STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

William DeWeese,

Appellant,

v.

Hocking College,

Appellee,

Case Nos. 2014-ABL-08-0201
2014-LAY-08-0202
2014-SUS-08-0203
2014-WHB-08-0204
2014-INV-08-0205

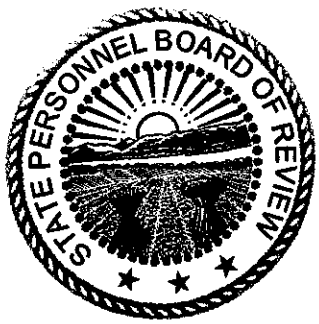
ORDER

These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals and request for a review.

This Board has extensively developed the respective records in these instant matters. The Board finds that the dispositions of these matters principally turn on the issue of whether this Board possesses R.C. Chapter 124. jurisdiction over an appeal or a request for an investigation filed with this Board that concerns a State Technical College. The Board has determined that, because Appellee constitutes a State *Technical* College as opposed to a State *Community* College, this Board lacks R.C. Chapter 124. jurisdiction over Appellee. Accordingly, after a thorough examination of the entirety of the records, including 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, and the subsequent supplementation of the records provided by respective counsel, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the four above captioned appeals and one above captioned request for review be **DISMISSED** for lack of R.C. Chapter 124. jurisdiction over Hocking College, pursuant to the specific provisions contained in R.C. Chapter 124., including but not limited to R.C. 124.341.

Casey - Aye
Tillery - Aye
McGregor - 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, September 23, 2016.

Eric E Cox

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 September 30, 2016. 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 Number: 2014-ABL-08-0201, *et seq*

Transcript Costs: $235.50 Administrative Costs: $25.00

Total Deposit Required: * $260.50

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: October 11, 2016

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

William DeWeese	Case No. 2014-WHB-08-0204
	2014-ABL-08-0201
Appellant	2014-LAY-08-0202
	2014-SUS-08-0203
	2014-INV-08-0205
v.	June 16, 2016
Hocking College	
	James R. Sprague
Appellee	*Administrative Law Judge*

REPORT AND RECOMMENDATION

This cause comes on for consideration pursuant to the duties and designation record hearing held March 2, 2016.

The parties stipulated that Appellant was an employee of Hocking College at all times relevant for purposes of this limited hearing. The parties submitted post-hearing briefs on the issue of whether Appellant is unclassified for purposes of prospective application of R.C. 124.341. Prior to this, the parties briefed the issue of jurisdiction as to Appellant's simultaneous: whistleblower, suspension, investigation, abolishment, and layoff appeals.

Pursuant to my Procedural Order dated April 21, 2016, Appellee did provide a copy of its charter, as amended. On June 15, 2016, Appellant filed Appellant's Response to that Procedural Order, addressing both the Charter and Appellee's April 21, 2016 submission. After further review of the record, I make the following recommended findings:

FINDINGS OF FACT

1. Appellee Hocking College is a technical college district organized under R.C. 3357.02.

2. Appellee is a political subdivision of the state and body corporate pursuant to R.C. 3357.04.

3. Appellant is <u>not</u> subject to the provisions of R.C. 124.11 because he was <u>not</u> an employee of the state, several counties, cities, civil service townships, city health district, general health district or city school district.

4. Correspondingly, the whistleblower, layoff and abolishment, and tenure of office provisions in R.C. 124 *et sequitur* are not applicable to Appellant because he is not covered under 124.11.

5. Appellant similarly cannot invoke the Investigations procedures in R.C. 124.40 and 124.56, and OAC 124-7-05 because he does not ask this Board to investigate a municipal civil service commission or civil service township.

6. Employees of technical colleges may file whistleblower complaints pursuant to R.C. 4113.52 which is outside this Board's jurisdiction.

CONCLUSIONS OF LAW

This Board does NOT have jurisdiction to hear Appellant's claims. This is because this Board's jurisdiction does not extend to direct appeals from employees of political subdivisions like Appellee. See *Butler v. Marion Technical College*, SPBR Case No. 11-REM-12-0421.

The General Assembly would have mentioned technical colleges under R.C. 124.11 like it mentions other bodies, if it intended to confer this Board with jurisdiction over Appellant's various claims.

In regards to whistleblower protection, the Generally Assembly conferred whistleblower protection on employees of political subdivisions in another statute. R.C. 4113.51 *Whistleblower's protection definitions,* states in pertinent part:

> (B) "Employer" includes an agent of an employer, the state or **any agency or instrumentality of the state**, and **any** municipal corporation, county, township, school district, **or other political subdivision** or any agency or instrumentality thereof.

Moreover, section (D) states that "Political subdivision" has the same meaning as in division (F) of section 2744.01 of the Revised Code which states in pertinent part that a political subdivision includes any: "...other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state."

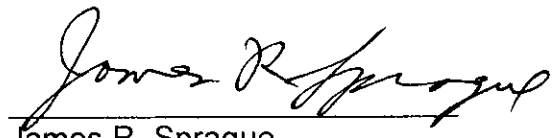
Finally, R.C. 3357.04 states in pertinent part, "**A technical college** district organized pursuant to section 3357.02 of the Revised Code ***shall be a political subdivision of the state and a body corporate with all the powers of a corporation...***" (emphasis added) This conclusively shows that Appellee is a

political subdivision and an Employer within the meaning of R.C. 4113.51.

This interpretation is in accordance with two principles of statutory interpretation; (1) the mention of one is the exclusion of the other (*expressio unius est exclusio alterius*), and (2) *harmonization* which stands for the proposition that courts should reconcile statutory language so none is rendered redundant or meaningless where possible.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the four above-captioned appeals and one above-captioned request for an investigation due to lack of jurisdiction over their respective subject matter.



James R. Sprague
Administrative Law Judge