

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

Joel Patrick,

Appellant,

v.

Case No. 10-INV-09-0255

Department of Youth Services
Ohio River Valley Juvenile Correctional Facility,

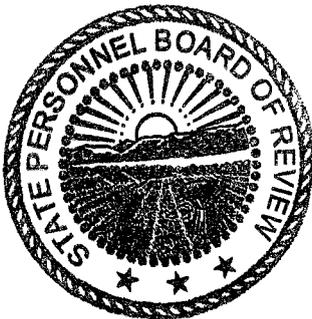
Appellee.

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 request for an investigation be **DISMISSED**, since Appellee's interpretation of its own discretionary policy in no way violates O.R.C. Chapter 124.



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.


Clerk

4-6-11mH

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

JOEL PATRICK,

Case No. 10-INV-09-0255

Appellant

v.

February 28, 2011

DEPARTMENT OF YOUTH SERVICES,
OHIO RIVER VALLEY JUVENILE CORRECTIONAL FACILITY,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's, Joel Patrick's, request for an investigation concerning whether Appellee, Department of Youth Services (DYS), violated any provision of R.C. Chapter 124. (Ohio's civil service laws). Mr. Patrick has alleged that DYS refused to permit Mr. Patrick, an exempt DYS employee, from representing a second exempt DYS employee at a pre-disciplinary hearing conducted by DYS.

In accordance with R.C. 124.56, the instant record has been developed through an exchange of correspondence and is now ready for review.

We begin our analysis by noting that DYS Policy 103.24 IV. D. 2. reads "Exempt employees may have a representative present during the [pre-disciplinary] meeting."

Consistent with constitutionally mandated pre-deprivation procedures, an employee has a right to advanced notice concerning a pre-disciplinary hearing (also called a pre-disciplinary meeting or conference) when the employer is contemplating a deprivation of the employee's property rights above a *de minimus* threshold. The employee has a right to attend or waive attending the hearing. At the hearing, the employee has a right to make a statement on the employee's behalf and has a right to review the evidence that the employer is considering regarding the matter.

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The hearing should be presided over by a neutral hearing officer not in the affected employee's immediate chain of command. The hearing officer is to make a recommendation to the appointing authority after the conclusion of the hearing.

There is no constitutional mandate or Revised Code provision that requires the employer to allow the employee to have a representative present at the pre-disciplinary hearing. Further, there is no constitutional mandate or Revised Code provision that requires the employer to allow the employee to be represented by legal counsel or that requires the employer to allow the employee to record the pre-disciplinary hearing.

DYS Policy 103.24 does permit the affected employee to have a representative present at the pre-disciplinary hearing. This policy thus extends the rights of the affected employee beyond either the constitutional or statutory requirements for such a hearing.

As reflected in the record, in the instant situation, Mr. Patrick accompanied the affected employee to the pertinent pre-disciplinary hearing, but was not allowed to speak for the affected employee at the hearing. Further, the affected employee at the hearing appears to have been granted extensive rights far exceeding the minimum acceptable level for such a proceeding.

In summary, then, when DYS interprets its policy to permit a representative to attend the hearing but not to speak at the hearing, DYS has not violated any provision of R.C. Chapter 124. Accordingly, there is no further reason for this Board to entertain this matter under its investigatory authority set forth in R.C. 124.56 and this matter should thus be dismissed.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant request for an investigation, since Appellee's interpretation of its own discretionary policy in no way violates R.C. Chapter 124.



JAMES R. SPRAGUE
Administrative Law Judge