

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-265

PAUL JAMES

APPELLANT

VS. FINAL ORDER  
SUSTAINING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

TOURISM, ARTS AND HERITAGE CABINET  
KENTUCKY STATE FAIR BOARD  
CLIFFORD "RIP" RIPPETOE, APPOINTING AUTHORITY

APPELLEE

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The Board at its regular August 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated July 14, 2014, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this 12<sup>th</sup> day of August, 2014.

KENTUCKY PERSONNEL BOARD

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Ellen Benzing  
Paul James  
Paul Herberg

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
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AND RECOMMENDED ORDER**

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This matter came on for an evidentiary hearing on May 14, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Paul James, was present and was not represented by counsel. Appellee, Tourism, Arts and Heritage Cabinet, Kentucky State Fair Board, was present and was represented by the Hon. Ellen Benzing. Also appearing as Agency representative was Paul Herberg.

**BACKGROUND**

1. Appellant, Paul James, is a classified employee with status, employed as a Mechanical Maintenance and Operations Technician II for the Kentucky State Fair Board. He was informed by letter dated September 17, 2013, that he was going to be transferred from his position in the Maintenance Branch of the Kentucky International Convention Center, to one in the Engineering Section of the Kentucky Exposition Center.

2. On November 13, 2013, Appellant filed a timely appeal from his involuntary transfer. In support of his appeal, Appellant stated:

All engineering function have not in fact been transferred to K.E.C. per cover page. I was discriminated against in that I was moved to K.E.C. in order replace me with a sub-contractor from a (sic) outside firm. They used sub-contractor to fill open positions or to help with a short-handed dept. Never have I seen them transfer a merited state worker out of his job to be replaced with a sub-contractor, this constitute a (sic) unfair labor practice all.

3. As Appellee bore the burden of proof, it went first in the presentation of evidence.

4. **Mr. Mike Sausman** is the Executive Director of Operations at the Kentucky Fair Board, a position he has held for approximately six years. His job duties include the oversight of the Division of Operations labor force.

5. Sausman explained that the Fair Board has two functions: running the Kentucky International Convention Center, located in downtown Louisville, and the Kentucky Exposition Center, which is located close to the Louisville International Airport.

6. Sausman testified that while the Division of Operations historically employed 200 to 220 employees, there are only 100 to 110 employees at the facilities currently. Sausman said this was based on the “significant changes” the Fair Board has experienced since the new CEO, Mr. Clifford “Rip” Rippetoe, was brought in, about eighteen months ago. Sausman testified that the new management “challenged the Operations Division to find additional efficiencies in the way we run the institution. We needed to find a way to do more with fewer folks.” When employees left employment, his department did not fill vacant positions.

7. Sausman’s department is not the only one to lose staff through attrition. Sausman stated that the “Grounds and Horticultural Department” went from twenty employees to four; the “building set-up people” used to be composed of five different crews. Now there are only two.

8. Sausman stated that his department is now contracting with “Alpha Mechanical” to fulfill the Fair Board’s energy management and mechanical maintenance needs. Sausman explained that the Exposition Center had lost several employees through attrition. He pulled all the engineering department employees (including Appellant) from the Convention Center (except for Mr. Allen) to “take care of the mother ship.” The Convention Center’s engineering needs are now met by Alpha Mechanical under the supervision of classified employee, Mr. Allen. Sausman explained that Allen was needed at the Convention Center for “continuity.” A staff person is needed at that facility to show the contract employees “where things are located.” Because of the larger number of events at the Exposition Center, Sausman stated that he can run the Convention Center “with a lot fewer folks.”

9. **Mr. Paul Herberg** is the Human Resource Director at the Fair Board, a position he has held since 2008. Through his testimony, a memorandum dated May 16, 2013, addressed to Appellant and two of his coworkers (Kevin Metcalf and Thomas Parkhill), was introduced in to the record as Appellee’s Exhibit 3. The memorandum informed the gentlemen that effective May 20, 2013, engineering staff at the Convention Center would be “temporarily assigned” to work at the Exposition Center. The assignment was described in the memo as a “business necessity” of the Fair Board.

10. Through Herberg's testimony, a letter addressed to the Appellant, dated September 17, 2013, was introduced into the record. The letter (identified as Appellee's Exhibit 2) informed Appellant that, effective October 1, 2013, he was being transferred from his current position of Mechanical Maintenance and Operations Technician II, position #30019611, in the Maintenance Branch of the Kentucky International Convention Center to the position of Mechanical Maintenance and Operations Technician II, position #31020965, in the Engineering Section of the Kentucky Exposition Center, Operations Division. The reason stated in the letter for the change is the Fair Board's "ongoing effort to gain operational efficiencies."

11. Herberg explained that in order to move Appellant to the Exposition Center, they created a new position there and abolished his old position at the Convention Center. Essentially, Appellant's job tasks are the same. "The only difference is the location," he stated.

12. **Mr. Mark Berg** is currently the Mechanical Maintenance and Operations Manager at the Exposition Center. Up until a year ago, he had additional responsibilities at the Convention Center as well. He has been employed by the Fair Board for the past five and a half years.

13. Berg testified that with the installation of the new CEO, Mr. Rippetoe, he had been asked to analyze the engineering operations at the two facilities, and to assess the consolidation of engineering staff. Berg added: "I was to position personnel so they are where they need to be."

14. Berg stated that the three Mechanical Maintenance Operations Technicians (MMOT) – Appellant, Thomas Parkhill and Keith Metcalf, had their workstation temporarily changed from the Convention Center to the Expo Center. Berg supervised both Appellant and Parkhill, but Metcalf resigned.

15. Berg testified that the job of MMOT is virtually the same at both facilities. The technicians are responsible for the maintenance, operation, and repair of the HVAC equipment. What is different is the location of each facility, and their physical layout. The Convention Center is a smaller facility, with many small meeting rooms. The Expo Center, on the other hand, is 1.2 million square feet, all on one level.

16. Berg was asked to address the role of the contract employees supplied by Alpha Mechanical. He said that Alpha provides staff to work on "the chillers" at both facilities, and labor, as required, to operate the Convention Center. He added that the advantage to using them was that they are procured only when needed. The Expo Center, unlike the Convention Center, needs to be manned 24 hours a day, seven days a week, to keep its steam boiler running in the winter, and to oversee certain "animal shows."

17. On cross-examination, Berg was asked if the transfer of MMOTs from the Convention Center to the Expo Center had achieved the goal of increased efficiency. Berg answered: "It's been partly successful. We had some time and attendance issues at the Convention Center. Some of them have been resolved, some have not." Berg expanded: "We had some issues at the Convention Center of staff making their own schedules, and then not adhering to them. That problem has been remedied. At the Convention Center, technicians sometimes worked unsupervised. This does not happen at the Expo Center."

18. At the end of Berg's testimony the Appellee rested its case.

19. The Appellant, **Paul James** testified on his own behalf. Appellant began his employment with the Fair Board as a temporary employee. He has been a full-time merit employee for the past six years. He is a MMOT II, and his duties include the maintenance of the HVAC, and operations of the boilers and chillers. He is currently assigned to the Expo Center.

20. Appellant stated he had some time and attendance issues, but those were due to his recovery from a car accident. Appellant stated he felt that he was "picked on" for his time and attendance issues.

21. Appellant stated that now he has to drive twice as far to work, which costs him an additional \$120 per month in gas. He added that he has not had a raise in six years.

22. Appellant added that when he started with the Fair Board, he was the Director's "point man." Now he feels underutilized and unappreciated. He decided to "push back" by filing this appeal.

23. At the end of his testimony, Appellant rested his case.

24. KRS 18A.005(38) defines "transfer" as:

'Transfer' means a movement of any employee from one (1) position to another of the same grade having the same salary ranges, the same level of responsibility within the classified service, and the same salary received immediately prior to transfer.

25. 101 KAR 1:335, Section 4, states:

Section 4. Transfers.

(1) The transfer of an employee with status shall conform to the requirements established in this section.

(2) (a) A transfer shall be on a voluntary or involuntary basis.

(b) An appointing authority shall establish a reasonable basis for selecting an employee for involuntary transfer.

(c) If an employee has not requested a transfer in writing, a transfer shall be deemed involuntary.

(3) Involuntary transfer, same county.

