

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Melissa D. Sites,

Appellant.

v.

Case No. 09-WHB-04-0213

ADAMHS Board,
Scioto-Lawrence-Adams Counties,

Appellee.

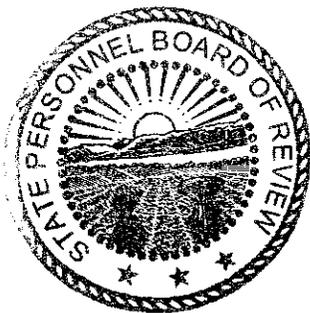
ORDER

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(B).

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

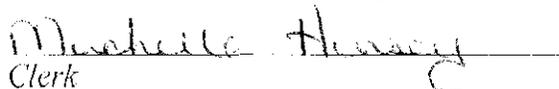



J. Richard Lumpe, *Chairman*

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, August 26, 2009.


Michelle Hunsley
Clerk

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

8-26-09

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

Melissa D. Sites,

Case No. 09-WHB-04-0213

Appellant

v.

June 17, 2009

ADAMHS Board, Scioto-Lawrence-
Adams Counties,

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 April 20, 2009, filing of an appeal alleging that her written reprimand and a complaint filed against her by a co-worker constituted retaliatory action based upon her "whistleblowing" activities, 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;
- (2) Withholding from the employee salary increases or employee benefits to which the employee is otherwise entitled;
- (3) Transferring or reassigning the employee;
- (4) Denying the employee promotion that otherwise would have been received;
- (5) Reducing the employee in pay or position.

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.

Appellant requested in her appeal that this Board review her written reprimand, issued to her by Executive Director Tony Pollard, and a complaint made against her by co-worker Scott Williams. Neither of these actions constitute prohibited retaliatory discipline, as set forth in R.C. 124.341(B), therefore Appellant may not claim protection under the statute.

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Accordingly, I find that this Board lacks jurisdiction to consider the instant matter because the actions Appellant has appealed do not rise to the level of prohibited retaliatory action as set forth in R.C. 124.341(B), I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** for lack of subject matter jurisdiction.


Jeannette E. Gunn
Administrative Law Judge

JEG: