

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

Jennifer L. Smith,

*Appellant,*

Case Nos. 09-REM-03-0160  
09-REM-03-0161

v.

Medina County Drug Task Force,

*Appellee.*

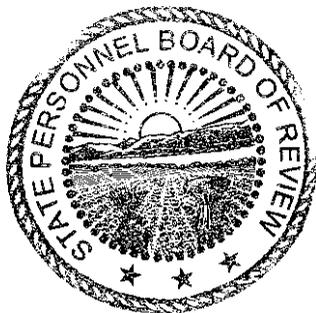
**ORDER**

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

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 Case Number 09-REM-03-0160 be **DIMISSSED** for lack of jurisdiction over the parties and Case Number 09-REM-03-0161 be **DIMISSSED** for lack of subject matter jurisdiction.

Lumpe - Aye  
Sfalcin - Aye  
Tillery - 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, July 30, 2009.

  
\_\_\_\_\_  
Clerk

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

7-30-09 MH

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

Jennifer L. Smith,

*Appellant*

v.

Medina County Drug Task Force,

and

Medina County Sheriff,

*Appellees*

Case Nos. 09-REM-03-0160  
09-REM-03-0161

June 29, 2009

Jeannette E. Gunn  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for consideration pursuant to Appellee's Motions to Dismiss, filed with this Board on June 15, 2009. Appellee asserts in its Motions that this Board lacks jurisdiction to consider the above-referenced appeals because Appellant was not a civil service employee of a state or county agency. Appellant filed no memorandum *contra*.

Based upon the uncontroverted information contained in the record, I find that Appellee Medina County Drug Task Force is an entity established under the Medina County Council of Governments for Drug Enforcement, which was established pursuant to Ohio Revised Code Chapter 167. I further find that Appellant was an undercover drug agent employed by, compensated by and supervised by the Medina County Drug Task Force, through its Operating Board; Appellant was compensated from special grant moneys designated exclusively for the purposes of the Medina County Drug Task Force. Although the Medina County Sheriff has specially commissioned Medina County Drug Task Force undercover agents as special deputies, such individuals are not employed by or compensated by the Medina County Sheriff, and I find that Appellant was not an employee of the Medina County Sheriff. Appellant acknowledged that Appellee Medina County Drug Task Force was an "at will" employer and that her employment could be terminated at the will of either party, with or without cause.

## CONCLUSIONS OF LAW

At the outset of any appeal, this Board must determine whether the parties are entities over which it may exercise jurisdiction. This Board's jurisdiction is almost exclusively derived from Revised Code Chapter 124., which sets forth the State civil service laws. O.A.C. 124-1-01(B) indicates that this Board's subject matter jurisdiction reaches all classified positions in the service of the State, the counties, and the general health districts.

Appellant filed SPBR Case Number 09-REM-03-0160 to appeal her removal from employment, naming the Medina County Drug Task Force as Appellee. In order to determine whether Appellee Medina County Drug Task Force (the Task Force) is an entity over which this Board may exercise jurisdiction, the Board must determine whether Task Force employees are in the service of the State, the counties, or the general health districts. O.A.C. 124-1-01(B). The Tenth District Court of Appeals, in In re Ford (1982), 3 Ohio App.3d 416, set forth a two-part test to determine whether individuals were "in the service of the State" within the contemplation of the definition contained in R.C. 124.01, i.e. (1) employment by a State agency, and (2) compensation being paid in whole or in part from State funds. The Ford court defined a state agency as a public agency created by statute to exercise a certain portion of the sovereignty of the state, as authorized by statute, which exercises its powers throughout the state.

The Task Force is a hybrid organization made up of county, municipal, township and village officials, and is governed by the Medina County Council of Governments for Drug Enforcement (the Council), a regional council of government created pursuant to R.C. 167.01. R.C. 167.05 authorizes the Council to employ its own staff, and R.C. 167.06 provides that the Council's funding is provided by appropriations from its members. Task Force employees are compensated through a special grant fund established by the Council.

The Council and employees of the Task Force exercise their authority and perform duties on behalf of their member political subdivisions. Although all of the entities served by Appellee may be located within the geographical boundaries of Medina County, the Council remains separate and apart from the political subdivisions it serves. See, generally, 1983 Ohio Op. Atty Gen. No. 064. As the

Council is not an instrumentality of Medina County, an entity formed by it, i.e. the Task Force, cannot be an instrumentality of the county.

Appellee Medina County Drug Task Force does not exercise its powers throughout the State of Ohio, nor is it a county agency. Therefore, I find that Appellee's employees are not in the service of the State or county for purposes of R.C. Chapter 124. and are not members of the civil service. See, 1989 Ohio Op. Atty Gen. No. 063. Although this Board may also hear appeals from employees of general health districts, Appellee Medina County Drug Task Force does not constitute such an entity, as defined by R.C. 3709.01.

Appellant filed SPBR Case Number 09-REM-03-0161 to appeal her removal from employment, naming the Medina County Sheriff as Appellee. A county Sheriff's Office is a county agency over which this Board typically may exercise its jurisdiction. However, the evidence contained in the record indicates that although Appellant was specially commissioned by Appellee Medina County Sheriff (the Sheriff) as a special deputy, Appellant was not compensated by or under the immediate supervision of the Sheriff, and, therefore, was not an employee of the Sheriff. Because the Sheriff could not have taken any employment action against an individual who was not an employee, there is no subject-matter basis for the appeal brought by Appellant against Appellee Medina County Sheriff.

Accordingly, based upon the above analysis, I respectfully **RECOMMEND** that SPBR Case Number 09-REM-03-0160 be **DISMISSED** for lack of jurisdiction over the parties, and that SPBR Case Number 09-REM-03-0161 be **DISMISSED** for lack of subject matter jurisdiction.

  
Jeannette E. Gunn  
Administrative Law Judge

JEG: