

{¶4} “2. The Executive Director of the Board is employed by the Board pursuant to R.C. 4753.04. In accordance with that statute, the Board designates the duties of the executive director, and fixes her compensation. The executive director is in the unclassified civil service, and serves at the pleasure of the Board.

{¶5} “3. Plaintiff, Judith D. Raabe (‘Ms. Raabe’) was the Executive Director of the Board from July 23, 1984 until her retirement on May 31, 2001. (Joint Exhibit A).

{¶6} “4. As the Executive Director, Ms. Raabe was the chief administrative and fiscal officer of the Board. Her duties included, among other things, management of the Board’s licensing functions, supervision of investigations, preparation of the Board’s biennial budget requests, and the day-to-day management of the Board’s finances and monitoring of all fiscal matters. Ohio Adm. Code 4753-1-05(C) (‘the director shall *** be responsible for fiscal management of the board including preparation and submission of the budget for the board’); Joint Exhibit B (‘the Executive Director shall assist in the preparation of the budget and monitoring of all fiscal matters. This includes working with government agencies responsible for funding the Board’).

{¶7} “B. The Funding of the Board

{¶8} “5. As with most state agencies, the Board’s ability to spend public funds is controlled by the provisions of the Ohio Constitution, the Ohio Revised Code, and the Ohio Administrative Code. The General Assembly appropriates funds to the various state agencies, including the Board, for their operations. Each appropriation is divided between the two years of the fiscal biennium so that there is a defined 12-month period during which an appropriation may be used.²

{¶9} “6. In the year prior to the beginning of each fiscal biennium, each state agency, including the Board, presents a proposed budget to the Office of Budget and Management (‘OBM’).

²“The state’s fiscal years begin on July 1 and end on June 30, and are numbered as to the next calendar year. Thus, for example, FY 2003 began on July 1, 2002; FY 2004 began on July 1, 2003 etc. The two-year biennium begins on July 1 of each odd-numbered year. Hence, the current biennium is 2004/2005, and it began on July 1, 2003.

After a series of meetings with the assigned OBM budget analyst, the Director of OBM makes recommendations to the Governor about each agency's request. The Governor ultimately makes decisions regarding all of the budget requests, and the proposed budget for the upcoming biennium is submitted to the General Assembly. Each agency's proposed budget is then reviewed by the Legislative Budget Office, and then hearings are held before subcommittees of the House of Representatives. After the budget is further revised, the House passes the budget and sends it to the Senate. More hearings are held before subcommittees of the Senate prior to Senate passage of the budget bill. If needed, the budget then goes to a conference committee, and the final budget is enacted and signed by the Governor. Appropriations are then made over the ensuing biennium in accordance with the budget as enacted. (Raabe deposition pp. 28-31).³

{¶10}“7. At the times relevant herein (July 1, 1987 until July 1, 1992), the Board received its appropriations entirely from the General Revenue Fund (GRF), which is the major operating fund for the state government. GRF funds come primarily from tax dollars.

{¶11}“8. The GRF operating appropriation to the Board was comprised of allotments to three sub-accounts: 100 - Personal Services, which included personnel costs, payroll and fringe benefits; 200 - Maintenance, which encompassed all expenditure objects except personal services and equipment; and 300 - Equipment, which included items such as copiers, computers, and furniture. (Joint Exhibits O and P).

{¶12}“9. Beginning on July 1, 1993, the Board, along with most of the other professional licensing boards, began receiving its appropriations from the Occupational Licensing and Regulatory Board Fund, also known as the 4K9 rotary fund, which is funded by the professional licensing fees received by the Board and 20 other occupational licensing boards. R.C. 4743.05. While the 4K9 fund has essentially made the various boards 'self-supporting' in the sense that their license fees are deposited into the fund, the boards' use of the monies in that fund are limited by their approved

³“Unless budget cuts become necessary due to revenue shortfalls, in which case each agency is notified by the Governor's office and OBM of the amounts that will be taken away from its appropriations.

budgets and the appropriations granted during the budgetary process by the General Assembly (subject, to a limited extent, to later modification as set forth in R.C. Chapters 126 and 131).

{¶13}“C. 1987—1992: The Pay Raises

{¶14}“10. As the Executive Director of the Board, Ms. Raabe was at all times designated as Administrative Staff, classification number 99580. As Administrative Staff, she did not receive automatic pay raises, step increases, or longevity increases that other state employees would receive whose positions were a part of Schedules E-1 and E-2.⁴

{¶15}“11. In October 1986, the Board voted to grant Ms. Raabe a pay increase that would place her salary ‘at a level commensurate with that of the same base, step and longevity of a Board/Commission Secretary II with equal service.’ However, the Board did not have sufficient funds available in its payroll allotment (the ‘100’ account) during FY 1987 to pay this raise, and so Ms. Raabe did not receive an increase until the beginning of FY 1988 on July 1, 1987. On that date, Ms. Raabe’s salary was increased from \$16.43 per hour to \$18.83 per hour. (Joint Exhibits C and D).

{¶16}“12. In subsequent years, the Board voted to grant a 6% increase to Ms. Raabe’s salary effective 7/1/88. The Board later voted increases to Ms. Raabe’s salary to be effective on 7/1/89 and 7/1/90, to make her salary the ‘equivalent of a Board/Commission Secretary II with equal time in service.’ However, the payroll allotments, that is, the money appropriated to the 100 - Personal Services sub-account in the Board’s budget, were not sufficient to pay these raises, and so the increases never went into effect. (Raabe deposition pp. 48, 55).

{¶17}“13. During the late 1980s, the State of Ohio experienced periods of fiscal shortfalls. In May 1988, the Governor and the Director of Budget and Management placed limitations on the use

⁴“The job classifications and pay ranges of most state employees who are exempt from collective bargaining under R.C. Chapter 4117 are established by the Director of the Department of Administrative Services pursuant to R.C. 124.14(A). The actual salary schedules for Schedule E-1 and Schedule E-2 collective-bargaining-exempt employees are found in R.C. 124.152. These job classifications, pay ranges, and schedules do not apply, however, to ‘positions for which the authority to determine compensation is given by law to another entity,’ such as the Board’s executive director position. R.C. 124.14(B)(4).

of lapsing funds at the end of FY 1988 (6/30/87), such that agencies could use lapsing funds only in very limited situations, none of which included the transfer of funds from 200 or 300 accounts of the Board to the 100 account to effect pay raises. The effect of the limitations placed on lapsing funds was that the salary raises voted by the Board for Ms. Raabe could not be funded from lapsing funds allotted to the other accounts. (Joint Exhibit E).

{¶18}“14. Nevertheless, the Board continued in its efforts to receive funding sufficient to pay Ms. Raabe the raises that it had voted to give to her, including the raises that had been approved by the Board but never funded. During the budget approval process for FY 1992 (beginning 7/1/91), the Board specifically requested an appropriation that would cover (1) a raise ‘to bring the [executive director’s] position to equivalent status of a Board/Commission Secretary II with equal longevity,’ which would equal a raise of approximately \$21,000 per year, and (2) an appropriation for a one-time payment of ‘back pay’ of approximately \$26,000, to cover the amounts of the raises that the Board had previously voted to give Ms. Raabe but which were not paid due to insufficient funding. The Board’s, chairperson, Margaret Roberts, presented testimony before House and Senate subcommittees during the budget hearings in the spring of 1991, seeking approval of these budget requests. (Joint Exhibit F).

{¶19}“15. The legislature refused to appropriate sufficient funding to the Board to pay the ‘back pay’ that had been requested in the FY 92-93 budget. (Joint Exhibit G; Raabe deposition p. 75). However, the legislature did approve sufficient funding so that the Board could increase Ms. Raabe’s salary to an amount which covered all of the accumulated but unpaid raises. Effective 7/1/92, Ms. Raabe’s salary was increased from \$18.83 per hour to \$26.89 per hour. (Joint Exhibit I).

{¶20}“D. The Back Pay

{¶21}“16. The Board attempted two more times in subsequent biennial budgets to gain legislative approval to pay Ms. Raabe the back pay that she asserted was due to her for the raises that the Board had voted to give her from 7/1/87 to 7/1/92, but which were not paid due to insufficient funds in the Board’s 100 - Personal Service allotment. Ms. Raabe calculated the back pay amount to total \$42,936.60 for the five year period. (Joint Exhibit Q).

{¶22}“a. First, the Board specifically sought an appropriation for a one-time payment of this amount in its FY 94-95 budget. (Joint Exhibit I). The Board presented testimony in support of the back pay request before both the House and the Senate during the budget hearings in the spring of 1993. (Joint Exhibit J). However, the requested appropriation was not recommended by the Governor, and was not approved by the General Assembly.

{¶23}“b. The Board tried one more time to gain funding to pay Ms. Raabe the claimed back pay. The budget chair of the Board, Guy Naples, again testified in support of the request before the legislative committees during the budget hearings, and board members also corresponded with members of both the House and the Senate explaining the request. The General Assembly, however, persisted in its refusal to appropriate funds to the Board to pay the back pay, and denied the request. (Joint Exhibits K and L).

{¶24}“E. Discussions Between Board Members and Ms. Raabe Concerning Payment of the Back Pay in Conjunction with her Retirement

{¶25}“17. Beginning in 1995, sometime after Naples testified before the legislative committees concerning the Board’s budget request for authorization to pay the back pay to Ms. Raabe in a lump sum, Ms. Raabe had discussions with three individual members of the Board, Frank Weldele, Mr. Naples, and Don Coen, concerning possible means to resolve the back pay issue. One of the possible solutions discussed would be for Ms. Raabe to retire and then be re-hired by the Board at a higher rate of pay. In this manner, she would be able to draw her full Public Employees Retirement System (PERS) pension, but at the same time be paid for working. These discussions were informal, and took place in various locations such as the coffee shop in the basement of the Riffe Tower. (Raabe deposition pp. 90--99, 122).

{¶26}“18. The full Board never discussed in any formal public meeting the proposal that Ms. Raabe be paid the back pay by retiring, drawing her pension, and being re-hired. The full Board never considered or adopted a motion agreeing that Ms. Raabe would be re-hired upon her retirement. (Raabe deposition pp. 99-100).

{¶27}“19. The full Board never discussed in any formal public meeting any other proposal by which Ms. Raabe would be paid the back pay upon her retirement, and the full Board never considered or adopted any motion agreeing that Ms. Raabe would be paid the back pay in a lump sum or any other manner upon her retirement. (Raabe deposition p. 103).

{¶28}“20. Ms. Raabe submitted a memorandum dated May 9, 2001 to the Board, announcing her resignation and retirement. The retirement was effective May 31, 2001; however, because she had accumulated compensatory time, her last day of work was actually May 11, 2001. (Joint Exhibit M).

{¶29}“21. At the time of her retirement in May, 2001, Ms. Raabe did not ask the Board to re-hire her or otherwise to adopt any motions to effectuate the retirement/rehiring plan that had been discussed in the past with Mr. Weldele, Mr. Naples, and Mr. Coen. (Raabe deposition p. 109).

{¶30}“22. The Board accepted Ms. Raabe’s resignation at its meeting on May 23, 2001. No motions were discussed or adopted by the Board at the May 23, 2001 meeting, or any other public meeting, concerning the payment of the back pay to Ms. Raabe upon her retirement. (Joint Exhibit N).

{¶31}“23. While Executive Director of the Board, Ms. Raabe never applied for any other jobs, and no one ever approached her about any other jobs. Raabe deposition pp. 8, 13, 107-108).

{¶32}“24. If the [sic] Ms. Raabe prevails in this action, the parties agree that the amount of back pay is as set forth in Joint Exhibit Q, that is, \$42,936.60. Whether or not Ms. Raabe is entitled to an award of pre- or post-judgment interest is a matter of law which will be addressed by the parties in their briefs.”

{¶33} Upon review of the parties’ stipulations of fact, joint exhibits and plaintiff’s deposition testimony, the court makes the following determination.

{¶34} In 1993 and 1995, defendant made formal requests for approval to pay plaintiff the accumulated back pay relating to the recommended salary increases for years 1986 to 1992. Joint Exhibit L is a transcript of Guy Naples’ testimony before the finance/transportation subcommittee in the House of Representatives on March 2, 1995. Naples testified, in part: “**** the Board has an

outstanding debt for unpaid salary increases for the Executive Director. The Board repeatedly, by unanimous vote approved motions granting raises to the Executive Director equivalent to those granted a Board/Commission Secretary II with equal time in service. Between July, 1987 and July, 1992 these raises were not paid. *The Board has always generated enough revenue to provide payment of these salary increases. This request would provide a one-time payment of backpay in the amount of \$42,936. *** The current and past Board members consider this a moral and legal financial obligation of the Board.* We respectfully request your consideration of funding for payment of this debt. ****” (Emphasis added.)

{¶35} Plaintiff testified during her deposition that after the back pay request was denied in 1995, she also had discussions with individual members of the Board regarding at least two possible plans to resolve the issue: 1) that plaintiff would retire from defendant’s employment and be re-hired to work in the same position until the debt was paid; or, 2) that defendant would delay filling plaintiff’s position upon her retirement so that funds could accumulate and plaintiff could be paid a lump sum. Defendant acknowledges that its board members continued to discuss alternatives to reimburse plaintiff for the back pay that she had been promised throughout her career.