(a) Prior to the effective date of an involuntary transfer to a position with a work station in the same county, an employee shall receive a written notice of involuntary transfer.

(b) The notice shall:

1. Indicate that the employee:

a. Has been selected for transfer; and

b. Is required to report to the new work station; and

2. State the:

a. New work station;

b. Reason for the transfer;

c. Effective date of the transfer; and

d. Right of the employee to appeal the transfer to the board within sixty (60) days of receipt of the notice of involuntary transfer, excluding the date the notice is received.

(c) A copy of the notice shall be forwarded to the Secretary of Personnel.

(d) An employee shall report to the new work station upon the date specified in the notice.

...

(5) An involuntary transfer shall be intra-agency.

### **FINDINGS OF FACT**

1. Appellant, Paul James, is a classified employee with status, employed by the Kentucky State Fair Board as a Mechanical Maintenance and Operations Technician II.

2. On May 16, 2013, Appellant was informed by a memorandum from Clifford Rippetoe, CEO and President of the Fair Board, that he and two coworkers (Keith Metcalf and Thomas Parkhill) were being temporarily re-assigned from the Kentucky International Convention Center to the Kentucky Exposition Center. The reason for this change, as stated in the memorandum, was for a "business necessity."

3. On September 17, 2013, Appellant was informed by a letter under the signature of Paul Herberg, Director of the Fair Board's Division of Personnel Management, that he was being involuntarily transferred from his current position of MMOT II, position #30019613, in the Maintenance Branch of the KICC to the position of MMOT II, position #31021320, in the Engineering Section of the Kentucky Exposition Center, Operations Division. The reason for the involuntary transfer, as stated in the letter, was to consolidate the Fair Board's oversight and management of its engineering functions in order to "gain operational efficiencies."

4. Appellant filed a timely appeal of his involuntary transfer on November 13, 2013.

5. According to the testimony of Mike Sausman, Executive Director of Operations, the Fair Board, under the direction of its new CEO, Clifford Rippetoe, was in the process of reducing staff through attrition in order to "do more with fewer folks." Contract employees from Alpha Mechanical group had been procured to provide "as needed" labor in the engineering operations department at the KICC, while the three merit employees, Appellant, Kevin Metcalf, and Thomas Parkhill, had been moved to the Kentucky Exposition Center, which was a larger operation and often needed to be manned 24 hours a day. One supervisor, James Allen, continued to work at KICC in order to manage and assist the contract employees from Alpha Mechanical.

6. Appellant's supervisor, Mark Berg, stated that Appellant's time and attendance issues factored into the decision to seek "operational efficiency" by transferring him from the KICC, where he sometimes worked unsupervised and did not adhere to his scheduled work time, to the KEC, where he could be more closely managed.

7. The Appellant states that he is seeking a transfer back to the KICC because the extra drive to the KEC costs him approximately an extra \$125 in fuel costs.

8. Pursuant to the 101 KAR 1:355, an appointing authority must establish a reasonable basis for the transfer. What was established at the evidentiary hearing was that the Kentucky Fair Board is attempting to reduce costs and increase efficiency by consolidating staff and using contract employees on an as-needed basis. With the exception of one individual (needed to supervise contract employees), the Fair Board sent all maintenance technicians at the KICC to the KEC. Being a larger facility, and housing some shows that require on-site staff 24 hours per day, the Expo Center had the greater need for maintenance staff. The fact that these technicians would also be better supervised at the Expo Center only strengthened the decision for the transfer.

**CONCLUSIONS OF LAW**

1. The Hearing Officer concludes, as a matter of law, that the Cabinet proved by a preponderance of the evidence that it followed the administrative mandates of 101 KAR 1:355, Section 4, in its involuntary transfer of Appellant.
2. Appellee's involuntary transfer of Appellant was taken for just cause.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **PAUL JAMES VS. TOURISM, ARTS AND HERITAGE CABINET, KENTUCKY STATE FAIR BOARD (APPEAL NO. 2013-265)** be **DISMISSED**.

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

**Any document filed with the Personnel Board shall be served on the opposing party.**

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

**ISSUED** at the direction of **Hearing Officer Colleen Beach** this 14<sup>th</sup> day of July, 2014.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**



A copy hereof mailed this date to:

Hon. Ellen Benzing  
Paul James