11, 2005.
6. On December 14, 2005, Appellee issued a notice of a pre-disciplinary conference, which was scheduled for December 20, 2005. The subject of the pre-disciplinary conference concerned Appellant's December 11, 2005 conduct.
7. On December 20, 2005, Appellee conducted Appellant's pre-disciplinary conference. At the pre-disciplinary conference, Appellee presented its charges against Appellant. Specifically, Appellee alleged that, on December 11, 2005, Appellant improperly removed and duplicated confidential documents that were located in the office of the Unit Manager of the Division of Streets, and Appellant misused city property.
8. On December 20, 2005, Appellee placed Appellant on paid administrative leave pending further investigation due to the serious nature of the charges made against Appellant.
9. On January 4, 2006, Appellee issued a notice of pre-termination conference to Appellant in accordance with the provisions of Article 9, Section 1, of the collective bargaining agreement between the parties.
10. On January 5, 2006, Appellant composed a letter addressed to the State Personnel Board of Review. Appellant's letter was posted January 6, 2006, and filed with this Board on January 9, 2006.
11. Appellant's January 5, 2006 letter requests that this Board consider Appellee's December 20, 2005 investigation of Appellant's December 11, 2005 conduct, and Appellee's decision to place Appellant on paid administrative leave pending further investigation, as retaliatory action for Appellant having filed a complaint with BWC pursuant to O.R.C. 4167.10(B)(1).
12. On January 9, 2006, Appellee held a pre-termination conference with Appellant. At the pre-termination conference, Appellant was given an opportunity to respond to the charges made against him.
13. On January 9, 2006, Appellee issued a letter to Appellant notifying him that his employment with Appellee was terminated, effective immediately. Appellee's letter provided information to Appellant regarding his right to appeal his termination through the grievance procedures contained in the collective bargaining agreement between the parties.

14. The time line for filing a grievance of Appellant's removal was extended as the parties continued their discussions to resolve the disciplinary issues regarding Appellant's December 11, 2005 conduct.
15. On January 19, 2006, Appellant Billey, Appellee City of Lakewood, and AFSCME signed an agreement entitled "Agreement to Resolve Disciplinary Action." The City of Lakewood, Appellant Billey, and AFSCME agreed to resolve the disciplinary issues regarding Appellant's December 11, 2005 conduct. The agreement provided that Appellant receive a seven-day suspension and reassignment to Street Construction, Maintenance and Repair.

### **CONCLUSIONS OF LAW**

O.R.C. 4167.13(A) provides that:

No public employer shall discharge or in any manner discriminate against any public employee because the public employee, in good faith, files any complaint or institutes any proceeding under or related to this chapter, or testifies or is about to testify in any proceeding, or because of the exercise by the public employee, on his own behalf or on the behalf of others, of any right afforded under this chapter.

O.R.C. 4167.13(B) provides that:

Any public employee who believes he has been discharged or otherwise discriminated against by any public employer in violation of division (A) of this section may elect any one of the following remedies:

(1) File, within sixty days after the violation occurs, a complaint with the state personnel board of review . The state personnel board of review may restrain violations of division (A) of this section and order all appropriate relief including rehiring or reinstatement of the employee to his former position with back pay and reasonable interest thereon.


\* \* \*

In the present case, Appellant alleges that Appellee's December 2005 investigation of Appellant's December 11, 2005 conduct, and Appellee's December 20, 2005 decision to place Appellant on paid administrative leave pending further investigation, were retaliatory actions taken against Appellant for having filed a complaint with BWC pursuant to O.R.C. 4167.10(B)(1).

The information contained in the record established that, on January 19, 2006, Appellant, Appellee, City of Lakewood, and AFSCME signed an agreement entitled "Agreement to Resolve Disciplinary Action." Appellant, the City of Lakewood, and AFSCME agreed to resolve the disciplinary issues regarding Appellant's December 11, 2005 conduct. The agreement provided that Appellant receive a seven-day suspension and reassignment to Street Construction, Maintenance and Repair.

#### **RECOMMENDATION**

Since the disciplinary actions related to Appellee's December 2005 investigation of Appellant occurred *subsequent* to the present appeal, and were resolved outside this Board's jurisdiction by the parties thereto, and since there is no remedy that this Board can provide Appellant with respect to the actions taken by Appellee during its December 2005 investigation, I respectfully **RECOMMEND** that Appellant's case before this Board be **DISMISSED** as moot.

  
Elaine K. Stevenson  
Hearing Officer

/:eks