

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

John R. Phillips,

Appellant,

v.

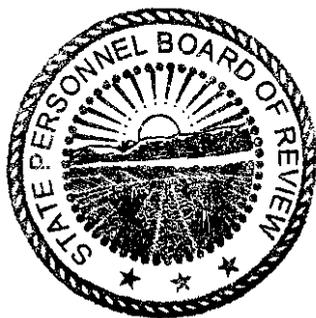
Case No. 10-RMD-07-0190

Ohio University,

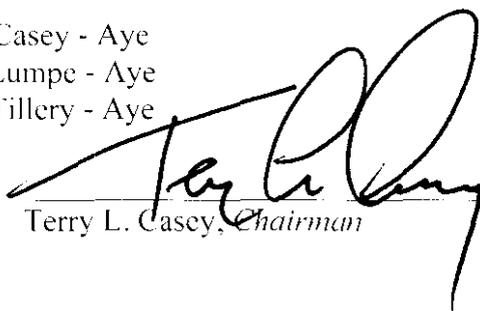
Appellee.

ORDER

This matter came on for consideration on the motion of both parties that the Settlement Agreement attached hereto and incorporated herein by reference, be adopted. Being fully advised in the premises, the Board hereby orders that the attached settlement agreement be **ADOPTED**. Accordingly, the above-referenced appeal is hereby **DISMISSED**.



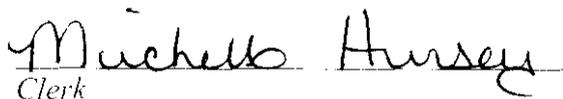
Casey - Aye
Lumpe - Aye
Tillery - Aye


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 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 29, 2011.


Clerk

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

2011 APR 25 11:11:24 This Settlement Agreement and Release of Claims ("Agreement") is made and entered into by and between John R. Phillips ("Phillips" as defined below) and Ohio University ("OU" as defined below).

WHEREAS, Phillips filed Case No. 10-RMD-07-0190 now pending before the State Personnel Board of Review ("SPBR"); and

WHEREAS, the Parties desire to resolve any and all disputes relating to Phillips' employment with OU, including, but not limited to, those claims embodied in the above-mentioned appeal filed with the State Personnel Board of Review.

NOW, THEREFORE, in consideration of the mutual agreements set forth herein, the Parties agree as follows:

1. **Parties.** This Agreement is entered into on behalf of, and shall extend to: "Phillips," to include, John R. Phillips, his immediate family, heirs, assigns, personal representative, executors, agents and administrators; and to "OU," which includes its successors, assigns, officers, trustees, directors, employees and agents, both past and present.

2. **Intent.** Except as specifically set forth herein, Phillips and OU wish to bring a complete, final and irreversible end to any and all claims and/or disputes which arise or which could have arisen from Case No. 10-RMD-07-0190 and to reach a full and final settlement of all matters and claims, of any nature whatsoever, as of the date of execution of this Agreement.

3. **Consideration.** In consideration of the mutual promises and agreements set forth herein, the Parties agree as follows:

A. **As for John R. Phillips:**

As consideration for the settlement of this matter, Phillips offers the following:

1. **Withdrawal of Claim:** In contemplation of entering this Agreement, Phillips will withdraw his appeal before the SPBR, Case No. 10-RMD-07-0190;
2. **Waiver of Claims:** Phillips agrees to execute a complete release and waiver of any and all legal claims or causes of action that he may have against OU up to and including the date on which the Agreement is fully executed;
3. **Resignation:** Phillips agrees to voluntarily resign in lieu of termination from his position as Administrative Assistant at OU effective January 17, 2007 with the execution of this Agreement.

B. **As for OU:**

As consideration for the settlement of this matter, OU offers the following:

1. **Rescind Termination:** OU agrees to rescind Phillips' termination effective December 22, 2006.
2. **Resignation:** OU hereby timely accepts Phillips' voluntary resignation in lieu of termination effective January 17, 2007 with the execution of this agreement. OU agrees to document in its records Phillips voluntarily resigned from his position. Nothing in this agreement shall be construed as an agreement by OU to withhold or destroy any document maintained in accordance with state or federal law.

[The remainder of this page is intentionally left blank.]

3. Back Pay: OU shall issue payment to Phillips in the amount of \$2,000, less all of the applicable taxes and required withholdings, which reflects wages that would have been earned by Phillips from the time of reinstatement on December 22, 2006 to the time of Phillips' voluntary resignation on January, 17, 2007. OU agrees to contribute the appropriate employer's amount to Phillips' Ohio Public Employees Retirement System ("OPERS") account; additionally, the appropriate employee contribution to OPERS shall be deducted from Phillips' back pay award and remitted to OPERS. Phillips forever waives any claim for any additional compensation, including but not limited to, any claim for damages, back pay, front pay, overtime, comp time, vacation, holiday pay, personal or sick leave, longevity, shift differential or any other benefit, insurance, or other payment, including any payment of interest, which may have accrued to him as an employee of OU.
4. Documentation: OU agrees to retain disciplinary documentation relating to Phillips in a file, separate from Phillips' personnel file, with the execution of this agreement. All documents related to Phillips' employment shall be retained in compliance with the requirements of the Ohio Public Records Act and other federal and Ohio laws.

4. **Release of All Claims and Dismissal of All Charges and Legal Actions.** Phillips does hereby fully, finally and forever release, hold harmless from and against, waive and forever discharge the State of Ohio, OU, its successors, assigns, officers, trustees, directors, employees and agents, both past and present, of or from any and all claims, actions and causes of actions, suits, debts, liability, demands whatsoever, in law or in equity, which Phillips ever had, may now have, or may hereafter have, whether known or unknown, with respect to the employment of Phillips by OU. Such rights, claims, causes of action or liability shall include, but not be limited to, those arising or which might arise out of intentional infliction of emotional distress, harm or illness, intentional injury or intentional tort, or any other facts; the Fair Labor Standards and the Equal Pay Acts; Title VII of the Civil Rights Act of 1964; the Civil Rights Acts of 1964 as amended; the Civil Rights Act of 1991 as amended; the United States Constitution; the Civil Rights Acts of 1866 or 1871 (42 U.S.C. Sections 1981, 1983, 1985, *et seq.*); the Americans with Disabilities Act; the Rehabilitation Act; the Age Discrimination in Employment Act; The Old Workers Benefit Protection Act; Chapter 4112 of the Ohio Revised Code; Ohio Revised Code Chapter 124; Tortious wrongful discharge claims under Ohio law; and any other Federal, State, City, County or other local law or ordinance concerning employment, or in any other manner regulating or otherwise concerning wages, hours or any other terms or conditions of employment, which, (a) have been filed, (b) are now pending, or (c) could have been filed, relating to any acts which have transpired in regard to Phillips' employment with OU at any time up to and including the date of execution of this Agreement.

5. **Complete Dismissal.** Within seven (7) days upon receiving a copy of this Agreement that has been signed by all Parties, Phillips agrees to withdraw with prejudice all actions filed by him against OU including Case No. 10-RMD-07-0190. Phillips also pledges to immediately dismiss any other action(s) which have been filed, are now pending, or which could have been filed against the State of Ohio and OU relating to any acts or omissions which have transpired at any time up to and including the date of execution of this Agreement in regard to Phillips' employment with OU. Phillips further agrees to never re-file any action, claim or other lawsuit against OU, its successors, assigns, officers, trustees, directors, employees and agents, both past and present, or any other agency of the State of Ohio, relating to any acts or omissions which have transpired at any time up to and including the date of the execution of this Agreement and acknowledges that this Agreement would bar any such action or proceeding.

6. **Non-Admission.** The terms set out in the Agreement are a compromise settlement of disputed claims, the validity, existence or occurrence of which is expressly denied by OU. Neither the terms nor the Agreement shall be deemed or construed as an admission by OU of any wrongful acts whatsoever by or against Phillips or any other person, nor does any arrangement(s) made with Phillips constitute an acknowledgement of the validity of any claim, charge, liability or cause of action asserted, it being expressly understood that all such claims are in all respects denied by OU.

[The remainder of this page is intentionally left blank.]

7. **General Terms.** The Parties to this Agreement represent and affirm that the only consideration for their agreement and execution are the terms stated herein, that no other promise or agreement of any kind has been made to or with any of them by any persons or entity to cause either to execute this Agreement, and that no other compensation, benefits, or prerequisites other than those specified in the foregoing Agreement shall be involved or claimed. This Agreement shall not be interpreted to render Phillips a prevailing party for any purpose, including but not limited to an award of attorney fees under any applicable statute or otherwise. Each party fully understands the meaning and intent of this Agreement, including but not limited to their final and binding effect. Each Party further acknowledges that before executing this Agreement that they have consulted counsel and that each Party has carefully read and fully understands all of the provisions of the Agreement, and that the execution of the Agreement is a knowing and voluntary act.

8. **Construction and Severability.** This Agreement shall be construed according to its fair meaning, and not strictly for or against any of the Parties. Should any provision of the Agreement be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms or provisions shall not be affected thereby and the illegal or invalid part, term or provision shall be deemed not to be part of the Agreement.

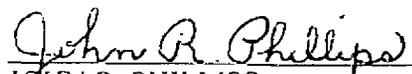
This Agreement sets forth the entire agreement between the Parties hereto, and fully supersedes any and all prior discussions, agreements, transmissions or understandings between the Parties or their representatives.

JOHN R. PHILLIPS, PLEASE READ CAREFULLY BEFORE SIGNING

PURSUANT TO THE AGE DISCRIMINATION IN EMPLOYMENT ACTION, 29 U.S. § 621 *ET SEQ.*, A WAIVER OF RIGHTS CANNOT APPLY TO AGE DISCRIMINATION CLAIMS ARISING IN THE FUTURE. I HAVE READ THE FOREGOING AGREEMENT AND RELEASE, AND FULLY UNDERSTAND IT. I ACKNOWLEDGE THAT I WAS GIVEN UP TO TWENTY-ONE (21) DAYS WITHIN WHICH TO CONSIDER THIS AGREEMENT, THAT I HAVE BEEN ADVISED TO CONSULT WITH LEGAL COUNSEL PRIOR TO SIGNING THIS AGREEMENT, AND THAT I HAVE THE RIGHT TO REVOKE THIS AGREEMENT, IN WRITING, FOR A PERIOD NOT TO EXCEED SEVEN (7) DAYS AFTER THE DATE ON WHICH IT IS SIGNED BY ME. I HEREBY ACKNOWLEDGE THAT IF I FAIL TO EXERCISE THIS RIGHT TO REVOKE, THIS AGREEMENT WILL BECOME A BINDING CONTRACT AS TO ITS TERMS ON THE EIGHTH (8TH) DAY AFTER I SIGN THIS AGREEMENT. I NOW VOLUNTARILY SIGN THIS AGREEMENT AND RELEASE ON THE DATE INDICATED. IF THIS AGREEMENT SHOULD BE REVOKED BY THE APPELLANT WITHIN THE TIME, THIS AGREEMENT SHALL BE VOID AND THE APPELLEE SHALL BE EXCUSED FROM PERFORMANCE HEREUNDER.

The undersigned Parties state that they have carefully read the foregoing and understand the contents thereof, and that they execute the same as their own free and voluntary act.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the day and date indicated below their respective signatures.


JOHN R. PHILLIPS


DR. RODERICK J. MCDAVIS
PRESIDENT
OHIO UNIVERSITY

1/3/2011
DATE

1-18-11
DATE