

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

Austintown Township Trustees, Mahoning County,

Respondent.

Case No. 98-ULP-07-0394

**ORDER
(OPINION ATTACHED)**

Before Chairman Pohler, Vice Chairman Gillmor, and Board Member Verich: May 4, 2000.

On September 17, 1999, the State Employment Relations Board ("Board") issued its Opinion and Order (SERB 99-024) in this case. The Austintown Township Trustees, Mahoning County ("Respondent"), appealed the Board's Order to the Mahoning County Court of Common Pleas. The Respondent requested, but did not obtain, a stay of the Board's Order.

On December 15, 1999, the Respondent filed an "Application for Instructions" in which it asked the Board for instructions concerning benefits that were not accrued by Matthew F. Romeo for the period from his termination to his reinstatement. On December 16, 1999, Mr. Romeo filed a "Notice of Noncompliance and Motion for Contempt" concerning the Respondent's alleged noncompliance with the Board's Order. On January 6, 2000, the Board directed this matter to the Hearings Section for a Show Cause hearing to determine whether the Respondent had complied with the Board's Order and, if not, what actions were necessary to be in compliance with the Order. After the parties submitted this matter on briefs and joint stipulations of fact, the Board transferred this case from the Hearings Section to the Board for a decision on the merits.

After reviewing the record, including the parties' stipulations of fact and briefs, the Board, for reasons set forth in the attached Opinion, incorporated by reference, orders the Austintown Township Trustees, Mahoning County, to comply immediately with and implement the terms of the prior Order of the Board by taking the affirmative action of immediately reinstating Matthew F. Romeo to the position of Catch-Basin Leader and by making Mr. Romeo whole for the wages he is owed at the rate of pay as the Catch-Basin Leader beginning October 18, 1999, less the amount of pay he has received as a member of the road crew from November 4, 1999, to the present.

It is so directed.

POHLER, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



SUE POHLER, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 4117.13(D) by filing a notice of appeal with the State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the court of common pleas in the county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, within fifteen days after the mailing of the State Employment Relations Board's order.

I certify that this document was filed and a copy served upon each party by certified mail, return receipt requested, on this 4th day of May, 2000.



SALLY L. BARAILLOUX, EXECUTIVE SECRETARY

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OPINION

GILLMOR, Vice Chairman:

This unfair labor practice case comes before the State Employment Relations Board ("Board" or "Complainant") upon the filing of Joint Stipulations of Fact and Supplemental Trial Briefs to determine whether the Austintown Township Trustees, Mahoning County, have complied with the prior Order of the Board in this case and, if not, what actions are necessary to be in compliance with the Order. For the reasons below, we find that the Austintown Township Trustees, Mahoning County, have not fully complied with the prior Order of the Board.

I. BACKGROUND

On September 17, 1999, the Board issued its Opinion and Order (SERB 99-024) in this case. The case was appealed by the Austintown Township Trustees, Mahoning County ("Respondent"), to the Mahoning County Court of Common Pleas. The Respondent requested, but did not obtain, a stay of the Board's Order.

On November 4, 1999, the Respondent reinstated Matthew Romeo, pending the outcome of its appeal of the Board's decision. At the time of his discharge, Mr. Romeo was employed as a Catch-Basin Leader and was paid at the rate of \$14.96 per hour. Upon reinstatement, Mr. Romeo was not placed back into the position of Catch-Basin Leader, but was placed in a position as a road crew member at the rate of \$13.98 per hour. The Catch-Basin Leader position had been filled by employee Dan Balint in January 1999, pursuant to the terms of the collective bargaining agreement between the unit's exclusive representative and the Respondent. Mr. Romeo was not given back pay or any other retroactive benefit upon his reinstatement.

By letters sent in November 1999 by his counsel, Mr. Romeo informed the Respondent that, upon his reinstatement, he had not received certain benefits retroactively, and he had not been reinstated to the position and pay that he had held before his discharge. Mr. Romeo contended that these actions and inactions violated the prior Order of the Board.

