

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

Anne Molnar,

Appellant,

v.

Case No. 10-INV-09-0230

City of Lorain,
Safety Service Department,

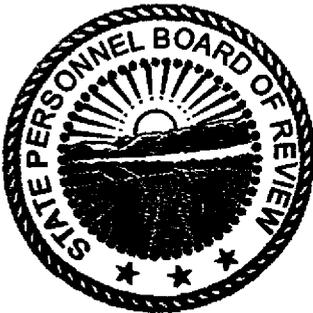
Appellee.

ORDER

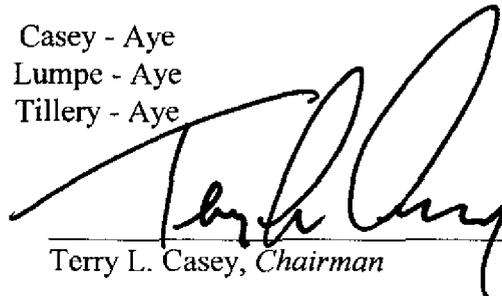
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 investigation be **TERMINATED**, pursuant to O.R.C. § 124.40.



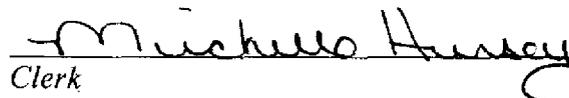
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, July 22, 2011.


Clerk

7.22.11 mH

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

Anne Molnar,

Case No. 10-INV-09-0230

Appellant

v.

June 7, 2011

City of Lorain,
Safety Service Department,

Jeannette E. Gunn
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon a review of the information contained in the record. On September 23, 2010, Appellant filed an appeal with this Board requesting an investigation of an appointment made by the Mayor and Safety Director of the City of Lorain (the "City"); Appellant subsequently expanded her investigation request to include the decision of the Lorain Civil Service Commission (the "Commission") to grant the City's request for an exceptional appointment to fill the position of Community Development Department Director.

Appellee filed a Memorandum responding to Appellant's request, outlining the procedures followed by the City of Lorain to fill the Community Development Department Director's position and the interaction between the City and the Lorain Civil Service Commission, which ultimately resulted in the exceptional appointment of a candidate, Ms. Tracy Udrija, to the position. Appellee asserted that the Lorain Civil Service Commission determined prior to voting to approve the candidate that its local rules had been complied with in filling the position vacancy, and that the applicable rules for requesting an exceptional appointment had also been satisfied. Appellee produced documentary evidence in the form of meeting minutes to support both assertions.

CONCLUSIONS OF LAW

Initially, I note that this Board does not have jurisdiction to investigate or review the merits of employment actions taken by a municipality. No section of the

Ohio Revised Code grants the Board investigatory authority over a municipality, and municipal employees are not employees in the state service, as defined by R.C. 124.01(B). Accordingly, this Board may not consider whether or not the City of Lorain acted properly in its selection of a candidate to fill the position of Community Development Department Director (the "Director"), or substitute its judgment for that of City in determining the best candidate to fill a position.

This Board does have investigatory authority over municipal civil service commissions pursuant to R.C. 124.40. That statute provides that the Board is authorized to conduct investigations when it has reason to believe:

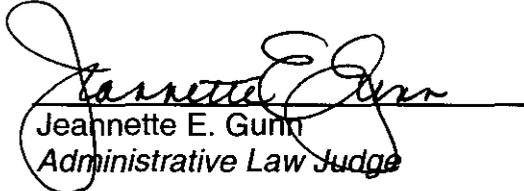
... that a municipal civil service commission is violating or is failing to perform the duties imposed upon it by law, or that any member of a municipal civil service commission is willfully or through culpable negligence violating the law or failing to perform official duties as a member of the commission

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. It has the responsibility to make sure that all appointments, discipline and removals 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. As correctly noted by Appellee in its Memorandum, the Lorain Civil Service Commission has no

Information contained in Appellee's Memorandum, filed with this Board on February 18, 2011, indicates that the Commission considered the interview committee's determination that the candidate met the minimum qualifications for the Director's position prior to approving the appointment. As correctly noted by Appellee, it is not appropriate for the Civil Service Commission to substitute its judgment for that of the interview committee as to which candidate is best suited to fill a position, however, the Commission may properly determine whether or not the selected candidate's qualifications meet the minimum qualifications adopted for the anticipated position.

Appellee's Memorandum further indicated that the Commission considered both the need for an exceptional appointment, and the City's compliance with civil service commission rules for filling a position by exceptional appointment prior to approving the request for an exceptional appointment. With regard to each issue, the Commission took deliberate steps to ensure that the process for filling the vacant Director's position was completed in accordance with local civil service regulations and determined that the City had successfully complied with the necessary hiring requirements.

Therefore, pursuant to a review of the information contained in the record and pertinent case law, I find no evidence to support a conclusion that the Lorain Civil Service Commission, or its individual members, violated or failed to perform the duties imposed upon it by law in approving the exceptional appointment of Ms. Tracy Udrija to the position of Community Development Department Director. Accordingly, I respectfully **RECOMMEND** that the instant investigation be **TERMINATED**.


Jeannette E. Gumm
Administrative Law Judge

JEG: