

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

THEODORE K. KASER JR.,

Appellant,

v.

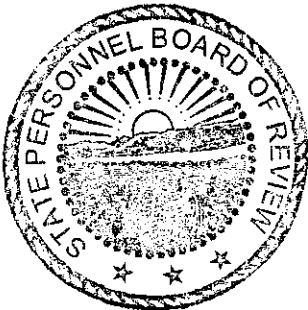
Case No. 06-REM-01-0020

DEPARTMENT OF TRANSPORTATION,

Appellee.

ORDER

This matter came on for consideration on the motion of both parties that the Settlement Agreement and Release of Claims attached hereto and incorporated herein by reference, be adopted. Being fully advised in the premises, the Board hereby orders that the attached settlement agreement and release of claims be **ADOPTED**.



Lumpe – Aye
Booth – Aye
Tracy – Aye

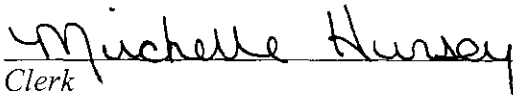


J. Richard Lumpe, *Chairman*

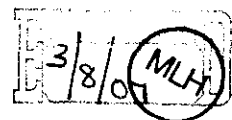
CERTIFICATION

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, MARCH 8, 2007.



Michelle Hursey
Clerk



BEFORE THE STATE PERSONNEL BOARD OF REVIEW

THEODORE K. KASER, JR., :
 Appellant, : CASE NO. 06-REM-01-0020
 v. : ALJ: CHRISTOPHER R. YOUNG
 OHIO DEPARTMENT OF :
 TRANSPORTATION, :
 Appellee :

STATE PERSONNEL
 BOARD OF REVIEW
 2007 FEB - 1 PM 2:58

NOTICE OF SETTLEMENT

Parties have entered into a Settlement Agreement regarding the above-captioned appeal. A copy of the Agreement is attached hereto.

Respectfully submitted,

MARC DANN
 Attorney General


Pooja Alag Bird

POOJA ALAG BIRD (0078020)
 LISA M. ESCHBACHER (0069673)
 DREW C. PIERSALL (0078085)
 Assistant Attorneys General
 Employment Law Section
 150 East Gay Street, 22nd Floor
 Columbus, Ohio 43215
 (614) 644-7257 Telephone
 (614) 752-4677 Fax

ENTERED
 2/1/07 MLH

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Notice of Settlement was served upon Dennis Muchnicki, 5650 Blazer Parkway, Suite 100, Dublin, Ohio 43017, by ordinary U.S. Mail, postage prepaid this 1st day of February, 2007.


POOJA ALAG BORD (0078020)
Assistant Attorney General

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is made and entered into by and between **Mr. Theodore K. Kaser, Jr. ("Kaser" as defined below)** and the **Ohio Department of Transportation ("ODOT" as defined below)**.

WHEREAS, Kaser filed Case No. 06-REM-01-0020 now pending before the State Personnel Board of Review; and

WHEREAS, the Parties desire to resolve any and all disputes relating to Kaser's employment with ODOT, including, but not limited to, those claims embodied in the above-mentioned appeal filed with the State Personnel Board of Review.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

1. **Parties.** This Agreement is entered into on behalf of, and shall extend to: "Kaser," to include, Theodore K. Kaser, Jr., his immediate family, heirs, assigns, personal representative, executors, agents and administrators; and to "ODOT," which includes its successors, assigns, officers, directors, employees and agents, both past and present.
2. **Intent.** Except as specifically set forth herein, Kaser and ODOT wish to bring a complete, final and irreversible end to any and all claims and/or disputes which arise or which could have arisen from Case No. 06-REM-01-0020 and to reach a full and final settlement of all matters and claims, of any nature whatsoever, as of the date of execution of this Agreement.
3. **Consideration.** In consideration of the mutual promises and agreements set forth herein, the Parties agree as follows:

A. As for Theodore Kaser's Consideration:

As consideration for the settlement of this matter, Kaser offers the following:

1. **Withdrawal of Claim:** Upon execution of this Agreement and the payment of back wages, Kaser will file a withdrawal of his appeal before the SPBR, Case No. 06-REM-01-0020;
2. **Waiver of Claims:** Kaser agrees to waive any and all legal claims or causes of action that he may have against ODOT as set forth by this agreement up to and including the date on which the Agreement is fully executed.
3. **Resignation:** Kaser voluntarily resigns from his position as a Building Construction Superintendent 3 with ODOT, effective September 30, 2006. Said resignation is hereby accepted by ODOT upon the effective date of this agreement.

4. Re-employment With ODOT: Kaser agrees that he will not apply for employment with the Ohio Department of Transportation in the future at either District One or any of the other districts of ODOT.

B. As for ODOT's Consideration:

As consideration for the settlement of this matter, ODOT offers the following:

1. Return to Employment: ODOT shall rescind Kaser's disciplinary removal from Building Construction Superintendent 3 and reinstate him to the same position, effective January 31, 2006. ODOT agrees to process a Personnel Action to reflect a resignation from employment effective September 30, 2006 for Kaser's personnel file.
2. Documentation: ODOT agrees to retain disciplinary documentation relating to Kaser's removal in a discipline file, separate from Kaser's personnel file. In addition, ODOT agrees to place a memo in Kaser's discipline file, indicating his removal was converted to a resignation, effective upon execution of this Agreement. All documents related to Kaser's employment shall be retained in compliance with the requirements of the Ohio Public Records Act or other federal and Ohio laws.
3. Back Wages and OPERS Contributions: ODOT agrees to remit to Kaser back pay in the amount of thirty-eight thousand eight hundred sixty-five dollars and twenty cents (\$38,865.20), less all of the applicable taxes and required withholdings. ODOT shall make its appropriate employer's contribution to OPERS in the amount of five thousand two hundred sixty-two dollars and thirty-five cents (\$5262.35). ODOT's payment of these OPERS contributions is subject to acceptance and approval by OPERS; refusal by OPERS to accept these purported contributions shall sever the obligation of ODOT to tender such contributions to OPERS. Subject to the foregoing, Kaser forever waives any claim for any additional compensation, including but not limited to, any claim for damages, back pay, front pay, overtime, comp time, vacation, personal or sick leave, longevity, shift differential or any other benefit, insurance or other payment, including any payment of interest, which may have accrued to him as an employee of ODOT.

4. **Release of All Claims and Dismissal of All Charges and Legal Actions.** Kaser does hereby fully, finally and forever release, hold harmless from and against, waive and forever discharge the State of Ohio, ODOT, its officers, directors, employees, agents, and agencies, of or from any and all claims, actions and causes of actions, suits, debts, liability, demands whatsoever, in law or in equity, which Kaser ever had, may now have, whether known or unknown, with respect to the employment of Kaser by ODOT. Such rights, claims, causes of action or liability shall include, but not be limited to, those arising or which might arise out of intentional infliction of emotional distress, harm or illness, intentional injury or intentional tort, or any other facts; the Fair Labor Standards and the Equal Pay Acts; Title VII of the Civil Rights Act of 1964; the Civil Rights Acts of 1964 as amended; the Civil Rights Act of 1991 as amended; the United States

Constitution; the Civil Rights Acts of 1866 or 1871 (42 U.S.C. Sections 1981, 1983, 1985, *et seq.*); the Americans with Disabilities Act; the Age Discrimination in Employment Act; The Old Workers Benefit Protection Act; Chapter 4112 of the Ohio Revised Code; Ohio Revised Code Chapter 124; Tortious wrongful discharge claims under Ohio law; and any other Federal, State, City, County or other local law or ordinance concerning employment, or in any other manner regulating or otherwise concerning wages, hours or any other terms or conditions of employment, which, (a) have been filed, (b) are now pending, or (c) could have been filed, relating to any acts which have transpired in regard to Kaser's employment with ODOT at any time, up to and including the date of execution of this Agreement.

