

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

Rick Mays,

Case Nos. 11-INV-06-0206

11-MIS-06-0207

*Appellant,*

v.

American Township Police Department,

*Appellee.*

**ORDER**

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

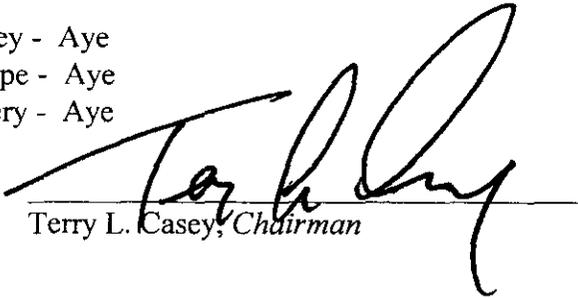
After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that Case 11-INV-06-0206 be **DISMISSED** for lack of jurisdiction over the parties and failure to respond to this Board's June 20, 2011, correspondence and Case 11-MIS-06-0207 be **DISMISSED** for lack of subject matter jurisdiction, as Appellant has failed to demonstrate a *prima facie* case, pursuant to O.R.C. §§ 124.341 and 4167.13(A).

Casey - Aye

Lumpe - Aye

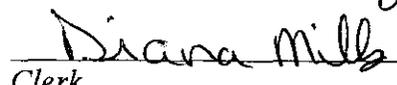
Tillery - Aye

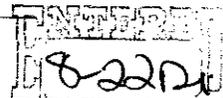
  
\_\_\_\_\_  
Terry L. Casey, *Chairman*

**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 constitutes ~~(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 22, 2011.

  
\_\_\_\_\_  
Diana Mills  
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**

Rick Mays,

*Appellant*

v.

American Township Police Department,

*Appellee*

Case Nos. 11-INV-06-0206  
11-MIS-06-0207

July 15, 2011

Jeannette E. Gunn  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

The above-referenced matters came on for consideration due to Appellant's June 7, 2011, filing of an appeal with this Board. Appellant alleged that Appellee had suspended him without pay on or about February 23, 2011, and generally requested that this Board investigate Appellee's actions; Appellant's investigation request was assigned a separate case number, SPBR Case No. 11-INV-06-0206. Appellant further alleged that his unpaid suspension constituted retaliatory discipline; this matter was assigned the case number of SPBR Case No. 11-MIS-06-0207.

Correspondence was sent to Appellant in SPBR Case No. 11-INV-06-0206, requesting that Appellant state with specificity which requirements of civil service law he believed to have been violated by Appellee and stating that the matter would be dismissed unless specific allegations were received by the date indicated. Appellant failed to respond in a timely manner. In order to more fully develop the record in SPBR Case No. 11-MIS-06-0207, a questionnaire was issued by this Board on June 20, 2011. Appellant's response to the questionnaire was filed with this Board on July 7, 2011. I note that filing was delayed due to a postal delivery error, and the deadline for submission of Appellant's response was extended accordingly.

**CONCLUSIONS OF LAW**

R.C. Section 124.03(A)(1) sets forth this Board's general jurisdiction and provides that the Board may hear appeals from employees in the classified state

Rick Mays

Case Nos. 11-INV-06-0206 and 11-MIS-06-0207

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service. "State service" is defined by R.C. 124.01(B) as including "all offices and positions in the service of the state and the counties and general health districts of the state." The evidence contained in the record indicates that Appellant was employed by a township police department. A township police department is not a political subdivision specifically named by R.C. 124.01(B), accordingly, I find that the Board does not have jurisdiction over appeals brought by Appellee's employees unless its general jurisdiction is specifically expanded by another section of the Revised Code.

This Board's investigatory jurisdiction is derived from R.C. Section 124.56. That section of the Revised Code makes no additional grant of jurisdiction over employees other than those referenced in R.C. 124.03(A)(1), therefore, I find that this Board is without jurisdiction to consider Appellant's request for investigation in SPBR Case No. 11-INV-06-0206. I further note that Appellant failed to allege with specificity any alleged violation of R.C. Chapter 124. by Appellee.

R.C. Section 124.341 provides this Board with jurisdiction over appeals brought by an employee in the classified or unclassified civil service who has filed a report under division (A) of the section and against whom an appointing authority has taken disciplinary or retaliatory action. R.C. Section 124.01(A) defines "civil service" as including all offices and positions of trust or employment in the service of the state and in the service of the counties, cities, city health districts, general health districts, and city school districts of the state. A township police department is not a political subdivision specifically named by R.C. 124.01(A), accordingly, I find that this Board does not have jurisdiction to consider a "whistleblower" appeal brought by employees of Appellee pursuant to R.C. 124.341 because they do not meet the definition of "civil service" employees contained in R.C. 124.01(A) and referenced in R.C. 124.341.

Notwithstanding such a conclusion, I further find that Appellant's response to this Board's June 20, 2011, questionnaire also fails to demonstrate that Appellant or his representative filed a written report pursuant to R.C. 124.341(A) prior to the alleged unpaid suspension imposed upon Appellant on or about February 23, 2011.

In order to invoke the protection of R.C. 124.341, an employee in the classified or unclassified civil service must properly report 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. Absent a showing of *prima facie* evidence that Appellant complied with the reporting

provisions of R.C. 124.341, he is not protected under the provisions of R.C. 124.341.

This Board also has the authority to review alleged retaliatory actions arising from OSHA violation claims. Revised Code Section 4167.13(A) provides that no public employer shall:

... discharge or in any manner discriminate against any public employee because the public employee, in good faith, files any complaint or institutes any proceeding under or related to this chapter, or testifies or is about to testify in any proceeding, or because of the exercise by the public employee, on his own behalf or on the behalf of others, of any right afforded under this chapter.

In this instance, Appellant and Appellee fall within the general definition of "public employee" and "public employer." The information contained in the record, however, does not indicate that Appellant filed a complaint, instituted a proceeding under or related to R.C. Chapter 4167., testified or was about to testify in any proceeding, or exercised a right afforded by R.C. Chapter 4167. prior to the alleged retaliatory action taken by Appellee on or about February 23, 2011. Because Appellant has failed to demonstrate that he had engaged in any of the privileged activities set forth in R.C. 4167.13(A), therefore, he may not claim the protections of R.C. 4167.

Therefore, based upon the above analysis, I respectfully **RECOMMEND** that SPBR Case No. 11-INV-06-0206 be **DISMISSED** for lack of jurisdiction over the parties and failure to respond to this Board's June 20, 2011, correspondence. I further **RECOMMEND** that SPBR Case No. 11-MIS-06-0207 be **DISMISSED** for lack of subject matter jurisdiction, as Appellant has failed to demonstrate a *prima facie* case pursuant to either R.C. 124.341 or R.C. 4167.13(A).

  
Jeannette E. Gunn  
Administrative Law Judge