{¶36} Although the court finds that defendant did not breach a specific contract with plaintiff, the court finds that the doctrine of promissory estoppel applies in this case.

{¶37} Promissory estoppel is defined as follows: “A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise.” Restatement of the Law, Contracts 2d (1973), Section 90; *McCroskey v. State* (1983), 8 Ohio St.3d 29, 30. In order for plaintiff’s claim of promissory estoppel to succeed, the threshold element of a promise must be met. Defendant must have made a promise to plaintiff which should have reasonably been expected to induce action or forbearance. *McCroskey*, at 30.

{¶38} Defendant has stipulated that the Board formally approved plaintiff’s pay increase in six separate votes and also voted to pay those increases retroactively. Plaintiff asserts that these votes constitute promises that she reasonably relied on, and that she continued her employment with

defendant in reliance on the promises that the back pay would eventually be paid to her. Plaintiff also alleges that individual board members made assurances to her that the back pay would be paid when she retired, by either of the two possibilities stated above. Defendant argues that it was not reasonable for plaintiff to have relied on these assertions.

{¶39}R.C. 4753.04 provides that “*** [t]he board may employ an executive director, who shall serve at the board’s pleasure, and shall designate the duties and fix the executive director’s compensation. ***” Despite defendant’s arguments, the court finds that defendant’s actions of formally recommending and approving salary increases constituted a promise to pay plaintiff the approved amounts. Pursuant to R.C. 4753, defendant had the authority to fix plaintiff’s compensation, and the court finds that it was reasonable for plaintiff to rely on defendant’s promises. In addition, the statements contained in Joint Exhibit L demonstrate that defendant acknowledged that it owed plaintiff the back pay.

{¶40}Defendant argues that plaintiff suffered no detriment because she did not reject any other job opportunities while continuing to be employed by defendant. However, the court finds that plaintiff suffered a financial detriment by relying on defendant’s continued assertions that one day the debt would be paid. The court further finds that injustice can be avoided only by enforcement of the promise.

{¶41}Defendant further asserts that plaintiff’s claims are barred by the applicable statute of limitations. R.C. 2743.16(A) states, in relevant part: “*** civil actions against the state permitted by sections 2743.01 to 2743.20 of the Revised Code shall be commenced no later than two years after the date of accrual of the cause of action or within any shorter period that is applicable to similar suits between private parties.” Plaintiff filed her initial claim after her retirement in 2001.* The court finds that defendant made efforts as late as 1995 to pay plaintiff the debt it owed her. Furthermore, plaintiff had ongoing discussions with board member Don Coen, the board’s budget

*On September 19, 2001, plaintiff filed Case No. 2001-09311, which was voluntarily dismissed on October 15, 2002; she filed the current action on April 25, 2003.

chair, as late as the summer of 2000 to resolve the back pay issue, which defendant acknowledged was still pending. (Raabe deposition, pp. 93-96.) Moreover, the promises upon which plaintiff reasonably relied in continuing her employment with defendant contemplated post-retirement compensation for back pay. Therefore, the court finds that the statute of limitations began to run as of the date of plaintiff's retirement and, as such, her claim was timely filed.

{¶42}Based upon the foregoing, the court finds that plaintiff has proven her claim of promissory estoppel by a preponderance of the evidence. Judgment shall be rendered in favor of plaintiff in the amount of \$42,936.60.

{¶43}Plaintiff's claim for prejudgment interest is DENIED. See R.C. 1343.03 and *Royal Elec. Constr. Corp. v. Ohio State Univ.*, 73 Ohio St.3d 110, 1995-Ohio-131.

[Cite as *Raabe v. Bd. of Speech-Language Pathology & Audiology*,
2004-Ohio-4569.]

IN THE COURT OF CLAIMS OF OHIO

JUDITH D. RAABE

:

Plaintiff :

CASE NO. 2003-05275

Judge J. Warren Bettis

v.

:

JUDGMENT ENTRY

OHIO BOARD OF SPEECH-LANGUAGE
PATHOLOGY AND AUDIOLOGY

:

Defendant

:

.....

This case was submitted to the court on stipulations and briefs on the issues of liability and damages. The court has considered the evidence and, for the reasons set forth in the decision filed concurrently herewith, judgment is hereby rendered in favor of plaintiff in the amount of \$42,961.60, which includes the filing fee paid by plaintiff. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

J. WARREN BETTIS
Judge

Entry cc:

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[Cite as *Raabe v. Bd. of Speech-Language Pathology & Audiology*,
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