

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

TIMOTHY J. HAGAR,

Appellant,

v.

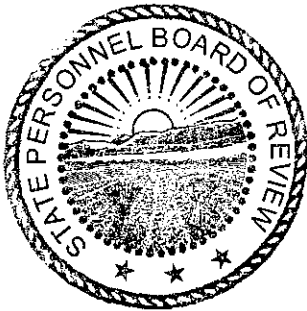
Case No. 06-REM-03-0059

MERCER COUNTY ENGINEER,

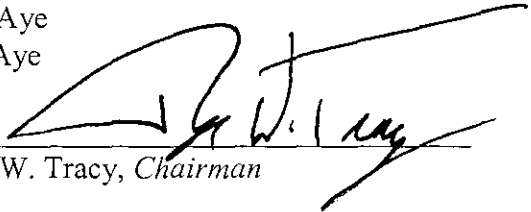
Appellee.

ORDER

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



Tracy – Aye
Lumpe – Aye
Booth – Aye

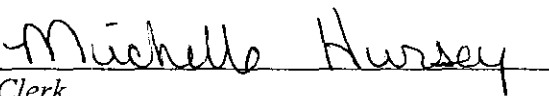


Roger W. Tracy, *Chairman*

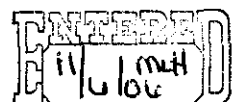
CERTIFICATION

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, November 6, 2006.



Clerk



STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

STATE PERSONNEL
BOARD OF REVIEW
2006 OCT 25 AM 10: 01

In the matter of:

Tim Hagar,

Case No. 06-REM-03-0059

Appellant,

v.

Mercer County Engineer's
Office,

Appellee.

SETTLEMENT AGREEMENT

A. Background

On or about February 12, 2006 Tim Hagar lost his commercial driver's license and his motor vehicle license. Both licenses are requirements for his job as bridge inspector for Mercer County. On March 2, 2006, he was given notice of a pre-disciplinary hearing for failure to maintain his licenses. He attended to hearing which was held by the Mercer County Engineer. He was given the opportunity to respond and admitted that the licenses were a job requirement and that both of his licenses were suspended. On March 3, 2006, the Mercer County Engineer gave Mr. Hagar until Monday March 6, 2006, to resign or be terminated. On March 6, 2006, Mr.

Hagar left work early without resigning. On the evening of March 6, 2006, he was given his termination notice, to be effective on March 7, 2006. Mr. Hagar appealed his termination.

B. Introduction

This is an agreement made by and between Mr. Hagar and the Mercer County Engineer's Office and Engineer Jim Wiechart by the terms of which the parties agree to resolve the pending SPBR appeal and any other claims that could arise from Mr. Hagar's employment at and separation from the Mercer County Engineer's Office in exchange for promises, consideration, and the knowing waiver of statutory rights. The Board of County Commissioners is a party only to the extent that it is the legislative body of the political subdivision that is Mercer County, Ohio.

C. The Parties

The parties to this agreement are:

1. Mr. Hagar, also known herein as the "Appellant"; and
2. The Mercer County Engineer's Office also known herein as "Appellee," in its capacity as former employer of Appellant.
3. Mercer County Engineer Jim Wiechart in his official and individual capacity.
4. The Board of County Commissioners for Mercer County, Ohio.

D. The Terms

1. Mr Hagar hereby agrees to settle his outstanding SPBR claim by signing a settlement drafted by Mercer County Prosecutor's Office for the amount of \$17,015.04, which is hereby attached as Exhibit A.
2. Mr. Hagar agrees that with the filing of this Agreement that his appeal to the State

Personnel Board of Review is hereby withdrawn. He further agrees to waive any right of reinstatement to his former position with the Mercer County Engineer's Office under any conditions, even if he later obtains his motor vehicle and commercial driver's licenses.

3. Employee acknowledges receipt of a copy of this Agreement, and further acknowledges that he has had the opportunity to consult with legal counsel, if desired, regarding the terms and execution of this Agreement. Employee acknowledges that he has been advised that he has twenty-one (21) days to consider this Agreement before signing it, and that he has elected to sign this Agreement as of the date set forth below.
4. The parties mutually agree that this settlement agreement constitutes no factual admission of wrongdoing of any kind by any party, and mutually covenant that it will not be offered as evidence in any proceeding, except as necessary to enforce its specific terms. This clause notwithstanding, the parties admit that Mr. Hagar was terminated on March 7, 2006, for failure to maintain licenses required for his job.
5. Mr. Hagar agrees he will not seek, apply for, pursue in any way, or accept employment with Jim Wiechart (whether in his capacity as County Engineer or otherwise) or Mercer County from this point forward.
6. Mr. Hagar represents that no bankruptcy action in which he is seeking bankruptcy is or has been pending during this litigation.
- 7.. Mr. Hagar states, warrants, and represents that he has not assigned any of the

claims that might otherwise be a subject of this Settlement Agreement.

8. Appellant, Mr. Hagar, agrees that he has been advised to confer with his attorney before signing this Agreement, and hereby acknowledges that this settlement constitutes a full, fair, and final resolution of any and all claims or causes of action that he may currently have against the Mercer County Engineer, Mercer County, or its officers, employees, agents, or representatives, irrespective of whether those claims arose, or may have arisen, under contract, tort, "public policy," or any federal or state statute. Mr. Hagar, his heirs, successors, assigns, executors, administrators, and all other related persons, release:

- a. County Engineer Jim Wiechart, both individually (including his heirs, successors, assigns, executors, administrators, and all other related persons and entities) and in his official capacity (including his employees, agents, insurers, successors, assigns, executors, administrators, and all other related persons, firms, or corporations); and
- b. Mercer County officers, employees, agents, insurers, successors, assigns, executors, administrators, and all other related persons, firms, or corporations

from all known and unknown liability, claims, and damages arising from Mr. Hagar's employment with the Mercer County Engineer's Office, including but not limited to:

- (1) The Americans with Disabilities Act
- (2) Ohio Revised Code Section 4112.02 et seq., or any similar laws in any

other state;

(3) Age Discrimination in Employment Act;

(4) Any state law or common law claim for wrongful or constructive discharge, fraud, misrepresentation, defamation, intentional and/or negligent infliction of emotional distress, or any similar action;

(5) Any state law or common law claim for breach of contract; breach of implied contract or implied covenant, or any similar action;

(6) Any claim for attorneys' fees and costs incurred by Plaintiff, whether pursuant to statute, common law, equitable principles, or judicial decision; and

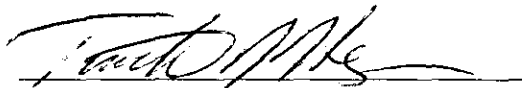
(7) Any other local, state, common law, "public policy", or federal claim whatsoever.

9. This Settlement Agreement contains the entire agreement between the parties, and the terms of this Settlement Agreement can be amended only by a writing signed by all of the Parties.
10. This Agreement will be construed and interpreted in accordance with the laws of the State of Ohio.
11. The parties agree that, to the extent permitted by R.C. 149.43, this agreement and its terms are to remain confidential.
12. This Settlement Agreement embodies the entire understanding of the parties and may be amended only by a writing signed by all of the parties. If any part of this Settlement Agreement is determined to be invalid, illegal, or unenforceable, the

remainder of this Settlement Agreement shall continue to be valid and enforceable.