5. Complete Dismissal. Kaser agrees to withdraw with prejudice all actions filed by him against ODOT including Case No. 06-REM-01-0020. Kaser also pledges to immediately dismiss any other action/s which have been filed, are now pending, or which could have been filed against ODOT relating to any acts or omissions which have transpired at any time up to and including the date of execution of this Agreement in regard to Kaser's employment with ODOT. Kaser further agrees to never re-file any action, claim or other lawsuit against ODOT, its officers, directors, agents or any other agency of the State of Ohio, relating to any acts or omissions which have transpired at any time up to and including the date of the execution of this Agreement and acknowledges that this Agreement would bar any such action or proceeding. Upon the signing of this Agreement and payment of back wages, Kaser shall file a Notice of Withdrawal with prejudice of Case No. 06-REM-01-0020. Said Notice of Withdrawal shall be filed at the State Personnel Board of Review within seven (7) days of execution of this Agreement.

6. Non-Admission. The terms set out in the Agreement are a compromise settlement of disputed claims, the validity, existence or occurrence of which is expressly denied by ODOT. Neither the terms nor the Agreement shall be deemed or construed as an admission by ODOT of any wrongful acts whatsoever by or against Kaser or any other person, nor does any arrangement(s) made with Kaser constitute an acknowledgement of the validity of any claim, charge, liability or cause of action asserted, it being expressly understood that all such claims are in all respects denied by ODOT.

7. General Terms. The Parties to this Agreement represent and affirm that the only consideration for their agreement and execution are the terms stated herein, that no other promise or agreement of any kind has been made to or with any of them by any persons or entity to cause either to execute this Agreement, and that no other compensation, benefits, or prerequisites other than those specified in the foregoing Agreement shall be involved or claimed. This Agreement shall not be interpreted to render Kaser a prevailing party for any purpose, including but not limited to an award of attorney fees under any applicable statute or otherwise. Each party fully understands the meaning and intent of this Agreement, including but not limited to their final and binding effect. Each Party further acknowledges that before executing this Agreement that they have consulted counsel and that each Party has carefully read and fully understands all of the provisions of the Agreement, and that the execution of the Agreement is a knowing and voluntary act.

8. Construction and Severability. This Agreement shall be construed according to its fair meaning, and not strictly for or against any of the Parties. Should any provision of the

Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and the illegal or invalid part, term or provision shall be deemed not to be part of the Agreement.

This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any and all prior discussions, agreements, transmissions or understandings between the Parties or their representatives.

KASER PLEASE READ CAREFULLY BEFORE SIGNING

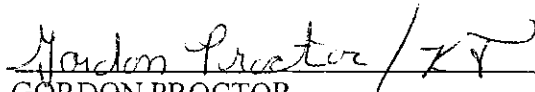
PURSUANT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACTION, 29 U.S. § 621 *ET SEQ.*, A WAIVER OF RIGHTS CANNOT APPLY TO AGE DISCRIMINATION CLAIMS ARISING IN THE FUTURE. I HAVE READ THE FOREGOING AGREEMENT AND RELEASE, AND FULLY UNDERSTAND IT. I ACKNOWLEDGE THAT I WAS GIVEN UP TO TWENTY-ONE (21) DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT, THAT I HAVE BEEN ADVISED TO CONSULT WITH LEGAL COUNSEL PRIOR TO SIGNING THIS AGREEMENT, AND THAT I HAVE THE RIGHT TO REVOKE THIS AGREEMENT, IN WRITING, FOR A PERIOD NOT TO EXCEED SEVEN (7) DAYS AFTER THE DATE ON WHICH IT IS SIGNED BY ME. I HEREBY ACKNOWLEDGE THAT IF I FAIL TO EXERCISE THIS RIGHT TO REVOKE, THIS AGREEMENT WILL BECOME A BINDING CONTRACT AS TO ITS TERMS ON THE EIGHTH (8TH) DAY AFTER I SIGN THIS AGREEMENT. I NOW VOLUNTARILY SIGN THIS AGREEMENT AND RELEASE ON THE DATE INDICATED. IF THIS AGREEMENT SHOULD BE REVOKED BY THE APPELLANT WITHIN THE TIME, THIS AGREEMENT SHALL BE VOID AND THE APPELLEE SHALL BE EXCUSED FROM PERFORMANCE HEREUNDER.

The undersigned Parties state that they have carefully read the foregoing and understand the contents thereof, and that they execute the same as their own free and voluntary act.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and date indicated below their respective signatures.



THEODORE K. KASER, JR.
Appellant



GORDON PROCTOR
Director, Ohio Department of Transportation

10/23/2006

DATE

11/1/06

DATE