

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Brent A. Runge,

Appellant,

v.

Case No. 08-REM-03-0064

Hocking County Board of Commissioners,

Appellee.

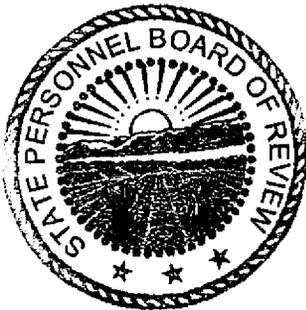
ORDER

This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeal be **DISMISSED** for lack of subject matter jurisdiction over an unclassified employee, pursuant to O.R.C. §§ 124.03 and 124.11(A)(3).

Lumpe - Aye
Booth - Aye
Sfalcin - Aye



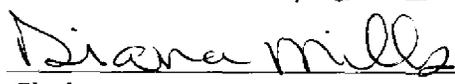


J. Richard Lumpe, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, November 18, 2008.



Diana Mills
Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

11-18-08

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Brent A. Runge

Case No. 08-REM-03-0064

Appellant

v.

October 22, 2008

Hocking County Board of Commissioners

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon the notice of appeal filed by Appellant Runge on March 19, 2008. A Procedural Order and Questionnaire was issued by this Board to Appellee on May 5, 2008, and on June 2, 2008, Appellee filed a response to the Questionnaire. Appellant Runge had the option of a filing a reply to Appellee's response within ten days of receipt of Appellee's response, but to date, no reply has been filed.

Appellee alleges in its response to this Board's Questionnaire that Appellant Runge was an unclassified employee at the time of his removal, pursuant to section 124.11(A)(3) of the Ohio Revised Code.

Unlike a court of general jurisdiction, this Board has only the authority given to it by statute. This Board does not possess jurisdiction over employees who are unclassified, as section 124.03 of the Ohio Revised Code limits this Board's jurisdiction to classified employees. The pertinent part of that statute states as follows:

A) The state personnel board of review shall exercise the following powers and perform the following duties:

(1) **Hear appeals, as provided by law, of employees in the classified state service** from final decisions of appointing authorities or the director of administrative services relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, or refusal

of the director, or anybody authorized to perform the director's functions, to reassign an employee to another classification or to reclassify the employee's position with or without a job audit under division (D) of section 124.14 of the Revised Code. As used in this division, "discharge" includes disability separations. (Emphasis added).

Therefore, if Appellant Runge was an unclassified employee at the time of his removal, then this Board does not possess jurisdiction to hear his appeal. Appellee has alleged that Appellant Runge was an unclassified employee pursuant to section 124.11(A)(3) of the Ohio Revised Code. That statute states as follows:

The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts of the state shall be divided into the unclassified service and the classified service.

(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter:

(3)(a) The members of all boards and commissions, and heads of principal departments, boards, and commissions appointed by the governor or by and with the governor's consent;

(b) The heads of all departments appointed by a board of county commissioners; (Emphasis added).

Appellee states in its response to this Board's Questionnaire that Appellant Runge was employed as the Director of the Hocking County 9-1-1 agency. At the same time that Appellant Runge filed the instant appeal, he also filed a whistleblower appeal, which was also assigned to this Administrative Law Judge as is referenced as case number 08-WHB-03-0065. In that case file, Appellant Runge submitted numerous documents on letterhead that stated "Memo from the Director Brent A. Runge. He also signed several documents as the Director.

The Hocking County Board of Commissioners is the appointing authority for the 9-1-1 agency, and as such, it was that Board that appointed Appellant Runge to the Director position. The position of Director certainly is akin to a "head of a department" as stated in section 124.11(A)(3)(b) of the Ohio Revised Code.

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Appellant Runge did not file any reply to Appellee's response to the Questionnaire and taking judicial notice of the documents in Appellant Runge's companion whistleblower appeal, it is clear that he was the head of an agency or department and appointed by the Board of County Commissioners. Therefore, pursuant to statute, Appellant Runge was an unclassified employee at the time of his termination and as such, this Board does not possess subject matter jurisdiction of his appeal.

Therefore, it is my **RECOMMENDATION** that this appeal be **DISMISSED** due to a lack of subject matter jurisdiction over an unclassified employee.



Marcie M. Scholl
Administrative Law Judge

:mms