STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Jon Stainbrook,

Appellant,

v. Case No. 2014-REM-06-0125

Secretary of State,

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 entirety of the record, 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, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant removal appeal is **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to R.C. 124.03, R.C. 124.34, and R.C. 3501.01 (U) (5).

Casey - Abstained
Lumpe - Aye
Tillery - Aye

J. Richard Lumpe, Vice 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 11, 2015.

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 18, 2015. 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-REM-06-0125

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: March 26, 2015

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Jon Stainbrook	Case No. 2014-REM-06-0125
Appellant	
v.	February 10, 2015
Secretary of State	
Appellee	James R. Sprague *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's June 19, 2014 filing of an appeal from his removal from his office as a Member of the Lucas County Board of Elections. Also on June 19, 2014, Appellant filed a whistleblower appeal with this Board (Please see SPBR Case No. 2014-WHB-06-0126).

On July 30, 2014, Appellee filed Appellee's Motion to Dismiss for Lack of Jurisdiction, Memorandum in Support, and pertinent accompanying documents. To date, Appellant has filed no memorandum *contra* to Appellee's motion to dismiss. However, the parties and this Board spent a considerable amount of time adjudicating Appellant's companion whistleblower appeal. Accordingly, the instant appeal was held in abeyance pending this Board's review and issuance of a final Order in Appellant's whistleblower appeal.

As an office holder identified as an "elections officer" in R.C. 3501.01 (U) (5), Appellant's office is outside of the protections offered to classified employees in R.C. 124.34. Accordingly, this Board lacks jurisdiction to consider the merits of Appellant's instant removal appeal.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant removal appeal for lack of jurisdiction over its subject matter, pursuant to R.C. 124.03, R.C. 124.34, and R.C. 3501.01 (U) (5).

James R. Sprague
Administrative Law Judge