On December 15, 1999, the Respondent filed an "Application for Instructions" in which it asked the Board for instructions concerning benefits that were not accrued by Mr. Romeo for the period from his termination to his reinstatement. On December 16, 1999, Mr. Romeo filed a "Notice of Noncompliance and Motion for Contempt" concerning the Respondent's alleged noncompliance with the Board's Order. On January 6, 2000, the Board directed this matter to the Hearings Section for a Show Cause hearing to determine whether the Respondent had complied with the Board's Order and, if not, what actions were necessary to be in compliance with the Order.

The parties agreed that no substantial or material issues of fact were in dispute. They decided that, rather than have a full hearing, the parties would submit this matter on briefs and joint stipulations of fact. On March 23, 2000, the Board transferred this case from the

Hearings Section to the Board for a decision on the merits.

II. DISCUSSION

The only issues pending before the Board are whether, pursuant to the Board's September 17, 1999 Order in this case, Mr. Romeo is entitled to: (1) all sick leave, seniority, and longevity benefits that accrued between his date of discharge and the date of his reinstatement; (2) the position that he held prior to his discharge for the appropriate period under the terms of the collective bargaining agreement; and (3) reimbursement of \$1,024.72 out-of-pocket insurance costs that would have been paid had he not been discharged by the Respondent.

In the Board's September 17, 1999 Order, the Respondent was ordered to take the affirmative action to: "Immediately reinstate Matthew F. Romeo to *his job* assignment as an Austintown Township road crew worker *without* back *pay*[" (emphasis added). The emphasis added to the language outlined above is to demonstrate that the Board intended that Mr. Romeo would return to the position he held at the time of his termination, not an equivalent position or some other position. Clearly, Mr. Romeo was to be returned to the position of Catch-Basin Leader at the rate of pay applicable to the position at the time of Mr. Romeo's return according to the Board's Order. Further, the Board's Order was issued on September 17, 1999, and was received by the Respondent on September 20, 1999. But reinstatement did not occur until November 4, 1999, more than six weeks later. Six weeks to carry out this Order was an unreasonable amount of time. Consequently, we find that Mr. Romeo should have been reinstated by October 18, 1999, which was four weeks after the Respondent received the Board's Order. Therefore, Mr. Romeo is to be immediately placed in the position of Catch-Basin Leader at the applicable rate of pay for the position, and he is owed wages at the rate of pay as the Catch-Basin Leader beginning October 18, 1999, less the amount of pay he has received as a member of the road crew from November 4, 1999,

to the present.

As to Mr. Romeo's entitlement to the other benefits at issue in this case, the Board's previous Order did not award those benefits to Mr. Romeo. The action taken by the Board in returning Mr. Romeo without back pay was done to specifically recognize Mr. Romeo's culpability with respect to his actions, and therefore, the only remedy Mr. Romeo was to receive was reinstatement. The return of Mr. Romeo without back pay was to reflect that Mr. Romeo's time off between discharge and reinstatement was to be considered similar to a disciplinary suspension, and Mr. Romeo would not be entitled to any other benefit during the time frame covered by the suspension. Thus, Mr. Romeo was not entitled to sick leave, seniority, and longevity benefits that accrued between the time of his discharge and the date of his reinstatement, nor was Mr. Romeo entitled to reimbursement of \$1,024.72 out-of-pocket insurance costs that would have been paid had he not been discharged by the Respondent.

III. CONCLUSION

For the reasons above, we find that the Respondent has not complied with the September 17, 1999 Order of the Board in this case. The Austintown Township Trustees, Mahoning County, are hereby ordered to comply immediately with and implement the terms of the prior Order of the Board. Further the Austintown Township Trustees, Mahoning County, are ordered to take the affirmative action of immediately reinstating Mr. Romeo to the position of Catch-Basin Leader, and to make him whole for the wages he is owed at the rate of pay as the Catch-Basin Leader beginning October 18, 1999, less the amount of pay he has received as a member of the road crew from November 4, 1999, to the present.

Pohler, Chairman, and Verich, Board Member, concur.