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IN THE OHIO COURT OF CLAIMS
STATE OF OHIO

DAVID A. BENTKOWSKI)	CASE NO. 2014-00651
)	
Plaintiff,)	JUDGE PATRICK M. McGRATH
)	
vs.)	
)	
OHIO LOTTERY COMMISSION,)	
)	
Defendant.)	

PLAINTIFF, DAVID A. BENTKOWSKI'S CLOSING ARGUMENT

This case was tried to Judge Patrick M. McGrath over two days at the Ohio Court of Claims in Columbus, Ohio. The parties agreed to submit simultaneous closing arguments.

SUMMARY OF THE EVIDENCE

David A. Bentkowski, age 44, has a bachelor's degree from the University of Toledo, a master's degree from the Monte Ahuja College of Business at Cleveland State University, and a law degree from Cleveland-Marshall College of Law (Tr. 226). He has also been an elected official in Seven Hills, Ohio (twice as a member of council and as a two-term elected mayor)

(Tr. 227). In his mayoral capacity, he was the head of human relations for the city (Tr. 228). He also provided human relations advice to members of the Northeast Ohio Concrete Promotion Council (Tr. 228) and has taught labor law at Cleveland State University (Tr. 228-229).

In 2011 Mr. Bentkowski was looking for a job in state government so he could continue in the Public Employees Retirement System (Tr. 230). He made contact with several individuals, including Patrick McDonald who was on the Ohio Lottery Commission (the "Lottery") and several former legislators about his job search (Tr. 231-232). He later received a call from Mr. McDonald, informing him that "I've got a job for you at the Lottery Commission." (Tr. 232.)

Mr. Bentkowski filled out an application for employment with the Lottery. He was interviewed by its Director, Dennis Berg and by Elizabeth ("Liz") Popadiuk, the Lottery's Deputy Director of Human Resources (Tr. 33; 41-42; 164; 234).

Mr. Bentkowski was hired as the Lottery's only labor relations officer effective October 10, 2011 at an initial salary of \$58,000.00 (Tr. 33; 41; 237). As the Lottery's labor relations officer, he was: (1) the "liaison" between management and the union; (2) responsible for facilitating labor relations; (3) required to hold disciplinary hearings; and (4) responsible for representing management in various labor matters (Tr. 40).¹

Mr. Bentkowski worked in this capacity for 13 months (Tr. 44-45).² Mr. Bentkowski described his job as doing "whatever Liz said . . . I did exactly what she said every time." (Tr. 238-239.) He "had to pursue whatever discipline [Liz] wanted on every single case." (Tr. 239.). Popadiuk could not recall any instance in 13 months that Mr. Bentkowski did not do something

¹. There are a number of labor relations officers employed throughout state government (Tr. 41).

². From October 10, 2011 to November 13, 2012 (Tr. 44-45).

she asked or directed him to do (Tr. 96-97). Mr. Bentkowski said he was “subservient” to Popadiuk except when she was engaged in “illegal activity.” (Tr. 359). He took to calling Popadiuk “chief,” which she appeared delighted about (Tr. 358).

Mr. Bentkowski’s immediate supervisor was Popadiuk (Tr. 331; 41-42).^{3, 4} He was obligated to provide her with written bi-weekly reports of his activities (Tr. 42). While Popadiuk “did not recall” if he submitted them, or whether she ever responded to them (Tr. 42; 89), Mr. Bentkowski testified he submitted all such reports on time and they are part of the record (Tr. 245-246; Exh. 25). Popadiuk could not recall ever raising any issues with Mr. Bentkowski related to his bi-weekly reports (Tr. 43).

As a new employee, Mr. Bentkowski was obligated to complete two written self-evaluations during his 180-day probationary period (Tr. 52-53; 240-241): One at 90 days and one at 180 days (Tr. 43-46). Mr. Bentkowski completed each of these evaluations on time (Tr. 45; 245-246; Plt’s Exhs. 17 and 18). He also completed an annual self-evaluation (Tr. 241; Exh. 19).

Mr. Bentkowski evaluated himself as “outstanding,” testifying he had never worked harder at any other job (Tr. 243; Plt’s Exhs. 17 and 18). Popadiuk never read any of these self-evaluations (Tr. 46). Despite her obligation to evaluate Mr. Bentkowski in writing, she never did so, purportedly because she did not have enough time (“we were very, very inundated and busy.”). (Tr. 47-48; 53.)

Popadiuk took no action to extend Mr. Bentkowski’s probationary period or to terminate him during, or at the end of, his probation (Tr. 54). Mr. Bentkowski testified that he spoke with

³. Mr. Bentkowski was one of five employees who directly reported to Popadiuk (Tr. 38).

⁴. The Lottery employs about 375 people (Tr. 33)

Popadiuk about each of his self-evaluations and she told him that everything was "great." (Tr. 241; 243.)

Mr. Bentkowski received a raise at the end of his probationary period and also received an annual raise (Tr. 58). At the end of his employment, he earned \$66,000.00 per year (Tr. 239).

Popadiuk conceded that Mr. Bentkowski's dealings with her were "fine." (Tr. 55). She had no issues with how he dressed or with his timeliness (Tr. 55). She claimed not to like how he wrote (Tr. 60-61). Mr. Bentkowski testified that she would ordinarily make small edits to his work and send documents mostly as he had drafted them (Tr. 362-363).

Popadiuk claimed Mr. Bentkowski "would oppose and would debate and argue with me about issues." (Tr. 56.) She said she did not have a problem with her "employees taking a position opposite of mine or discussing it." (Tr. 52). Mr. Bentkowski was never disciplined (Tr. 58; 155).

Mr. Bentkowski testified that he was never late, was nice to every single employee, and went out of his way to do the best job possible. He never used his cell phone at work, did not misuse his computer, and worked doubly hard to meet every deadline he was given, including working at home if need be (Tr. 244-245; 248).

Just prior to being discharged, Mr. Bentkowski was sent to the State of Ohio's "Arbitration School" which is part of the Office of Collective Bargaining's Labor Academy (Tr. 258). Mr. Bentkowski had just finished a 16-course program at the OCB's Labor Academy. *Id.*

Popadiuk testified there was no "triggering event" which led to Mr. Bentkowski's firing (Tr. 99). Popadiuk attended a meeting several days before Mr. Bentkowski was discharged with Patrick McDonald and Dennis Berg (Tr. 99). She was given the "green light" to fire Mr. Bentkowski at that time (Tr. 100).

Popadiuk claimed Mr. Bentkowski was discharged because he was “not a good fit.” (Tr. 92.) She could not recall if she ever told him this in writing. *Id.* Popadiuk claimed the decision to fire Mr. Bentkowski allegedly resulted from a “cumulative ongoing process.” (Tr. 92.) Her only explanation for why she continued to assign him projects, including on the very day he was fired, was that “I was just trying to work with him, trying to keep going.” (Tr. 92).

On November 13, 2012 Mr. Bentkowski was summoned to a meeting at which Popadiuk told him he was “fired.” (Tr. 263). Mr. Bentkowski told her that her actions were in retaliation for “the things I told you not to do.” *Id.* She responded by saying something like “we’re not getting into that.” *Id.* When Director Berg walked into the meeting, Mr. Bentkowski also told him that his firing was “retaliatory.” Berg, too, said: “I’m not talking about that.” (Tr. 264; 265.)

Popadiuk claimed that during the first three months of Mr. Bentkowski’s employment – when he was still on probation – she asked Berg to transfer her because Mr. Bentkowski was allegedly a “bad fit” with her (Tr. 119-120). This period of time corresponds with Mr. Bentkowski’s involvement in discipline directed at two black Lottery employees – Lora Watts and Notre LaBeach – where he firmly objected to Popadiuk’s racist comments about them (Tr. 121).

At the trial, Popadiuk claimed Mr. Bentkowski was “condescending, argumentative and difficult to deal with.” (Tr. 121.) However, she admitted never telling him that she regarded him as such (Tr. 397). As noted above, she never gave Mr. Bentkowski any written feed-back on his self-evaluations as she was required to do, allowed him to complete his probation without difficulty, and approved a raise for him.

Popadiuk later testified that she would not characterize her relationship with Mr. Bentkowski as someone “with whom she did not get along.” (Tr. 203.) According to Mr. Bentkowski, Popadiuk repeatedly complimented him on his work (Tr. 397).

These facts strongly support the conclusion that Popadiuk’s new-found criticism of Mr. Bentkowski was post-facto. For his part, Mr. Bentkowski testified that his conversations with Popadiuk were almost always “tempered” and “calm” (Tr. 279).

III

Mr. Bentkowski testified the only time he and Popadiuk “had any friction or tension is when she would do things [he believed] were discriminatory and crossed the line.” (Tr. 252-253; 356; 358.) Popadiuk incredibly denied that Mr. Bentkowski ever told her that her racist statements were inappropriate (Tr. 63-64; 106 (“He never told me that he felt that anything I said was racist.”). She also flatly denied that Mr. Bentkowski ever spoke with her about the manner in which she talked about fellow employees (Tr. 100). She also denied ever making “racist comments” about any black employee of the Lottery (Tr. 106). However, she admitted that, that “well, sure” we take into consideration whether an employee is “white or black.” (Tr. 106).

Popadiuk agreed that human resources professionals should never make racist comments about other employees (Tr. 141). She conceded that making adverse employment decisions based upon race, sexual orientation or disability is illegal (Tr. 145). Moreover, she agreed that an employee’s race should not dictate or influence whether and how discipline should be given. particular manner because the employee is black (Tr. 144).

IV

Mr. Bentkowski said the Lottery is a “wonderfully diverse place.” (Tr. 3634). With the exception of Jim Zimmerman, who is white, he saw an “overwhelming pattern” of racial

discrimination against black employees (Tr. 364). Popadiuk would “target and go after” black employees, usually starting with making sure they got bad performance reviews followed by goals and objectives and “disproportionate” and “aggressive” discipline (Tr. 364). Mr. Bentkowski told her she was doing this just to “harass these people.” (Tr. 366.) He also told her it was “obvious” she was “papering the file” for future discipline (Tr. 366-367).

A. BILL NEWSOME.

Mr. Bentkowski was preceded as labor relations officer for the Lottery by Bill Newsome, whom Popadiuk described as a “big scary black guy.” (Tr. 255-267). Several days later the opportunity arose for Mr. Bentkowski to talk about his wedding and he purposefully mentioned that he had a lot of African American friends, thinking that Popadiuk would get the hint that he was not “the guy to be racist with.” (Tr. 267-269.)

B. LORA WATTS

When Mr. Bentkowski was hired, there was an on-going investigation involving a black employee named Lora Watts (Tr. 269). Watts worked as a “call center attendant” (also called a “customer service 2” worker) at the Lottery (Tr. 67; 167; 269). Popadiuk told Mr. Bentkowski she wanted Watts fired “because she always looks wacked out on drugs.” (Tr. 269.) (Popadiuk denies this, Tr. 66-67). He told her “let’s not go there” and said “you can’t say stuff like that.” Popadiuk remonstrated with: “Well, it’s true.” (Tr. 269.)

Popadiuk also referred to Watts as “ghetto” and referred to her as “hood.” Mr. Bentkowski redirected the discussion to what Watts may have done at work, but Popadiuk was “hell bent on getting her fired.” (Tr. 270.) Popadiuk said she “may have” discussed with Mr. Bentkowski the fact that she was black (Tr. 108).

Mr. Bentkowski learned that Watts had called someone on Lottery time complaining about a woman “monkeying around” with her husband (Tr. 270). This had precipitated an “investigation” by the State Highway Patrol and the Ohio Inspector General. *Id.* This investigation had revealed that Watts, along with another Lottery employee, had made numerous personal telephone calls from Lottery phones while at work (Tr. 272).

Mr. Bentkowski testified Popadiuk told him she had previously wanted to fire Watts but couldn’t because Watts was black (Tr. 271) (Popadiuk denied saying this, Tr. 69; 108-109; She also denied Mr. Bentkowski telling her that saying this was inappropriate, Tr. 69.) Mr. Bentkowski testified that Popadiuk told him that she was going to use the telephone calls to “get rid of” Watts (Tr. 272).

After evaluation, Mr. Bentkowski suggested to Popadiuk that she should not just “fire” Watts as it had been discovered that another Lottery employee, who was white, was engaged in much the same conduct (Tr. 272-273; 371-374) (Popadiuk claims not to recall this, Tr. 70.) Popadiuk still insisted on charging Watts with “theft of time” and, as Mr. Bentkowski testified, she wanted to “go for the jugular” against her (Tr. 273; 275-276).⁵

Popadiuk reluctantly agreed to a lesser sanction but wanted a “last change agreement” to apply for two years and to any error, not just misuse of the telephone (Tr. 276). Mr. Bentkowski and the union leader pushed for a lesser sanction of one year and only related to misuse of the telephone (Tr. 275). Popadiuk claimed she had to go along with this because the investigation was so poor (Tr. 128-129). However, Mr. Bentkowski testified that the investigation was complete and that Popadiuk never complained about it (Tr. 276-278). Moreover, he denies

⁵. Mr. Bentkowski found this ironic since Popadiuk regularly went to Starbucks during work hours (Tr. 274).

having a post-hearing meeting where Popadiuk criticized him about the quality of the investigation (Tr. 281).

Watts was thereafter given a poor performance review (Tr. 349; Exh. 22). Mr. Bentkowski testified that this was consistent with Popadiuk's claim that she was going to "paper the file" against Watts (Tr. 349-350).

Popadiuk denied telling Mr. Bentkowski to "stay on top of" Watts and report anything she possibly could have done wrong (Tr. 110). In the 13 months that Mr. Bentkowski was employed by the Lottery, Watts was the object of two or three disciplinary proceedings (Tr. 110). Popadiuk denied telling Mr. Bentkowski every time Watts' name came up that she wanted her fired (Tr. 74). She also denied telling Mr. Bentkowski that she wanted to "go after" Watts' supervisors, Sam Erby and Loretta Washington, who were also black (Tr. 74).

However, toward the end of Mr. Bentkowski's employment Popadiuk directed him to "write up" Watts about not having a sufficient sick leave balance and further told him to follow up with her supervisors to see if she was "still screwing up" and, if so, she intended to go after her supervisors who were also black (Tr. 260; 389). Mr. Bentkowski told her he was not comfortable pursuing this woman whom he described as "broken" and "beaten." (Tr. 390-391.)

C. NOTRE LABEACH

Notre LaBeach is black (Tr. 65). She was a sales representative in Wayne or Holmes County, Ohio (Tr. 285). Popadiuk claimed she never told Mr. Bentkowski to write this woman up for every conceivable transgression (Tr. 66). Popadiuk also denied telling Mr. Bentkowski that she wanted LaBeach to leave her employment (Tr. 65). She also denied telling him that she could not fire LaBeach because LaBeach was black (Tr. 66; 111). She denied telling Mr. Bentkowski to write her up so she will quit (Tr. 66). She also denied telling Mr. Bentkowski that

she had told LaBeach's supervisor to conduct repeated performance evaluations of LaBeach to find anything that would show she was not doing her job (Tr. 110).

Mr. Bentkowski testified that Popadiuk described LaBeach as "worthless" and also said she would "love to get rid of her" but couldn't because LaBeach was "too old and was black." (Tr. 271; 286; 293). Popadiuk told him she had to "building a case" against her (Tr. 272). Suddenly LaBeach received "poor performance reviews." (Tr. 290-291).

After LaBeach had a motor vehicle accident (she struck an Amish Buggy), Popadiuk took Mr. Bentkowski to the Director's office to discuss what had occurred (Tr. 286-287). Popadiuk then called LaBeach's supervisor and told him to make sure he reported everything she was doing, telling the supervisor she was "building a case" against LaBeach (Tr. 287). Popadiuk did this in front of Mr. Bentkowski (Tr. 288). Popadiuk thereafter wrote up LaBeach for multiple alleged transgressions that Mr. Bentkowski characterized as "so arbitrary." (Tr. 288-289; 378.)⁶ When LaBeach said she was going to retire, the discipline stopped (Tr. 289).⁷

D. SAM ERBY AND LORETTA WASHINGTON

During the Watts discipline described above, Popadiuk directed that statements be taken from Mr. Erby and Ms. Washington because they were "black," and thus "no one could say anything about them" and it would not "appear" as if Popadiuk was "going after" Watts (Tr. 294). When Mr. Bentkowski spoke with Erby and Washington and learned that other employees,

⁶ For example, LaBeach was written up for not using her cell phone and not "logging in." (Tr. 290).

⁷ After the Watts and LaBeach interactions, Mr. Bentkowski told his wife that Popadiuk was a "sitting duck for a lawsuit" and she then decided to document things she said (Tr. 300). He thereafter made four tape recordings of conversations with Popadiuk (Tr. 399).

when not busy, watched movies at their work stations, Popadiuk wanted to “go after” Erby and Washington, calling them “stupid managers.” (Tr. 296-297.)

Whenever Popadiuk spoke of Erby and Washington in racial terms, Mr. Bentkowski told her she could not do this and told her she was “going to be sued.” (Tr. 298). Popadiuk ignored him, saying she knew what she was doing and, after all, “it’s the truth.” (Tr. 299.)

E. JAMES ZIMMERMAN

Shortly after Mr. Bentkowski began working for the Lottery, he learned of Jim Zimmerman (Tr. 302). Popadiuk denied “hating” Jim Zimmerman (Tr. 75). She also denied telling Mr. Bentkowski that it would be her “finest day” when she walked Zimmerman out of the Lottery’s offices (Tr. 75). She said she “did not remember” saying anything negative about Zimmerman to Mr. Bentkowski (Tr. 76).

Popadiuk recalled being critical of Mr. Bentkowski for not calling security and having Zimmerman removed when Zimmerman got upset at a meeting (Tr. 76-77). Mr. Bentkowski testified that Popadiuk wanted him to write a detailed description of a meeting he had with Zimmerman where Zimmerman became upset (Tr. 249). Popadiuk told him that she was going to use the incident to further discipline Zimmerman (Tr. 251).

Mr. Bentkowski testified that Zimmerman claimed his diabetes was affecting his work performance (Tr. 315; 341). Mr. Bentkowski testified that Popadiuk called this “B.S.” and scoffed at it (Tr. 316; 336-337). Popadiuk denied this (Tr. 77; 102). She also denied Mr. Bentkowski telling her that the Lottery had to make reasonable accommodations for Mr. Zimmerman’s disability (Tr. 78-79). When Mr. Bentkowski brought up the fact that the Lottery had to reasonably accommodate him, she was “irritated” and told him she was “handling it.” (Tr. 396).

F. GIAVONNA EVANS.

Popadiuk conceded she had been sued by Giavonna Evans for racial discrimination (Tr. 81).

ARGUMENT

A. DAVID BENTKOWSKI PROVED EACH ELEMENT OF HIS RETALIATION CLAIM BY A PREPONDERANCE OF THE EVIDENCE.

The evidence showed that the Lottery engaged in prohibited conduct under R.C. 4112.02(I). That statute makes it an

. . . unlawful discriminatory practice. . . [f]or any person to discriminate in any manner against any other person because that person has opposed any unlawful discriminatory practice defined in this section or because that person has made a charge, testified, assisted, or participated in any manner in any investigation, proceeding, or hearing under sections 4112.01 to 4112.07 of the Revised Code. .

To establish a claim for retaliatory discharge plaintiff must prove that: (1) he or she engaged in a protected activity; (2) the employer knew of plaintiff's participation in the protected activity; (3) he or she was subject to adverse employment action; and (4) a causal link existed between the protected activity and the adverse action. *Greer-Burger v. Temesi*, 116 Ohio St.3d 324, 2007-Ohio-6442, 879 N.E.2d 174.

The evidence showed that Mr. Bentkowski engaged in protected activity; that the Lottery was aware of his participation in protected activity; that he was discharged on November 13, 2012; and that a causal link existed between his protected activity and his discharge.

A plaintiff may prove a retaliation claim through either direct or circumstantial evidence that unlawful retaliation motivated the employer's adverse employment decision. *Imwalle v. Reliance Med. Prods., Inc.*, 515 F.3d 531, 543 (6th Cir.2008); *Reid v. Plainsboro Partners, III*, 10th Dist. Franklin No. 09AP-442, 2010-Ohio-4373, 2010 WL 3610931, ¶ 55.

Direct evidence is that evidence which, if believed, requires no inferences to establish that unlawful retaliation was the reason for the employer's action. *Imwalle* at 543-44.

When a plaintiff lacks direct evidence, he or she may establish retaliation through circumstantial evidence using the burden-shifting framework set forth in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). Under the *McDonnell Douglas* framework, a plaintiff bears the initial burden of establishing a prima facie case of retaliation. *St Mary's Honor Ctr. v. Hicks*, 509 U.S. 502, 506, 113 S.Ct. 2742, 125 L.Ed.2d 407 (1993); *Texas Dept. of Community Affairs v. Burdine*, 450 U.S. 248, 252-53, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981).

To establish a prima facie case of retaliation under R.C. 4112.02(I), a plaintiff must meet each of the elements of a retaliation claim set forth above. Once a plaintiff establishes a prima facie case, the burden shifts to the employer to "articulate some legitimate nondiscriminatory reason for" its action. *Carney v. Cleveland Hts.-Univ. Hts. City School Dist.*, 143 Ohio App.3d 415, 429, 758 N.E. 2d 234 (8th Dist. 2001), citing *Burdine* at 252-53. If the employer carries its burden, then the burden shifts back to the plaintiff to prove that their employer's stated reason is a pretext for discrimination. *Id.*

1. DAVID BENTKOWSKI'S PROTECTED ACTIVITY

A plaintiff's opposition to an alleged unlawful employment practice must be reasonable and based on a good-faith belief that the employer's actions were unlawfully discriminatory. See, *Clark Cty. School Dist. v. Breeden*, 532 U.S. 268, 271, 121 S.Ct. 1508, 149 L.Ed.2d 509 (2001); *Johnson v. Univ. of Cincinnati*, 215 F.3d 561, 580 (6th Cir. 2000). R.C. 4112.02(I) protects two types of activities: participation and opposition. Participation activity involves making a charge, testifying, assisting, or participating in any manner in any investigation, proceeding, or hearing

under sections 4112.01 to 4112 .07 of the Ohio Revised Code. Opposition activity involves opposing unlawful discriminatory practices. Opposition must involve an “overt stand” against suspected illegal activity. See, *Coch v. GEM Indus.*, 6th Dist. Lucas No. L-04-1357, 2005-Ohio-3044, 2005 WL 1414454, ¶ 32.

David Bentkowski testified that he repeatedly told Popadiuk that comments she made about black employees of the Lottery were inappropriate and illegal. She specifically said that because Lora Watts and Notre LaBeach were black, she could not fire them, and thus had to “build a case” to do so. She referred to Watts as “looking wacked out on drugs” and further said she was “ghetto” and “hood.” She referred to Notre LaBeach as being “too old and black” to fire.

Mr. Bentkowski complained to Popadiuk, who, after all, was the Deputy Director of Human Resources at the Lottery, about her targeting black employees for excessive and aggressive discipline. While Popadiuk claimed she never said these things, she admitted that she “considered” race in her employment decisions (Tr. 106).

Popadiuk admitted that making derogatory statements about, and taking adverse employment action based upon a person’s race, age or disability was illegal. Indeed, it is:

It shall be an unlawful discriminatory practice . . . for any employer, because of the race, color, religion, sex, military status, national origin, disability, age, or ancestry of any person, to discharge without just cause, to refuse to hire, or otherwise to discriminate against that person with respect to hire, tenure, terms, conditions, or privileges of employment, or any matter directly or indirectly related to employment.

R.C. 4112.02(A).

In addition to directly telling Popadiuk to stop engaging in illegal activity, Mr. Bentkowski took other proactive protected measures. He began documenting what Popadiuk was doing and even video-taping her so he could go to a higher authority to stop her. He researched who in the State of Ohio he could approach about Popadiuk’s behavior because she was in

charge of human relations at the Lottery. Most relevant, he attempted to aid and assist the targeted Lottery employees by arguing on their behalf, pointing out the weaknesses of Popadiuk's pursuit against them, and negotiating for lesser discipline contrary to Popadiuk's racist agenda.

Bentkowski's burden of proof in this case was a preponderance of the evidence. Based upon his detailed testimony and his exhibits, and comparing it with the self-serving testimony of Popadiuk which included healthy doses of "I don't remember" and "I don't think so," Bentkowski clearly met his burden.

2. THE LOTTERY KNEW OF DAVID BENTKOWSKI'S PROTECTED ACTIVITY.

Mr. Bentkowski engaged in the protected activity in relation to the Deputy Director of Human Resources, the highest ranking human resources person at the 375-employee agency. Not only did she engage in prohibited activity, he specifically challenged her and told her that activity was illegal and was likely to get the agency sued.

In fact, the Lottery got sued after Mr. Bentkowski left by a woman who alleged *racial discrimination by Popadiuk, Berg, and the Commission*. Thus, it cannot be contended that the Lottery was unaware of Popadiuk's conduct when she was the Lottery's highest-ranking official in charge of the human resources.

3. DAVID BENTKOWSKI WAS FIRED ON NOVEMBER 13, 2012.

The evidence showed that on November 13, 2012 Mr. Bentkowski was summoned to a meeting at which Popadiuk said he was "fired." (Tr. 263.) Mr. Bentkowski told her that her actions were in retaliation for "the things I told you not to do." *Id.* She responded by saying something like "we're not getting into that." *Id.* When Director Berg walked into the meeting,

Mr. Bentkowski also told him that his firing was “retaliatory.” Berg, too, said: “I’m not talking about that.” (Tr. 264; 265).

Popadiuk testified there was no “triggering event” which led to Mr. Bentkowski’s firing (Tr. 99). Popadiuk attended a meeting several days before Mr. Bentkowski was discharged with Patrick McDonald and Dennis Berg (Tr. 99). She was given the “green light” to fire Mr. Bentkowski at that time (Tr. 100).

4. DAVID BENTKOWSKI PROVED A CAUSAL LINK EXISTED BETWEEN THE PROTECTED ACTIVITY AND THE ADVERSE ACTION.

A causal relationship between the protected activity and the adverse employment action can be demonstrated through (1) direct evidence of a causal connection or (2) evidence of the employer's knowledge of the protected activity, together with temporal proximity. *Nguyen v. Cleveland*, 229 F.3d 559, 566 (6th Cir. 2000). But “[t]he plaintiff cannot prevail if it appears from the evidence that the employer would have made the same decision regardless of the plaintiff’s participation in the protected activity.” *Neal v. Hamilton Cty.*, 87 Ohio App.3d 670, 678, 622 N.E.2d 1130 (1st Dist. 1993).

Popadiuk claimed Mr. Bentkowski was discharged because he was “not a good fit.” (Tr. 92.) However, she could not recall if she ever told him this in writing and, in any event, the Lottery produced no writing. *Id.*

Popadiuk also claimed the decision to fire Mr. Bentkowski alleged resulted from a “cumulative ongoing process.” (Tr. 92.) However, she continued to assign him projects, including on the very day he was fired. (Tr. 92). She said she did so because she was just “just trying to work with him, trying to keep going.” (Tr. 92).

Moreover, Popadiuk claimed that during the first three months of Mr. Bentkowski’s employment – when he was still on probation – she allegedly asked Berg to transfer her because

Mr. Bentkowski was allegedly a "bad fit" with her (Tr. 119-120). This period of time not coincidentally corresponds with Mr. Bentkowski's protected activity regarding Popadiuk's racist statements about Watts and LaBeach (Tr. 121). Notably, no documents or witnesses supported Popadiuk's alleged transfer request were produced or offered by the Lottery at trial.

While Popadiuk claimed Mr. Bentkowski was "condescending, argumentative and difficult to deal with" (Tr. 121), she never told Mr. Bentkowski she regarded him as such (Tr. 397). She would not characterize her relationship with Mr. Bentkowski as someone "with whom she did not get along." (Tr. 203.) Furthermore, she repeatedly complimented Mr. Bentkowski on his work product (Tr. 397). Moreover, Popadiuk never gave Mr. Bentkowski any negative feedback about his self-evaluations and she failed to evaluate him at all. Mr. Bentkowski testified that she told him he was doing a "great" job (Tr. 241; 243.)

Moreover, Popadiuk made no effort to extend his probation or terminate him at or before the end of his probation. Instead, he got a raise (Tr. 58).

So what explanation did the Lottery and Popadiuk give for the sudden termination of Mr. Bentkowski on November 13, 2012? There was no "triggering event." (Tr. 99.) Popadiuk claims she merely attended a meeting with Berg and Patrick MacDonald "several days before Mr. Bentkowski was discharged" where she was given the "green light" to fire Mr. Bentkowski (Tr. 99-100). Popadiuk conceded that Mr. Bentkowski was always at work when he was supposed to be, completed all assignments he was given, got along with others, and worked hard (Tr. 243). He was even volunteering for the Lottery on the Sunday before he was fired (Tr. 262).

She claimed, however, he was "argumentative" and "condescending." (Tr. 121). However, she never bothered to tell him this, either verbally or in writing and she never subjected him to discipline.

Mr. Bentkowski testified the only time he and Popadiuk “had any friction or tension is when she would do things [he believed] were discriminatory and crossed the line.” (Tr. 252-253; 356; 358). While Popadiuk denied that Mr. Bentkowski ever told her racist statements were inappropriate (Tr. 63-64; 106), Mr. Bentkowski’s testimony shows Popadiuk’s claim is clearly false.

Accordingly, Mr. Bentkowski submits that the causal connection between his firing and his exercise of known protected activity is established.

B. DAVID BENTKOWSKI SUSTAINED AND PROVED SIGNIFICANT DAMAGES RESULTING FROM THE LOTTERY’S UNLAWFUL RETALIATION.

Mr. Bentkowski’s starting salary at the Lottery was \$58,000 (Tr. 434). He received two step raises, one when he came off of probation and one at the end of the first year of employment (October 2012). His salary was \$65,000.00 when he was unlawfully fired (Tr. 434). Mr. Bentkowski intended to stay at the Lottery for at least as long as John Kasich was governor (Tr. 438). This would be the last three years of Governor Kasich’s first term and, assuming Governor Kasich was reelected, another four years (Tr. 439). Mr. Bentkowski anticipated step-rate increases of three percent (3%) (Tr. 440). Even ignoring the step raises, his damages are \$195,000.00 and, over seven years, \$455,000.00.

Mr. Bentkowski also participated in the Public Employees Retirement System (PERS). Mr. Bentkowski would not be subject to the anti-spiking provisions in R.C. 3307.501. Mr. Bentkowski calculated his lost pension benefits at \$1.1 million (Tr. 442-444).

On February 27, 2016 PERS provided calculations of pension benefits assuming Mr. Bentkowski returned to work on March 1, 2016 and retained employed at the same annual salary of \$65,728.00 for one, two, three, four and five years (Exhibit A). The single life annuity to be paid to him under each of these scenarios are \$1,016.99 (one year) \$1,378.10 (two years),

\$1,555.22 (three years); \$1,674.54 (four years), and \$1,747.70 (five years). Thus, if Mr. Bentkowski had remained employed at the Lottery for five years, his pension benefit would increase by \$1,053.70 per month or \$12,636.00 per month effective January 1, 2032. Assuming Mr. Bentkowski has a standard life expectancy of 84 years, he would lose 38 years of pension benefits at \$12,636.00 per year or a total of \$480,168.00.

In the alternative, the Court should award Mr. Bentkowski the relevant PERS wage and service credit for the seven years he would have worked and order the Lottery to adjust his PERS pension as such. Then, his retirement formula will be accurate when he retires.

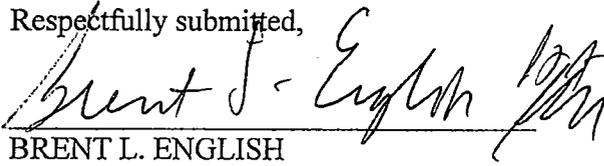
Mr. Bentkowski testified that his earned income from November 2012 to the date of the trial was as follows:

Balance of 2012:	\$ 580.00 (Tr. 446)
2013:	\$39,056.00 (Tr. 448)
2014:	\$54,000.00 (Tr. 456-457)
2015:	\$50,000.00 (Tr. 459)
2016:	Unknown (Tr. 461)
Total:	<u>\$143,636.00</u>

CONCLUSION

For each of the foregoing reasons, David A. Bentkowski respectfully requests that the Court award judgment in his favor and against the Ohio Lottery Commission for \$791,532.00 (\$455,000.00 lost salary + \$480,168.00 (lost pension) minus \$143,636.00 (post discharge earnings to mitigate damages)).

Respectfully submitted,



BRENT L. ENGLISH

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Cleveland, Ohio 44113-1818
(216) 781-9917

(216) 781-8113 (fax)

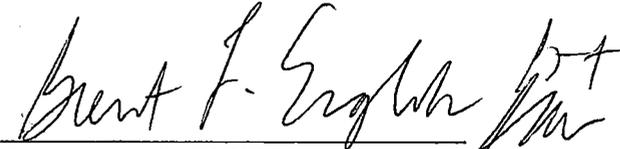
benglish@englishlaw.com

Sup. Ct. Reg. 0022678

Attorney for Plaintiff, David A. Bentkowski

CERTIFICATE OF SERVICE

I certify that a true and complete copy of Plaintiff, David A. Bentkowski's Closing Argument was served by e-mail upon Randall Knutti, Esq., Assistant Attorney General, 150 East Gay Street, 25th Floor, Columbus, Ohio 43215, randall.knutti@OhioAttorneyGeneral.gov on this ___ day of March 2016.



BRENT L. ENGLISH

Attorney for Plaintiff, David A. Bentkowski



Ohio Public Employees Retirement System

February 25, 2016

Brent L. English, Esq.
820 W. Superior Avenue, Suite 900
Cleveland, OH 44113-1818

1656

Re: David A. Bentkowski

Dear Mr. English:

The enclosed information is provided pursuant to Mr. Bentkowski's written authorization dated February 1, 2016.

Your previous Subpoena requested estimates using earnings through November 13, 2013. Since Mr. Bentkowski's last date of service with the Ohio Lottery Commission was in November of 2012, OPERS assumed he returns to employment with the Commission's earnings based on 2012 (rather than City of Seven Hills' earnings in 2013). Also, OPERS is unable to estimate the impact of prior return to public employment that did not actually occur. Meaning, OPERS cannot alter its records to estimate the impact of earning additional service credit in the past. Therefore, all of the enclosed estimates assume a future projection of public employment beginning on March 1, 2016, and continuing for one to five years. Finally, Mr. Bentkowski has service credit in the State Teacher's Retirement System of Ohio. Since you did not request an estimate of a joint retirement benefit between OPERS and STRS, the enclosed estimates consider only OPERS service credit.

R.C. 145.27(E) provides that a statement that contains information obtained from the System's records that bears the System's official seal and an officer's signature shall be received as true copies of the System's records in any court of this state.

Please contact me if you have any questions regarding this information.

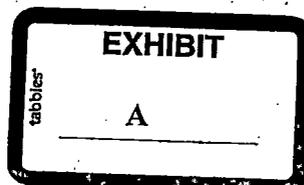
Sincerely,

A handwritten signature in black ink, appearing to read "Lauren Nichelson Gresh", written over a faint background of a signature strip.

Lauren Nichelson Gresh
Associate Counsel

LNG/jlf
Enclosures

cc: David Bentkowski (w/ enclosures)



STATE OF OHIO)
) SS:
COUNTY OF FRANKLIN)

CERTIFICATE OF AUTHENTICATION

I, Allen Foster, Director – Benefits Administration of the Ohio Public Employees Retirement System do hereby certify that the annexed material from the file of David A. Bentkowski (SSN xxx-xx-1656), is a true and accurate copy of the documents on file in the office of and in the custody of the Ohio Public Employees Retirement System in the ordinary course of business.

In Witness Whereof I have hereunto set my hand and affixed the seal of the Ohio Public Employees Retirement System at Columbus, Ohio this 25th day of February, 2016.



Director – Benefits Administration





Ohio Public Employees Retirement System

OPERS 277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PERS (7377) www.opers.org

Age & Service Retirement Estimate

DAVID ANTHONY BENTKOWSKI
6399 CROSSVIEW ROAD
SEVEN HILLS , OH 44131

Thank you for your career in public service!

Ohio PERS provides a valuable benefit for your career in public service. Please review the special considerations below, which provide additional information for your estimate.

Special Considerations:

- This estimate assumes you return to work effective March 1, 2016 and continue full time service through February 28, 2017 and then leave the account on deposit to the earliest benefit effective date shown.
- This estimate assumes an annual salary of \$65,728.00 with a 0% increase to the effective date shown.
- This estimate assumes you retire on an independent basis in our system.
- If you have not already done so, your *Traditional Pension Plan Retirement Application (Form SR-IT)* should be filed with OPERS no later than 60 days prior to your effective benefit date. OPERS now offers an electronic retirement application process through your online account. The new online process features step-by-step instructions and detailed retirement information tailored specifically to your situation. Registration is easy, so visit www.opers.org and start taking advantage of the variety of self-service options that OPERS offers.
- All purchases should be made prior to submitting your retirement application to prevent a delay in benefits. Please contact OPERS if you wish to make a service purchase or complete an existing purchase. OPERS will provide you with a cost statement and advise you of the methods in which you can submit payment.

Disclaimers:

- Your earliest effective date for retirement is the first of the month following your employment termination or not more than 90 days prior to the date OPERS receives your application for retirement.
- All projections are based on current rates, factors and laws -- all of which are subject to change. Any changes could affect these estimates.
- These projections are neither a contract nor an offer to contract.
- Taxes are not taken into consideration.
- Limitations required by law, including those contained in Internal Revenue Code Section 415, are not considered.
- These estimates do not take into account the adjustment or deduction to a benefit or refund due to support orders, division of property orders, restitution withholding orders for theft in office, tax levies, or other mandatory deductions.
- There is no promise, guarantee, contract or vested right to access to health care coverage or a premium allowance. The board has the discretionary to review, rescind, modify or change the health care plan at any time. All projections are based on current rates, factors and laws--all of which are subject to change. Any changes could affect these estimates.



Ohio Public Employees Retirement System

277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PEERS (7377) www.opers.org

Age & Service Retirement Estimate

(Single Plans)

MEMBER: DAVID ANTHONY BENTKOWSKI

Date of Birth	12/23/1971
Gender	M
Termination Date	02/28/2017
Group	B

The following table lists your estimated monthly benefit with no Partial Lump Sum Option Payment (PLOS). This plan estimate is based on the information on file at OPERS on the date the estimate was created.

Estimated Monthly Benefit Effective 01/01/2032 at Age 60 without PLOS			
Plan	Description	Member Amount	Beneficiary Amount
Single	A single life annuity paid for your lifetime which terminates at your death.	\$1,016.99	\$0.00

For information on benefits including Partial Lump Sum Option Payments (PLOS), see the following pages.

The following information was used in the calculation of all benefits shown in this statement.

Final Average Salary:			\$46,787.75	Total Service Credit:		22.370	
Year	Months	Salary	Actual				
2011	12	\$24,027.15	Contributing (through 12/31/2013)				2.083
2012	12	\$61,383.15	Other Service Credit				19.287
2016	12	\$54,952.94	Projected				
			Contributing				1.000
			Total Pension Eligible Service Credit:		22.370		
			Total Pension Eligible Contributing Months:		210		



Ohio Public Employees Retirement System

277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PERS (7377) www.opers.org

Member: DAVID ANTHONY BENTKOWSKI

Age & Service Estimate with PLOP

(Single Plans)

What is a PLOP?

The Partial Lump Sum Option Payment (PLOP) is a method in which a member, at the time of retirement, may elect to receive a partial lump sum payment amount and a reduced monthly allowance. The lump sum payment cannot be less than six times (minimum) or more than thirty six times (maximum) the monthly amount that would be payable to the member under the plan of payment selected and shall not result in a monthly allowance that is less than fifty percent of that monthly amount. The total amount paid as a lump sum and a monthly benefit shall be the actuarial equivalent of the amount that would have been paid had the lump sum not been selected.

Should you choose a partial lump sum optional payment at retirement, payment will be issued no sooner than 90 days after your first monthly benefit has been issued. Once the PLOP has been issued, no changes can be made to your plan of payment or to the PLOP amount you requested.

Is the PLOP amount taxable?

As a lump sum distribution, the PLOP payment is fully taxable. OPERS is required by law to withhold 20% of the taxable PLOP amount. In addition, if you receive a payment before you reach age 59-1/2, you may be required to pay an extra tax equal to 10% of the taxable portion of the payment. These taxes may be avoided if the taxable portion of the payment is rolled into either a traditional IRA or to an employer plan that is a defined contribution plan that provides separate accounting for amounts rolled over and that accepts rollovers of after-tax contributions.

How would a PLOP affect my monthly benefit?

The following table lists your specified and/or estimated minimum and maximum PLOP amounts and how your monthly payment would differ, depending on the lump sum amount you take.

Comparison of Estimated Monthly Benefits w/ PLOP Effective 01/01/2032 at Age 60				
Plan	PLOP Range	PLOP Amount	Member Amount	Beneficiary Amount
Single	Minimum	\$6,101.94	\$978.73	\$0.00
	Maximum	\$36,611.64	\$787.44	\$0.00



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Age & Service Retirement Estimate

DAVID ANTHONY BENTKOWSKI
6399 CROSSVIEW ROAD
SEVEN HILLS, OH 44131

Thank you for your career in public service!

Ohio PERS provides a valuable benefit for your career in public service. Please review the special considerations below, which provide additional information for your estimate.

Special Considerations:

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- This estimate assumes an annual salary of \$65,728.00 with a 0% increase to the effective date shown.
- This estimate assumes you retire on an independent basis in our system.
- If you have not already done so, your *Traditional Pension Plan Retirement Application (Form SR-IT)* should be filed with OPERS no later than 60 days prior to your effective benefit date. OPERS now offers an electronic retirement application process through your online account. The new online process features step-by-step instructions and detailed retirement information tailored specifically to your situation. Registration is easy, so visit www.opers.org and start taking advantage of the variety of self-service options that OPERS offers.
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Ohio Public Employees Retirement System

277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PERS (7377) www.opers.org

Age & Service Retirement Estimate

(Single Plans)

MEMBER: DAVID ANTHONY BENTKOWSKI

Date of Birth	12/23/1971
Gender	M
Termination Date	02/28/2018
Group	B

The following table lists your estimated monthly benefit with no Partial Lump Sum Option Payment (PLOS). This plan estimate is based on the information on file at OPERS on the date the estimate was created.

Estimated Monthly Benefit - Effective 01/01/2032 at Age 60 without PLOS			
Plan	Description	Member Amount	Beneficiary Amount
Single	A single life annuity paid for your lifetime which terminates at your death.	\$1,378.10	\$0.00

For information on benefits including Partial Lump Sum Option Payments (PLOS), see the following pages.

The following information was used in the calculation of all benefits shown in this statement.

Final Average Salary:			\$60,688.03	Total Service Credit:		23.370
Year	Months	Salary	Actual			
2012	12	\$61,383.15	Contributing (through 12/31/2013)		2.083	
2016	12	\$54,952.94	Other Service Credit		19.287	
2017	12	\$65,728.00	Projected			
			Contributing		2.000	
			Total Pension Eligible Service Credit:		23.370	
			Total Pension Eligible Contributing Months:		222	



Ohio Public Employees Retirement System

277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PERS (7377) www.opers.org

Member: DAVID ANTHONY BENTKOWSKI

Age & Service Estimate with PLOP

(Single Plans)

What is a PLOP?

