STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

RAJSHREE MALHOTRA,

Appellant,

v.

Case Nos. 13-MIS-01-0057
13-MIS-01-0058
13-MIS-01-0059

MONTGOMERY COUNTY JUVENILE COURT,

Appellee

ORDER

This matter came on for consideration on the Appellee's Motion to Dismiss. After a thorough examination of the entirety of the records, including a review of the Appellee's Motion to Dismiss and the Appellant's Response to the Motion to Dismiss, as well as a pre-hearing held before the full Board on March 20, 2013, the Board hereby DISMISSES these appeals for lack of subject matter jurisdiction over the parties.

This Board does not possess subject matter jurisdiction over the removal of an unclassified employee since R.C. 124.03 limits this Board's merit jurisdiction to actions concerning classified employees. Appellee argued that Appellant's position was statutorily exempted from the civil service pursuant to R.C. 124.11(A)(32), which designates as exempt from the classified service those employees who are placed in the unclassified service by another section of the Revised Code.

Evidence was presented by Appellee to establish that Appellant was duly appointed to her position of Juvenile Court Magistrate pursuant to R.C. 2151.13. That section of the Revised Code indicates that those employees so appointed serve at the pleasure of the appointing authority. An employee who serves "during the pleasure" of an appointing authority is an at-will employee, and falls within the unclassified civil service.

Accordingly, the Board finds that Appellant's position was exempted from the classified civil service pursuant to R.C. 2151.13 and R.C. 124.11(A)(32).

As well as challenging the merits of her removal, Appellant also challenges the process Appellee utilized to assign Appellant's position to the unclassified service. Since the records appear to clearly establish that Appellant's position fell within the unclassified service pursuant to R.C. 2151.13, it would be, at best, superfluous to attempt to review the propriety of Appellee's placing Appellant's position in the unclassified service and, so, this Board respectfully declines to undertake that exercise.

Appellant also challenges the method and basis that Appellee utilized to place her on administrative leave with pay for an approximate 21-day time period. R.C. 124.388 (A) does establish parameters, although broad in their scope, as to when an appointing authority may place an employee on paid administrative leave. At pre-hearing, Appellee noted that it utilized a 21-day administrative leave time period; in order to allow Appellant her full 21-day mandated time frame under the federal ADEA to consider and accept, or reject, Appellee's offer of resignation, severance, and release of claims to Appellant. We also note that, since

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this Board lacks authority to review the merits of Appellant's removal by operation of R.C. 2151.13, even if some theoretical violation of R.C. 124.388 were found to have occurred, Appellant would still lack any meaningful remedy before this Board for such a supposed violation. This is because, at bottom, Appellant served in an unclassified position and, as such, this Board lacks authority either to review Appellant's removal or theoretically to restore her back to her unclassified position.

Additionally, Appellant raises questions regarding whether R.C. 2151.13's mandate (*i.e.* that all pertinent employees of the Juvenile Court encumber unclassified positions), is at odds with R.C. 124.11 (A)(10)'s delineation of pertinent Court of Common Pleas' employees into the classified or unclassified service. Appellant claims that the application of R.C. 124.11 (A)(10) to employees within, for example, a General Division of a Court of Common Pleas, while simultaneously applying R.C. 2151.13 to employees within, for example, the Juvenile Division of the Court of Common Pleas creates an equal protection violation. Clearly, this Board is not empowered to decide Constitutional questions that might theoretically contemplate invalidating an Act of the Ohio General Assembly. It appears Appellant understands that she may perhaps pursue the avenue of remedy that she seeks regarding this argument through the requisite filing with a pertinent Court of competent jurisdiction.

Finally, in her response to Appellee's motion to dismiss and at pre-hearing, Appellant addressed the idea that her actions might fall under the whistleblower protections set forth in R.C. 124.341. Appellant conceded both in her response and at pre-hearing that she notified a Court employee "verbally" (as opposed, here, to in writing) regarding a concern that she shared with that employee. Since such actions would appear to fall under the parameters and restrictions set forth in R.C. 124.341 (A) requiring the authoring and filing of a written report with the specified individual or entity, Appellant's apparent oral notification would fail to trigger the potential statutory protections for whistleblowers established in R.C. 124.341 (A).

Wherefore, it is hereby **ORDERED** that Appellee's Motion is **GRANTED** and these appeals are **DISMISSED** for lack of jurisdiction.

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, March 22, 2013.

Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE March 29, 2013. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Numbers: 13-MIS-01-0057, 0058, 0059

Transcript Costs: N/A Administrative Costs: $25.00

Total Deposit Required: * $25.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: April 8, 2013