

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Brenda Lowe,
Lori L. Lamb
Zhanna J. Melamed

Case Nos. 10-ABL-12-0358
10-ABL-12-0360
10-ABL-12-0362

Appellant.

v.

Lucas County Auditor,

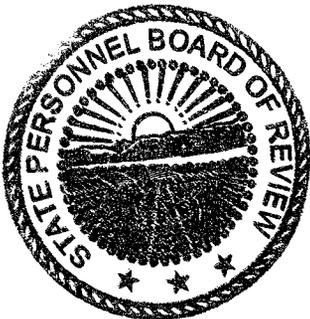
Appellee.

ORDER

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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 the instant appeals be **DISMISSED** for lack of any demonstrable abolishment in these cases, pursuant to O.R.C. § 124.328.



Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *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, April 6, 2011.


Michelle Hursey
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**

Brenda Lowe,

Case Nos. 10-ABL-12-0358

10-ABL-12-0360

Lori L. Lamb,

10-ABL-12-0362

and

Zhanna J. Melamed

Appellants

v.

February 24, 2011

Lucas County Auditor

James R. Sprague

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These cases came to be heard at pre-hearing on February 11, 2011. At pre-hearing, this Board's jurisdiction over the subject matter of same was initially reviewed. By agreement of the parties, on February 16, 2011, Appellee filed Appellee's position statement and on February 22, 2011, Appellants filed Appellants' brief in opposition to Appellee's motion to dismiss.

The principal issue that these three cases present to this Board is whether Appellee in fact abolished Appellants' respective positions with a commensurate right to appeal same to this Board. From the record developed, to date, in these three appeals, **it is clear that Appellee did not, in fact, abolish any of these three positions**, but, in fact, removed Appellants without benefit of the procedures mandated in R.C. 124.34. While the parties may or may not agree with such a determination by this Board, such a determination would not leave Appellants without a potential avenue of remedy, for they have respectively also filed removal appeals with this Board.

Appellee has alleged that each of the Appellants herein held positions exempted from the classified service by operation of R.C. 124.11 (A)(9). Appellants' three removal appeals will proceed collectively to record hearing (*currently*

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scheduled for May 16, 2011 and May 17, 2011 at 9:30 a.m.) to determine whether or not any of these three positions fell under R.C. 124.11 (A)(9)'s exemptions or whether Appellants should otherwise be estopped from claiming the protections offered by the classified service. Should Appellee fail to meet its burden of proof regarding at least one of those two issues, then this Board would need to disaffirm Appellants' removals for Appellee's failure to comply with the requirements set forth in R.C. 124.34. Conversely, should Appellee succeed in meeting its burden of proof, then this Board would need to dismiss Appellants' removal appeals for lack of jurisdiction over their subject matter.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** Case Nos. 10-ABL-12-0358, 10-ABL-12-0360, and 10-ABL-12-0362 for lack of any demonstrable abolishment in these cases, pursuant to R.C. 124.328.



JAMES R. SPRAGUE
Administrative Law Judge

JRS: