

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

Donard Bowling,

Appellant,

v.

Case No. 09-WHB-02-0052

Department of Youth Services Central Office,

Appellee.

ORDER

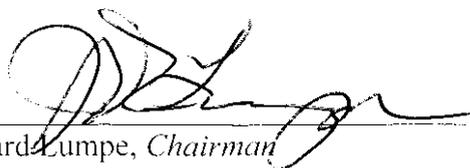
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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, pursuant to O.R.C. § 124.341(A).

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



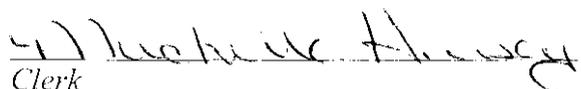


J. Richard Lumpe, *Chairman*

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, September 18, 2009.



Clerk

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

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

Donard Bowling,

Case No. 09-WHB-02-0052

Appellant

v.

August 10, 2009

Department of Youth Services,
Central Office,

Appellee

Jeannette E. Gunn
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration due to Appellant's February 10, 2009, filing of an appeal alleging that his three-day working suspension and/or fine constituted a retaliatory action as prohibited by R.C. 124.341.

R.C. 124.341 states, in pertinent part:

(A) If an employee in the classified or unclassified civil service becomes aware in the course of employment of a violation of state or federal statutes, rules, or regulations or the misuse of public resources, and the employee's supervisor or appointing authority has authority to correct the violation or misuse, the employee may file a written report identifying the violation or misuse with the supervisor or appointing authority.

If the employee reasonably believes that a violation or misuse of public resources is a criminal offense, the employee, in addition to or instead of filing a written report with the supervisor or appointing authority, may report it to a prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation, to a peace officer, as defined in section 2935.01 of the Revised Code, or, if the violation or misuse of public resources is within the jurisdiction of the inspector general, to the inspector general in accordance with section 121.46 of the Revised Code. In addition to that report, if the employee reasonably believes the violation or

misuse is also a violation of Chapter 102., section 2921.42, or section 2921.43 of the Revised Code, the employee may report it to the appropriate ethics commission.

(B) Except as otherwise provided in division (C) of this section, no officer or employee in the classified or unclassified civil service shall take any disciplinary action against an employee in the classified or unclassified civil service for making any report authorized by division (A) of this section, including, without limitation, doing any of the following:

...

(1) Removing or suspending the employee from employment;

...

(5) Reducing the employee in pay or position;

...

CONCLUSIONS OF LAW

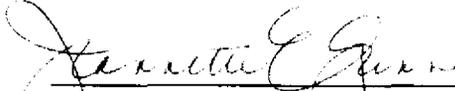
In order to invoke the protection of R.C. 124.341, an employee in the classified or unclassified civil service must meet two threshold requirements: the employee must have properly reported an alleged violation or violations of state or federal statutes, rules, or regulations, or misuse of public resources that the employee became aware of during the course of his or her employment, and the employee must demonstrate that one or more prohibited retaliatory actions must have been taken by Appellee.

In response to this Board's April 16, 2009, Procedural Order and Questionnaire, Appellant indicated that he filed a written report with his appointing authority on June 11, 2008, by filing a grievance with Labor Relations Officer Mary Ann Krake. Appellant provided this Board with a copy of the document he provided to LRO Krake, alleging that a co-worker (identified as Mrs. Palmer) had made intimidating remarks to him, had falsely reported that he had threatened a youth

under his supervision, and had conducted an unauthorized investigation. Appellant did not identify any other actions, other than his co-worker's alleged conduct, as violations of state or federal statutes, rules, or regulations, or as a misuse of public resources. I find that the document provided by Appellant to LRO Krake constituted an exercise of Appellant's contractual rights as a member of a collective bargaining unit, rather than a written report identifying a violation of state or federal statutes, rules, or regulations or the misuse of public resources, as contemplated by R.C. 124.341(A). Appellant has, therefore, failed to provide the Board with *prima facie* evidence that he complied with the provisions of R.C. 124.341(A), and is not protected under the provisions of R.C. 124.341.

Even assuming, *arguendo*, that the document provided by Appellant to LRO Krake was sufficient to constitute a written report under that subsection, I note that the allegedly retaliatory discipline received by Appellant (a three-day fine/working suspension) was grieved by Appellant pursuant to Article 25 of the collective bargaining agreement covering Appellant's bargaining unit, which provides for binding arbitration of grievances. See, SPBR Case No. 09-FIN-02-0051.

Therefore, because Appellant has failed to demonstrate compliance with the reporting requirements of R.C. 124.341(A), and because the alleged retaliatory action taken by Appellee was the subject of a binding arbitration, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** for lack of subject matter jurisdiction.



Jeannette E. Gunn
Administrative Law Judge