

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

GEORGE J. MAZZARO,

Appellant,

v.

Case No. 10-INV-06-0157

AURORA CIVIL SERVICE COMMISSION,

Appellee

ORDER

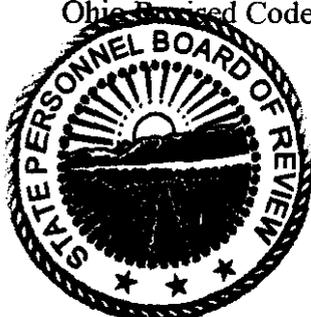
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned request for an investigation.

After a thorough examination of the entirety of the record, including 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 Findings of the Administrative Law Judge but must modify the Recommendation of the Administrative Law Judge, as follows.

The Board notes that it has spent considerable time to further develop and very carefully review the facts and record in this matter. Ultimately, however, the Board is constrained by its own jurisdiction to do more in this matter. With that in mind, Appellant may wish to avail himself of other avenues of potential remedy.

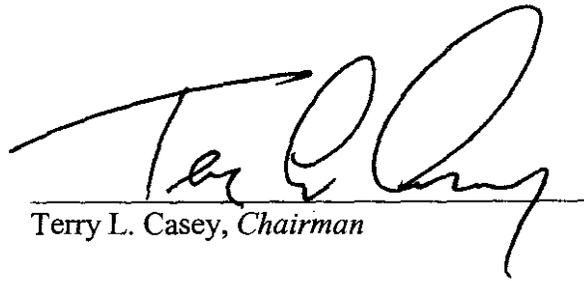
Yet, given the above comprehensive review and jurisdictional constraints placed on this Board, we have no other option but to agree with the Aurora Civil Service Commission's (CSC) claim that the CSC lacked jurisdiction over the subject matter of several reductions that the City of Aurora effectuated due to a lack of funds. Since these reductions did not involve the subject matter of discipline, the CSC appears to have lacked jurisdiction over this specific subject matter. Accordingly, the subject of such reductions is a matter under appropriate legal standards that is between the Mayor and City Council of the City of Aurora.

Wherefore, it is hereby **ORDERED** that the instant request for an additional investigation be **DISMISSED**, due to the Aurora Civil Service Commission's lack of jurisdiction over the specific subject matter for which Appellant sought review, pursuant to Ohio Revised Code Section 124.40.



Casey - Aye
Lumpe - Aye
Tillery - Aye

4-5-11mH

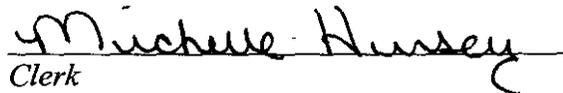


Terry L. Casey, *Chairman*

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 constitutes ~~(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 5, 2011.



Michelle Hursey
Clerk

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

George J. Mazzaro,

Case No. 10-INV-06-0157

Appellant

v.

January 20, 2011

Aurora Civil Service Commission,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration upon a thorough review of the record. Appellant filed a request for investigation with this Board on June 17, 2010, alleging that the Mayor of Aurora failed to properly notify employees who were laid off or reduced in hours and benefits and that the employees were improperly denied the opportunity for a hearing by the Aurora Civil Service Commission. Appellant also alleged that the Mayor of Aurora failed to fill a vacancy on the Aurora Civil Service Commission in a timely manner.

Appellee responded on July 30, 2010, to Appellant's allegations by filing its Response with this Board. Appellee asserted that Appellant was without standing to file an appeal with the Board because he is not an employee of the City of Aurora. Appellee further asserted that the Aurora City Charter and Aurora Civil Service Commission Rules do not provide for a hearing when an employee is laid off or reduced in hours and/or benefits for non-disciplinary reasons. Appellee supplied this Board with copies of the City Charter and the City Civil Service Rules and Regulations. Appellant filed a brief Reply to Appellee's Response on August 6, 2010.

FINDINGS OF FACT

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

Appellant is a resident of the City of Aurora; he is not a City employee. His notice of appeal stated as its subject the “[q]uestionable if not illegal action by Aurora City, Civil Service Commission and the Aurora City Mayor Lynn McGill.

On or about April 16, 2010, Aurora Mayor Lynn McGill notified employee Ross Brankatelli that his employment would be terminated effective April 30, 2010; on April 29, 2010, Acting Mayor James Fisher clarified that Mr. Brankatelli was being laid off from his position, rather than terminated for cause. On or about April 22, 2010, Acting Mayor James Fisher notified employees Cathy Lafferty, Lionel Finch and Albert Hall that their employment status would be reduced from full-time to part-time, effective May 1, 2010.

Ms. Lafferty, Mr. Finch and Mr. Hall requested in a timely manner that the Aurora Civil Service Commission review and interpret the notification letters provided to them by Acting Mayor Fisher. Mr. Brankatelli also requested that the Civil Service Commission review his layoff. The Civil Service Commission declined to hear appeals from all four employees.

A vacancy occurred on the Civil Service Commission on March 24, 2010; as of the date of Appellant’s request for investigation, that vacancy had not yet been filled.

CONCLUSIONS OF LAW

I initially note that Appellant requested that this Board examine the actions of “Aurora City, Civil Service Commission and the Aurora City Mayor Lynn McGill.” This Board has no statutory authority to scrutinize actions taken by either the City of Aurora or the Mayor of Aurora. It does, however, have investigatory authority over municipal civil service commissions pursuant to section 124.40 of the Ohio Revised Code. That statute, in pertinent part, reads as follows:

Whenever the board has reason to believe that a municipal civil service commission is violating or is failing to perform the duties imposed upon it by law, or that any member of such municipal civil service commission is willfully or through culpable negligence violating the law or failing to perform his duties as a member of the commission, it shall institute an investigation, and if, in the judgment of the board, it finds any such violation or failure to perform the duties imposed by law, it shall make a report of such violation in writing to

the chief executive authority of such city, which report shall be a public record.

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. In accordance with the above referenced statute, this Board's authority over municipal civil service commissions is one of investigation to ensure that the commission is not violating or failing to perform the duties entrusted to it, as well as ensuring that no civil service commission member is negligently violating the law or failing to perform his or her duty.

Because this Board is empowered to make such an investigation whenever it has reason to believe that a violation has taken place, it is not a requirement that the individual filing the appeal be a municipal employee. Accordingly, I find that Appellant has standing to bring the instant appeal.

Appellee presently exercises home-rule authority pursuant to its Charter, however, civil service is not purely a local power and a municipality may only legislate with regard to its civil service so long as provisions made in the charter comply with the requirements of Section 10 of Article XV of the Ohio Constitution, and do not conflict with any other provision of the Constitution. *Toledo v. State, ex rel. Lawler* (1935), 51 Ohio App. 329. Appellee is bound by the provisions contained in its charter, however, where the charter is silent on a subject, the provisions of the Ohio Revised Code prevail.

The Charter for the City of Aurora establishes the Civil Service Commission in Article XV, Civil Service Commission. The Charter states, in pertinent part:

The Civil Service Commission shall consist of three electors of the City not holding any other City office of employment, who shall be appointed by the Mayor and confirmed by Council. . . . A vacancy occurring during the term of any member shall be filled for the unexpired term in the manner authorized for an original appointment....

The Charter is silent with regard to the time limits within which a vacancy must be filled, therefore, R.C. 124.40 is controlling. That section of the Revised Code states that where an appointing authority fails to fill a vacant Commissioner's position within sixty days, this Board has the authority to do so. Appellee conceded in its Response that the vacancy occurring on the Aurora Civil Service Commission in

March 2010 was not filled within sixty days, however, Appellee further indicated that a candidate for the position was to be presented to City Council for confirmation on August 9, 2010. A review of the Civil Service Commission's website indicates that the vacancy was filled on August 24, 2010, and I hereby take judicial notice of same. Although such appointment was not made within the sixty-day time period, I find that the appointing authority has taken steps to fill the vacancy and that it is unnecessary for this Board to take further action with regard to the matter.

A municipal civil service commission, pursuant to R.C. 124.40, performs the same functions as does the Director of Administrative Services and the State Personnel Board of Review with respect to the civil service of a city. Therefore, the Aurora Civil Service Commission has the responsibility to make sure that all appointments, layoffs and discipline are carried out correctly, and that employees have the same right to appeal to the municipal civil service commission as a state or county employee would have to appeal to this Board. See, *Brotherton v. Amherst Civil Service Commission* (Jan. 23, 1991), PBR 90-INV-08-0861; aff'd Franklin Co. No. 91CVF04-2777, unreported.

The Aurora Civil Service Commission has jurisdiction over offices and positions in the classified service of the City; Appellee has not asserted that any of positions held by the named employees were in the unclassified service. The City of Aurora's Charter states in Article XV, and the Civil Service Commission Rules and Regulations echo in Rule I:

The duties of the Civil Service Commission shall include ... hearing appeals and the implementation, supervision and enforcement of the rules of the Civil Service Commission, as adopted by City Council, and for appeals from the action of the Mayor in any case of transfer, reduction, suspension or removal.

The remaining question posed by Appellant is whether the appointing authority acted properly in effectuating the layoff and/or reduction in hours and benefits of the employees named in Appellant's request for investigation: Ross Brankatelli, Cathy Lafferty, Lionel Finch and Albert Hall. As initially noted, this Board's investigatory jurisdiction is limited to a determination as to whether or not the Civil Service Commission has violated or failed to perform its duties. The Aurora Civil Service Commission Rules and Regulations provide for an appeal of the disciplinary actions outlined in Rule XIV in Section 6 of that same rule. As noted above, however, the City Charter and Rule 1 of the Commission's Rules and

Regulations set forth as one of the Commission's duties "appeals from the action of the Mayor in any case of transfer, reduction, suspension or removal."

A layoff is not an appealable action identified by either the Commission's Rules or by the City Charter. I find that Mr. Brankatelli was laid off from employment with the City of Aurora. Accordingly, he had no right of appeal to the Aurora Civil Service Commission and the Commission did not have a duty to provide him with a hearing regarding his layoff from employment with the City. Based upon the information contained in the record, I further find that the remaining three employees were not laid off, but were reduced in hours and benefits from full-time positions to part-time positions.

Appellee notes that the terms transfer, reduction, suspension and removal are words typically used in disciplinary matters. The language of the Charter and Rule 1 specifically states, however, that the Commission is to consider appeals "in any case" (emphasis added) of transfer, reduction, suspension or removal. Therefore, because Ms. Lafferty, Mr. Finch and Mr. Hall were reduced, rather than laid off, I find that they have a right of appeal to the Aurora Civil Service Commission pursuant to the language included in Article XV of the Aurora City Charter. As such, it appears that the Commission mistakenly denied Ms. Lafferty, Mr. Finch and Mr. Hall's request for a hearing with regard to their reduction in hours and benefits from full-time positions to part-time positions.

Therefore, I respectfully **RECOMMEND** that the Aurora Civil Service Commission be **MANDATED** to convene hearings for each of the reduced individuals within thirty (30) days of the date of this Board's Final Order, and to provide this Board with confirmation that such hearing has been held or waived by Ms. Lafferty, Mr. Finch and/or Mr. Hall. As part of the hearing procedure, the Commission should consider whether the appointing authority complied with the appropriate provisions of the Aurora Civil Service Commission Rules and Regulations, Ohio Revised Code and Ohio Administrative Code, in effectuating the employment actions.


Jeannette E. Gunn
Administrative Law Judge