The Partial Lump Sum Option Payment (PLOP) is a method in which a member, at the time of retirement, may elect to receive a partial lump sum payment amount and a reduced monthly allowance. The lump sum payment cannot be less than six times (minimum) or more than thirty six times (maximum) the monthly amount that would be payable to the member under the plan of payment selected and shall not result in a monthly allowance that is less than fifty percent of that monthly amount. The total amount paid as a lump sum and a monthly benefit shall be the actuarial equivalent of the amount that would have been paid had the lump sum not been selected.

Should you choose a partial lump sum optional payment at retirement, payment will be issued no sooner than 90 days after your first monthly benefit has been issued. Once the PLOP has been issued, no changes can be made to your plan of payment or to the PLOP amount you requested.

Is the PLOP amount taxable?

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How would a PLOP affect my monthly benefit?

The following table lists your specified and/or estimated minimum and maximum PLOP amounts and how your monthly payment would differ, depending on the lump sum amount you take.

Comparison of Estimated Monthly Benefits w/ PLOP: Effective 01/01/2032 at Age 60				
Plan	PLOP Range	PLOP Amount	Member Amount	Beneficiary Amount
Single	Minimum	\$8,268.60	\$1,326.26	\$0.00
	Maximum	\$49,611.60	\$1,067.04	\$0.00



Ohio Public Employees Retirement System

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Age & Service Retirement Estimate

DAVID ANTHONY BENTKOWSKI
6399 CROSSVIEW ROAD
SEVEN HILLS, OH 44131

Thank you for your career in public service!

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- This estimate assumes an annual salary of \$65,728.00 with a 0% increase to the effective date shown.
- This estimate assumes you retire on an independent basis in our system.
- If you have not already done so, your *Traditional Pension Plan Retirement Application (Form SR-IT)* should be filed with OPERS no later than 60 days prior to your effective benefit date. OPERS now offers an electronic retirement application process through your online account. The new online process features step-by-step instructions and detailed retirement information tailored specifically to your situation. Registration is easy, so visit www.opers.org and start taking advantage of the variety of self-service options that OPERS offers.
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- Limitations required by law, including those contained in Internal Revenue Code Section 415, are not considered.
- These estimates do not take into account the adjustment or deduction to a benefit or refund due to support orders, division of property orders, restitution withholding orders for theft in office, tax levies, or other mandatory deductions.
- There is no promise, guarantee, contract or vested right to access to health care coverage or a premium allowance. The board has the discretionary to review, rescind, modify or change the health care plan at any time. All projections are based on current rates, factors and laws--all of which are subject to change. Any changes could affect these estimates.



Ohio Public Employees Retirement System

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Age & Service Retirement Estimate

(Single Plans)

MEMBER: DAVID ANTHONY BENTKOWSKI

Date of Birth	12/23/1971
Gender	M
Termination Date	02/28/2019
Group	B

The following table lists your estimated monthly benefit with no Partial Lump Sum Option Payment (PLOS). This plan estimate is based on the information on file at OPERS on the date the estimate was created.

Estimated Monthly Benefit: Effective 01/01/2032 at Age 60 without PLOS			
Plan	Description	Member Amount	Beneficiary Amount
Single	A single life annuity paid for your lifetime which terminates at your death.	\$1,555.22	\$0.00

For information on benefits including Partial Lump Sum Option Payments (PLOS), see the following pages.

The following information was used in the calculation of all benefits shown in this statement.

Final Average Salary:			\$65,677.82	Total Service Credit:		24.370
Year	Months	Salary	Actual			
2016	10	\$54,952.94	Contributing (through 12/31/2013)	2.083		
2017	12	\$65,728.00	Other Service Credit	19.287		
2018	12	\$65,728.00	Projected			
2019	2	\$10,624.53	Contributing	3.000		
			Total Pension Eligible Service Credit:	24.370		
			Total Pension Eligible Contributing Months:	234		



Ohio Public Employees Retirement System

277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PERS (7377) www.opers.org

Member: DAVID ANTHONY BENTKOWSKI

Age & Service Estimate with PLOP

(Single Plans)

What is a PLOP?

The Partial Lump Sum Option Payment (PLOP) is a method in which a member, at the time of retirement, may elect to receive a partial lump sum payment amount and a reduced monthly allowance. The lump sum payment cannot be less than six times (minimum) or more than thirty six times (maximum) the monthly amount that would be payable to the member under the plan of payment selected and shall not result in a monthly allowance that is less than fifty percent of that monthly amount. The total amount paid as a lump sum and a monthly benefit shall be the actuarial equivalent of the amount that would have been paid had the lump sum not been selected.

Should you choose a partial lump sum optional payment at retirement, payment will be issued no sooner than 90 days after your first monthly benefit has been issued. Once the PLOP has been issued, no changes can be made to your plan of payment or to the PLOP amount you requested.

Is the PLOP amount taxable?

As a lump sum distribution, the PLOP payment is fully taxable. OPERS is required by law to withhold 20% of the taxable PLOP amount. In addition, if you receive a payment before you reach age 59-1/2, you may be required to pay an extra tax equal to 10% of the taxable portion of the payment. These taxes may be avoided if the taxable portion of the payment is rolled into either a traditional IRA or to an employer plan that is a defined contribution plan that provides separate accounting for amounts rolled over and that accepts rollovers of after-tax contributions.

How would a PLOP affect my monthly benefit?

The following table lists your specified and/or estimated minimum and maximum PLOP amounts and how your monthly payment would differ, depending on the lump sum amount you take.

Comparison of Estimated Monthly Benefits w/ PLOP: Effective 01/01/2032 at Age 60				
Plan	PLOP Range	PLOP Amount	Member Amount	Beneficiary Amount
Single	Minimum	\$9,331.32	\$1,496.71	\$0.00
	Maximum	\$55,987.92	\$1,204.18	\$0.00



Ohio Public Employees Retirement System

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Age & Service Retirement Estimate

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6399 CROSSVIEW ROAD
SEVEN HILLS, OH 44131

Thank you for your career in public service!

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Special Considerations:

- This estimate assumes you return to work effective March 1, 2016 and continue full time service through February 29, 2020 and then leave the account on deposit to the earliest benefit effective date shown.
- This estimate assumes an annual salary of \$65,728.00 with a 0% increase to the effective date shown.
- This estimate assumes you retire on an independent basis in our system.
- If you have not already done so, your *Traditional Pension Plan Retirement Application (Form SR-IT)* should be filed with OPERS no later than 60 days prior to your effective benefit date. OPERS now offers an electronic retirement application process through your online account. The new online process features step-by-step instructions and detailed retirement information tailored specifically to your situation. Registration is easy, so visit www.opers.org and start taking advantage of the variety of self-service options that OPERS offers.
- All purchases should be made prior to submitting your retirement application to prevent a delay in benefits. Please contact OPERS if you wish to make a service purchase or complete an existing purchase. OPERS will provide you with a cost statement and advise you of the methods in which you can submit payment.
- Benefit has been capped based on the Contribution-Based Benefit Cap (CBBC) Formula.

Disclaimers:

- Your earliest effective date for retirement is the first of the month following your employment termination or not more than 90 days prior to the date OPERS receives your application for retirement.
- All projections are based on current rates, factors and laws -- all of which are subject to change. Any changes could affect these estimates.
- These projections are neither a contract nor an offer to contract.
- Taxes are not taken into consideration.
- Limitations required by law, including those contained in Internal Revenue Code Section 415, are not considered.
- These estimates do not take into account the adjustment or deduction to a benefit or refund due to support orders, division of property orders, restitution withholding orders for theft in office, tax levies, or other mandatory deductions.
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Ohio Public Employees Retirement System

277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PEERS (7377) www.opers.org

Age & Service Retirement Estimate

(Single Plans)

MEMBER: DAVID ANTHONY BENTKOWSKI

Date of Birth	12/23/1971
Gender	M
Termination Date	02/29/2020
Group	B

The following table lists your estimated monthly benefit, with no Partial Lump Sum Option Payment (PLOS). This plan estimate is based on the information on file at OPERS on the date the estimate was created.

Estimated Monthly Benefit: Effective 01/01/2027 at Age 55 without PLOS			
Plan	Description	Member Amount	Beneficiary Amount
Single	A single life annuity paid for your lifetime which terminates at your death.	\$1,474.54	\$0.00

For information on benefits including Partial Lump Sum Option Payments (PLOS), see the following pages.

The following information was used in the calculation of all benefits shown in this statement.