13. **IN ENTERING INTO THIS AGREEMENT, MR. HAGAR REPRESENTS THAT TO THE EXTENT THAT HE HAS RELIED UPON LEGAL ADVICE, IT HAS BEEN ONLY THE LEGAL ADVICE OF HIS OWN ATTORNEYS, WHO ARE THE ATTORNEYS OF HIS OWN CHOOSING. MR. HAGAR FURTHER REPRESENTS THAT HE HAS READ THE TERMS OF THIS AGREEMENT AND THAT HE HAS HAD THE OPPORTUNITY TO DISCUSS THEM WITH HIS ATTORNEYS, AND THAT THOSE TERMS ARE FULLY UNDERSTOOD AND VOLUNTARILY ACCEPTED BY MR. HAGAR. MR. HAGAR MAY REVOKE AND DECLARE THIS AGREEMENT NULL AND VOID AFTER SIGNING THIS AGREEMENT BY PROVIDING WRITTEN NOTICE OF HIS INTENT TO REVOKE THIS AGREEMENT WITHIN SEVEN (7) DAYS OF THE DATE OF MR. HAGAR'S SIGNATURE BELOW.**

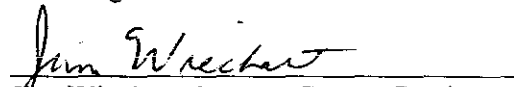
IT IS SO AGREED:



Tim Hagar

10-24-06

Date



Jim Wiechart, Mercer County Engineer

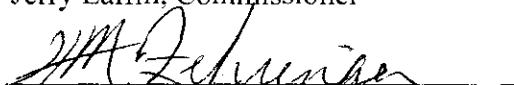
10-24-06

Date


For the Board of County Commissioners:



Jerry Laffin, Commissioner



Jim Zehringer, Commissioner



Bob Nuding, Commissioner

FINAL SETTLEMENT AGREEMENT
AND RELEASE

This Final Settlement Agreement and Release ("Settlement Agreement"). is entered into in Mercer County, Ohio, this 24th day of October, 2006, between Tim Hagar and Mercer County Engineer (and other parties).

WHEREAS, Tim Hagar commenced his employment as a bridge inspector with the Mercer County Engineer's Office on June, 1995, remaining in this capacity until March 7, 2006.

WHEREAS, on March 7, 2006, Tim Hagar was terminated for failing to maintain licenses required for his job; and

WHEREAS, Hagar brought an appeal before the State Board of Review in connection with the termination of his employment;

NOW, THEREFORE, in consideration of the mutual promises and releases contained below, the parties agree as follows:

1. Hagar agrees this settlement agreement, which includes the payment of \$17,015.04, is adequate consideration to compensate him for all claims, and he is settling all existing or potential claims, known or unknown, relating to his employment with the Mercer County Engineer's Office and subsequent termination, against County Engineer Jim Wiechart, Mercer County and any and all other persons or entities.

EXHIBIT A

2. Hagar's confidentiality is a material term of this Agreement, and County Engineer Jim Wiechart retains all contractual rights and remedies for his breach of this provision of the Agreement. Hagar shall not comment on or disclose any aspect of the settlement unless compelled by law or reporting obligations to the taxing authorities.
3. Hagar acknowledges this settlement is the resolution of disputed claims, and the settlement contained in this Settlement Agreement is not an admission of liability by County Engineer Jim Wiechart and/or Mercer County, who specifically deny liability.
4. Hagar agrees he will not seek, apply for, pursue in any way, or accept employment with Jim Wiechart (whether in his capacity as County Engineer or otherwise) or Mercer County from this point forward.
5. Employee acknowledges receipt of a copy of this Agreement, and further acknowledges that he has had the opportunity to consult with legal counsel, if desired, regarding the terms and execution of this Agreement. Employee acknowledges that he has been advised that he has twenty-one (21) days to consider this Agreement before signing it, and that he has elected to sign this Agreement as of the date set forth below.
6. Hagar represents that no bankruptcy action in which he is seeking bankruptcy is or has been pending during this litigation.

EXHIBIT A

- a. Hagar states, warrants, and represents that he has not assigned any of the claims that might otherwise be a subject of this Settlement Agreement.
7. This Settlement Agreement embodies the entire understanding of the parties and may be amended only by a writing signed by all of the parties. If any part of this Settlement Agreement is determined to be invalid, illegal, or unenforceable, the remainder of this Settlement Agreement shall continue to be valid and enforceable.
8. Tim Hagar, his heirs, successors, assigns, executors, administrators, and all other related persons, release:
 - a. County Engineer Jim Wiechart, both individually (including his heirs, successors, assigns, executors, administrators, and all other related persons and entities) and in his official capacity as County Engineer (including his employees, agents, insurers, successors, assigns, executors, administrators, and all other related persons, firms, or corporations); and
 - b. Mercer County and its employees, agents, insurers, successors, assigns, executors, administrators, and all other related persons, firms, or corporations from all known and unknown liability, claims, and damages arising from Hagar's employment with the Mercer County

Engineer's Office, including but not limited to:

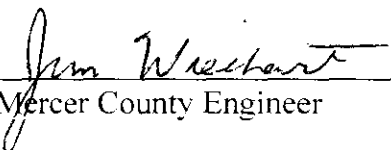
- (1) The Americans with Disabilities Act
- (2) Ohio Revised Code Section 4112.02 et seq., or any similar laws in any other state;
- (3) Age Discrimination in Employment Act;
- (4) Any state law or common law claim for wrongful or constructive discharge, fraud, misrepresentation, defamation, intentional and/or negligent infliction of emotional distress, or any similar action;
- (5) Any state law or common law claim for breach of contract; breach of implied contract or implied covenant, or any similar action;
- (6) Any claim for attorneys' fees and costs incurred by Plaintiff, whether pursuant to statute, common law, equitable principles, or judicial decision; and
- (7) Any other local, state, common law or federal claim whatsoever.

9. The parties agree that, to the extent permitted by R.C. 149.43, this agreement and its terms are to remain confidential.
10. This Settlement Agreement contains the entire agreement between the parties, and the terms of this Settlement Agreement can be amended only by a writing signed by all of the Parties.
11. This Agreement will be construed and interpreted in accordance with the laws

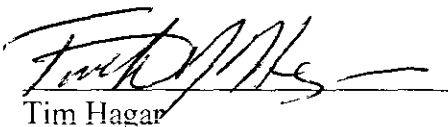
of the State of Ohio.

12. **IN ENTERING INTO THIS AGREEMENT, MR. HAGAR REPRESENTS THAT TO THE EXTENT THAT HE HAS RELIED UPON LEGAL ADVICE, IT HAS BEEN ONLY THE LEGAL ADVICE OF HIS OWN ATTORNEYS, WHO ARE THE ATTORNEYS OF HIS OWN CHOOSING. MR. HAGAR FURTHER REPRESENTS THAT HE HAS READ THE TERMS OF THIS AGREEMENT AND THAT HE HAS HAD THE OPPORTUNITY TO DISCUSS THEM WITH HIS ATTORNEYS, AND THAT THOSE TERMS ARE FULLY UNDERSTOOD AND VOLUNTARILY ACCEPTED BY MR. HAGAR. MR. HAGAR MAY REVOKE AND DECLARE THIS AGREEMENT NULL AND VOID AFTER SIGNING THIS AGREEMENT BY PROVIDING WRITTEN NOTICE OF HIS INTENT TO REVOKE THIS AGREEMENT WITHIN SEVEN (7) DAYS OF THE DATE OF MR. HAGAR'S SIGNATURE BELOW.**

In witness whereof, the parties hereby agree to the terms and conditions of this Final Settlement Agreement and Release.



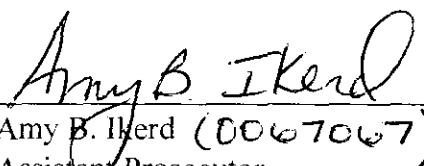
Mercer County Engineer



Tim Hagar

DATE 10-24-06

DATE 10-24-06



Amy B. Ikerd (0067067)
Assistant Prosecutor
Counsel for Defendant/Employer

10/24/06
DATE