

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

James M. Utendorf,

Appellant,

v.

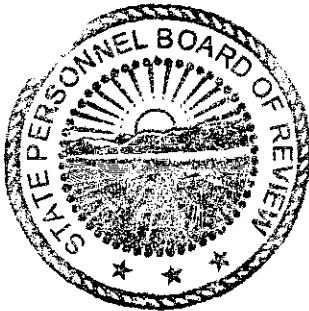
Case No. 08-REM-01-0023

Department of Education,

Appellee.

ORDER

This matter came on for consideration on the notice of Appellant that the Withdrawal attached hereto be adopted. Being fully advised in the premises, the Board hereby orders that the attached withdrawal, incorporated herein by reference and made a part of the case file in this appeal, be **ADOPTED**. Accordingly, the above-referenced appeal is hereby **DISMISSED**.



Lumpe - Aye
Booth - Aye
Sfalcin - Aye

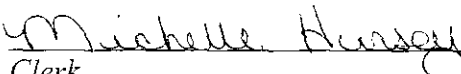


J. Richard Lumpe, *Chairman*

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 this document and any attachment thereto constitute ~~(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, October 31, 2008.



Michelle Hunsay
Clerk

ck

STATE PERSONNEL
BOARD OF REVIEW
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P.O. Box 171
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(614) 323-4010
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Friday, October 03, 2008

Hon. Christopher R. Young,
Administrative Law Judge
State Personnel Board of Review
65 East State Street, 12th Floor
Columbus, OH 43215-4213

RE: Case No. 08-REM-01-0023

Dear Judge Young:

I initially took the action to initiate this case in order to draw the State Personnel Board of Review's (Board) attention to what I considered a serious unfair labor practice of the Department of Education. The policy of retaining more senior unclassified employees in that status, when new hires, with identical or very similar job responsibilities, were being placed in the classified service. This has resulted during the last several years in significant differences in the compensation of those with the title of Education Consultant 3. Those in the unclassified service were paid as much as \$15,000 to \$20,000 less than the new hires now placed in the classified service. The job responsibilities of the two groups are indistinguishable. In addition to the salary differential, those new hires in the classified service receive overtime compensation. The salary differences are explained entirely by the pay rate increases, granted to classified employees, denied to unclassified personnel during the last several years. I felt my case was a good example of the discrepancy between considerations afforded by the Union contract to classified employees and those, like myself, who were retained in the unclassified service.

While I was employed by the Department of Education, it was made clear to my colleagues and me, by middle management, that the basic unfairness of the labor practice I've outlined was an issue not to be raised. We feared for our jobs, since we could be dismissed without recourse or stated reason. I felt that since I had been dismissed without any stated reason, I was in a position to bring this matter to a forum where it could be remedied ... the State Personnel Board of Review. Unfortunately, I've found, in the course of my preparation for the scheduled hearings in this case, that the fear of job loss is still present, in my former unclassified colleagues, in relation to this matter.

I would like to respond briefly to some, what I will refer to as misunderstandings, in matters stated as fact by the Assistant Attorney General's in her motion *Appellee Ohio Department of Education's Motion for Reconsideration of August 6, 2008 Order of Remand* (undated): *Memorandum of Support*.

10-6-08

- The Asst. A.G. has raised several times my "failure" to inform the Board of my current address. At no time did the Board have an address at which I did not receive mail. Being hospitalized for treatment of my disability does require at times an address that will provide more timely delivery of mail to me. I kept the board informed of those addresses in writing.
- "Appellant failed to oppose the Motion to Dismiss"; I was not informed that I was requested or required to oppose a motion that I considered without merit, and I was confident that the Board would rule against that motion as it eventually did.
- "Appellant failed to file objections to the Report and Recommendation"; I again did not understand that these objections were required or requested. My letter to you of August 3, 2008 did inquire why that Report and Recommendation was made before any hearing of the evidence I intended to present.
- "Appellant failed to appear at any Board meeting to oppose adoption of the Report and Recommendations"; I was not made aware of when or where this Board meeting was taking place, in fact, I was not even informed that this Board meeting was taking place.

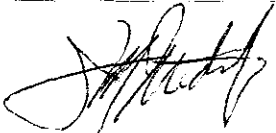
The final item in this series of "failures" attributed to me by the Asst. A.G. is curious because she includes it in a listing introduced by the phrase "Appellant never responded". Indicating that I failed to respond to the Board's initial DISMISSAL of my case. In her very next sentence, she says "After the Board dismissed the case, Appellant sent a letter, dated August 3, 2008 [sic] but not received by the Board until August 6, 2008." I'm not sure what the Asst. A.G. considers a response, but my letter was a timely and rather lengthy expression of my concerns related to the Board's DISMISSAL. I never provided this letter to her because my understanding was that the case was dismissed. I did not intend my letter of August 3, 2008 to be an appeal of the board's dismissal decision. I intended it only to be a question to you about how this final decision was reached without any hearing. Because I considered the Board's decision final, I did not see how my letter was any longer of any concern to the Asst. A.G.. I was pleased that the Board did respond to my letter by reversing its decision to dismiss my case. I was not requesting or expecting that action.

I have learned a great deal in the process of pursuing this case. Initially, I only was aware that this action could result in my reinstatement to a position at the Department of Education. This no longer is something that I desire. Opportunities have presented themselves to me here in Northeast Ohio which will enable me to continue to make a contribution to my field, while I continue to be in residence and treatment at Cleveland Clinic's Glenbeigh Hospital. I never knew that "back-pay" was a possibility until you referred to that matter in one of your letters. Also in the course of my dealings with this case, I became aware that I was dismissed from my job at the Department of Education because of my alcoholism. That had never been said to me verbally or in writing prior to one of the Asst. A.G.'s motions and the Affidavit of Pamela King that was filed by the Asst. A.G.. My letter of dismissal only mentioned that my services were no longer needed.

These latter actions taken by the Asst. A.G., in her role representing the Department of Education in this case, have raised and brought to light the possibility that a violation, of the federal Americans with Disabilities Act, occurred in relation to my dismissal by the Department of Education. If that is found to be true, it is a much more egregious matter than the case I have brought before the this Board. I have taken action in bringing this matter to the attention of the Ohio Civil Rights Commission. In light of this, I am withdrawing my request for any further consideration of this case by the State Personnel Board of Review.

I thank you for the attention and consideration you and the Board have given my case.

Sincerely,

A handwritten signature in black ink, appearing to read 'James M. Utendorf', written over a horizontal line.

James M. Utendorf

Appellant, Case No. 08-REM-01-0023