Final Average Salary:			\$65,728.00	Total Service Credit:		25.370
Year	Months	Salary	Actual			
2017	12	\$65,728.00	Contributing (through 12/31/2013)		2.083	
2018	12	\$65,728.00	Other Service Credit		19.287	
2019	12	\$65,728.00	Projected			
			Contributing		4.000	
			Total Pension Eligible Service Credit:		25.370	
			Total Pension Eligible Contributing Months:		246	



Ohio Public Employees Retirement System

277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PERS (7377) www.opers.org

Member: DAVID ANTHONY BENTKOWSKI

Age & Service Estimate with PLOP

(Single Plans)

What is a PLOP?

The Partial Lump Sum Option Payment (PLOP) is a method in which a member, at the time of retirement, may elect to receive a partial lump sum payment amount and a reduced monthly allowance. The lump sum payment cannot be less than six times (minimum) or more than thirty six times (maximum) the monthly amount that would be payable to the member under the plan of payment selected and shall not result in a monthly allowance that is less than fifty percent of that monthly amount. The total amount paid as a lump sum and a monthly benefit shall be the actuarial equivalent of the amount that would have been paid had the lump sum not been selected.

Should you choose a partial lump sum optional payment at retirement, payment will be issued no sooner than 90 days after your first monthly benefit has been issued. Once the PLOP has been issued, no changes can be made to your plan of payment or to the PLOP amount you requested.

Is the PLOP amount taxable?

As a lump sum distribution, the PLOP payment is fully taxable. OPERS is required by law to withhold 20% of the taxable PLOP amount. In addition, if you receive a payment before you reach age 59-1/2, you may be required to pay an extra tax equal to 10% of the taxable portion of the payment. These taxes may be avoided if the taxable portion of the payment is rolled into either a traditional IRA or to an employer plan that is a defined contribution plan that provides separate accounting for amounts rolled over and that accepts rollovers of after-tax contributions.

How would a PLOP affect my monthly benefit?

The following table lists your specified and/or estimated minimum and maximum PLOP amounts and how your monthly payment would differ, depending on the lump sum amount you take.

Comparison of Estimated Monthly Benefits w/ PLOP Effective 01/01/2027 at Age 55				
Plan	PLOP Range	PLOP Amount	Member Amount	Beneficiary Amount
Single	Minimum	\$8,847.24	\$1,422.87	\$0.00
	Maximum	\$53,083.44	\$1,164.53	\$0.00



Ohio Public Employees Retirement System

OPERS 277 East Town Street Columbus, Ohio 43215-4642 1-800-222-PERS (7377) www.opers.org

Age & Service Retirement Estimate

DAVID ANTHONY BENTKOWSKI
6399 CROSSVIEW ROAD
SEVEN HILLS , OH 44131

Thank you for your career in public service!

Ohio PERS provides a valuable benefit for your career in public service. Please review the special considerations below, which provide additional information for your estimate.

Special Considerations:

- This estimate assumes you return to work effective March 1, 2016 and continue full time service through February 28, 2021 and then leave the account on deposit to the earliest benefit effective date shown.
- This estimate assumes an annual salary of \$65,728.00 with a 0% increase to the effective date shown.
- This estimate assumes you retire on an independent basis in our system.
- If you have not already done so, your *Traditional Pension Plan Retirement Application (Form SR-IT)* should be filed with OPERS no later than 60 days prior to your effective benefit date. OPERS now offers an electronic retirement application process through your online account. The new online process features step-by-step instructions and detailed retirement information tailored specifically to your situation. Registration is easy, so visit www.opers.org and start taking advantage of the variety of self-service options that OPERS offers.
- All purchases should be made prior to submitting your retirement application to prevent a delay in benefits. Please contact OPERS if you wish to make a service purchase or complete an existing purchase. OPERS will provide you with a cost statement and advise you of the methods in which you can submit payment.

Disclaimers:

- Your earliest effective date for retirement is the first of the month following your employment termination or not more than 90 days prior to the date OPERS receives your application for retirement.
- All projections are based on current rates, factors and laws -- all of which are subject to change. Any changes could affect these estimates.
- These projections are neither a contract nor an offer to contract.
- Taxes are not taken into consideration.
- Limitations required by law, including those contained in Internal Revenue Code Section 415, are not considered.
- These estimates do not take into account the adjustment or deduction to a benefit or refund due to support orders, division of property orders, restitution withholding orders for theft in office, tax levies, or other mandatory deductions.
- There is no promise, guarantee, contract or vested right to access to health care coverage or a premium allowance. The board has the discretionary to review, rescind, modify or change the health care plan at any time. All projections are based on current rates, factors and laws-all of which are subject to change. Any changes could affect these estimates.



Ohio Public Employees Retirement System

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Age & Service Retirement Estimate

(Single Plans)

MEMBER: DAVID ANTHONY BENTKOWSKI

Date of Birth	12/23/1971
Gender	M
Termination Date	02/28/2021
Group	B

The following table lists your estimated monthly benefit with no Partial Lump Sum Option Payment (PLOS). This plan estimate is based on the information on file at OPERS on the date the estimate was created.

Estimated Monthly Benefit: Effective 01/01/2027 at Age 55 without PLOS			
Plan	Description	Member Amount	Beneficiary Amount
Single	A single life annuity paid for your lifetime which terminates at your death.	\$1,747.70	\$0.00

For information on benefits including Partial Lump Sum Option Payments (PLOS), see the following pages.

The following information was used in the calculation of all benefits shown in this statement.

Final Average Salary:			\$65,728.00	Total Service Credit:		26.370
Year	Months	Salary	Actual			
2018	12	\$65,728.00	Contributing (through 12/31/2013)		2.083	
2019	12	\$65,728.00	Other Service Credit		19.287	
2020	12	\$65,728.00	Projected			
			Contributing		5.000	
			Total Pension Eligible Service Credit:		26.370	
			Total Pension Eligible Contributing Months:		258	



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Member: DAVID ANTHONY BENTKOWSKI

Age & Service Estimate with PLOP

(Single Plans)

What is a PLOP?

The Partial Lump Sum Option Payment (PLOP) is a method in which a member, at the time of retirement, may elect to receive a partial lump sum payment amount and a reduced monthly allowance. The lump sum payment cannot be less than six times (minimum) or more than thirty-six times (maximum) the monthly amount that would be payable to the member under the plan of payment selected and shall not result in a monthly allowance that is less than fifty percent of that monthly amount. The total amount paid as a lump sum and a monthly benefit shall be the actuarial equivalent of the amount that would have been paid had the lump sum not been selected.

Should you choose a partial lump sum optional payment at retirement, payment will be issued no sooner than 90 days after your first monthly benefit has been issued. Once the PLOP has been issued, no changes can be made to your plan of payment or to the PLOP amount you requested.

Is the PLOP amount taxable?

As a lump sum distribution, the PLOP payment is fully taxable. OPERS is required by law to withhold 20% of the taxable PLOP amount. In addition, if you receive a payment before you reach age 59-1/2, you may be required to pay an extra tax equal to 10% of the taxable portion of the payment. These taxes may be avoided if the taxable portion of the payment is rolled into either a traditional IRA or to an employer plan that is a defined contribution plan that provides separate accounting for amounts rolled over and that accepts rollovers of after-tax contributions.

How would a PLOP affect my monthly benefit?

The following table lists your specified and/or estimated minimum and maximum PLOP amounts and how your monthly payment would differ, depending on the lump sum amount you take.

Comparison of Estimated Monthly Benefits w/ PLOP: Effective 01/01/2027 at Age 55				
Plan	PLOP Range	PLOP Amount	Member Amount	Beneficiary Amount
Single	Minimum	\$10,486.20	\$1,686.46	\$0.00
	Maximum	\$62,917.20	\$1,380.26	\$0.00

This Personal Statement of Estimated Benefits was prepared especially for:



Ohio Public Employees Retirement System
277 East Town Street
Columbus, OH 43215-4642
1-800-222-7377
www.opers.org

19629

David Anthony Bentkowski
6399 Crossview Road
Seven Hills, OH 44131



This statement contains important information about your account and the benefits available to you and your beneficiaries as a member of the Ohio Public Employees Retirement System. All information within this statement reflects our records as of December 31, 2014.

Your OPERS Benefits at a Glance - Traditional Pension Plan Contributions

Total contributions as of December 31, 2014 \$48,366.86
Additional Annuity contributions \$0.00

*Account Value
Account value as of December 31, 2014 \$52,836.35

Service Credit
Total service credit as of December 31, 2014 21.370 years

*Please see page 3 for account value details.

OPERS is pleased to present you with this personalized summary of your account and estimated retirement benefits. Plan benefits are subject to state and federal law changes. This statement simply provides an overview of your estimated benefits and is not a guarantee of the type or amount of your benefits.

As a result of Substitute Senate Bill 343, which became effective on Jan. 7, 2013, all OPERS members now fall into one of the three groups listed below. For more information about pension changes including retirement eligibility criteria, benefit formula, final average salary, Cost of Living Adjustment (COLA) and age reduction factors for early retirement, please visit www.opers.org.

- Group A - Eligible to retire under the pre-S.B. 343 eligibility requirements on or before Jan. 7, 2018 - grandfathered under pre-S.B. 343 law for all major components except the Cost of Living Adjustment (COLA).
Group B - Members who have 20 years of service credit on Jan. 7, 2013, or who are eligible to retire under the pre-S.B. 343 eligibility requirements after Jan. 7, 2018, but on or before Jan. 7, 2023 - Grandfathered under current law for major components except COLA and age reduction factors; subject to modified age and service retirement eligibility.
Group C - Eligible to retire after Jan. 7, 2023 or members hired on or after Jan. 2013 - Subject to all new plan provisions.

Please see page 2 for more information about your transition group.

Personal Statement of Estimated Benefits prepared for David Anthony Bentkowski

Your Personal Account Information

Your current age: 43
 Your date of birth on record: December 23, 1971
 Your current final average salary (FAS): \$33,437
 Your email address: BENT959@AOL.COM
 Registered to access your OPERS account online? No

Please take a moment to register for online account access. Once registered, you can view your personal account information, update your address and beneficiary information, elect to receive online publications and obtain estimates of your retirement benefits. Registration is easy – visit www.opers.org and click "Member Login" on the home page.

Your Beneficiary Designation

Your beneficiary is determined by specific designation or by automatic succession. If you do not have a valid designation, your beneficiary will be determined by automatic succession (1) spouse, 2) children, 3) dependent parents, 4) if none of the above, parents share equally in a refund of the account, or 5) if none of the above, a refund of the account will be paid to the member's estate). Marriage, divorce, legal separation, or the birth or adoption of a child following a specific designation automatically voids that designation.

You will find your beneficiary designation(s) listed below including birth date(s), relationship(s) and benefit allocation percentage. If they are incorrect, missing or need to be updated, please visit www.opers.org, sign into your online account and make the necessary changes. If you are survived by eligible children, they will receive monthly benefits regardless of a specific designation.

Primary beneficiary (ies):
 None on File

Your OPERS membership status and service credit record

Your OPERS retirement plan:
 Traditional Pension Plan

Your OPERS pension transition group: Group B
 Your transition group is based on your first eligible date of retirement, 01/01/2032.
 Your group is subject to change based on your continued service and your retirement date.

Your Total OPERS service credit: 21.370 years

Service credit breakdown

Total Service Credit by Type		Total Purchased Service	
Total Contributing	2.083	Plan Change (from Comb)	8.767
Total Purchased	19.287	35% Elective	4.813
Total Service Credit	21.370	Restored Balance Trans	4.079
		Unreported Service	1.043
		Exempt Service	0.335
*Total Service Credit applicable to health care coverage eligibility:	16.222	Redeposited Service	0.250
		Total Purchased Service	19.287

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 *Effective Jan. 1, 2014 OPERS implemented changes to the types of purchased service credit applicable toward health care coverage eligibility. For more information, please see the "OPERS Service Credit and Health Care Coverage" chart available on the OPERS website.

This does not include credit in other Ohio retirement systems or in other OPERS retirement plans.

Personal Statement of Estimated Benefits prepared for David Anthony Bentkowski

Your Contributions and Account Value

Account Value (Already Taxed + Taxable = Total)

	Already Taxed	Taxable	Total
Your Employee Contributions and Deposits through December 31, 2014	\$22,084.89	\$26,281.97	\$48,366.86
Plus Interest:	\$0.00	\$972.15	\$972.15
*Plus Additional Amount:	\$0.00	\$3,497.34	\$3,497.34
Additional Annuity and Applicable Interest:	\$0.00	\$0.00	\$0.00
Your Total Account Value:	\$22,084.89	\$30,751.46	\$52,836.35

Your contributions include Employer Accumulation Fund deposits for your 35% Additional Elective Service.

Full recovery of all employee contributions to OPERS is guaranteed. Upon leaving all public employment in Ohio, you may apply for and receive your accumulated contributions (which include interest) and an additional amount (for those members with five or more years of qualifying service credit in the Traditional Pension Plan). Ohio law does not permit OPERS members to receive loans on their OPERS account value. *The additional amount is subject to change and is not guaranteed.

Your Retirement Benefit Estimates

Benefit payments vary in amount, depending on the following:

Length of public service, age at retirement, payment plan selection, and final average salary (FAS). The age and service formula benefit cannot exceed 100 percent of FAS or the limits under federal tax law.

The retirement benefit estimates below are based on your account information and a number of assumptions which can change at any time. Rules governing the retirement system are subject to change periodically either by legislation or rules of the Ohio General Assembly, Internal Revenue Code, or OPERS Board of Trustees. Any changes could affect future estimates and benefits. These estimates assume your earnable salary will increase by one percent annually and you will be employed continuously in a full-time position with an OPERS-covered employer, earning a full year of service credit annually.

An unreduced pension is not subject to any age reduction factors.

	Date	Age	Service Credit	Monthly Benefit Single Life Plan
Earliest eligible retirement date with current service	01/01/2032	60	21.370 years	\$694

A variety of retirement benefit estimates based on your current OPERS account are available by accessing your account online at www.opers.org. Pension amount is just one factor to consider in planning your retirement. For information on other factors, including health care coverage eligibility, please visit www.opers.org.

***Notes: Contributions and Account Value:**

Contribution amounts shown are actual values.

There are two reasons why the total shown in the Contributions section may not be the same as the amount found on your

W-2 form: First, your employer's reporting periods may delay contributions being reported to OPERS in a particular year.

Secondly, your W-2 may include pay that is not subject to OPERS contributions.

Your Additional Benefits

Disability Benefits

Your Disability Plan is the REVISED plan. If your application is approved and you are determined to be medically eligible, you may receive an estimated annual disability benefit of \$15,720.

Survivor Benefits

As an OPERS member, if you die before retirement or while receiving a disability benefit, your qualified beneficiaries may be eligible for monthly benefit payments or a refund of your account.

Your Annual Survivor Benefit Estimate

One survivor	\$11,034	Four survivors	\$18,390
Two survivors	\$13,375	Five survivors	\$20,062
Three survivors	\$16,718		

Your Survivor Benefit Lump Sum Refund Estimate

Lump sum payment: \$52,836

More information about OPERS benefits

Please see the following publications available on the OPERS website: www.opers.org for more detailed information about OPERS benefits; the OPERS Member Handbook; the OPERS Information Series (leaflets); Chapter 145 of the Ohio Revised Code and Ohio Administrative Code.

The OPERS website also features valuable information about how to maximize your retirement benefit by participating in supplemental savings programs or purchasing available OPERS service credit. You will also find information about retiree health care coverage eligibility and a planning tool to help you choose your ideal retirement date based on a variety of factors.

Learn about your OPERS benefit and know when to take action

Retirement is an important life event and it is vital you take time to plan and learn about your OPERS pension benefit. Please visit www.opers.org for detailed planning information and answers to frequently asked questions.

Throughout your career:

- Register for online account access
- Keep address and beneficiary information updated
- Review Annual Statements and newsletters
- Use online retirement planning tools
- Save for retirement and health care expenses

5-10 years from retirement:

- Calculate retirement income needs and resources
- Evaluate health care needs and alternatives
- Consider saving more money
- Determine best year to retire

Required documents

Multiple documents (proof of date of birth, proof of marriage, applicable court orders, etc.) are required to process your retirement application. These documents can be submitted at any time during your career in preparation for retirement. All documents need to have your full name and at least the last four digits of your Social Security Number on them. A complete list of required documents can be found at www.opers.org.

How to Apply

Members in the Traditional Pension Plan can file for retirement electronically through our online account. Members participating in the Member-Directed or Combined Plan must complete and submit a number of forms available on the OPERS website.

Additional Items to Keep in Mind

We recommend filing for retirement at least 60 days, but not more than six months prior to your retirement effective date.

If you are married, your spouse may be required to sign the retirement application or a separate affidavit. Signatures on the retirement application or affidavit must be notarized.

The estimated timeframe for receiving your first retirement benefit is approximately 60 days after your retirement effective date. This payment will be retroactive back to your retirement effective date.

One-on-One Counseling and Seminars

If you have questions about your retirement eligibility or the retirement process, please feel free to call OPERS. If you feel you need to review your account with one of our counselors, we recommend you schedule an appointment. You can schedule an appointment through your online account or by calling 1-800-222-7377. A schedule of Ready to Retire seminars and webinars is also available on the OPERS website, www.opers.org.

Access Your OPERS Account Online

If you have not yet registered for online access to your personal OPERS account, please do so at www.opers.org. Registration is quick and simple. Accessing your account online lets you view your account information, obtain current retirement estimates and apply for retirement at any time of day, wherever you have an Internet connection.