STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Amy Rinehart,

Appellant,

v. Case Nos. 2015-WHB-07-0102
2015-INV-07-0103

South Western City School District,

Appellee,

ORDER

These matters 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 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, as well as additional filings by the parties in response to the Board's Procedural Order, the Board hereby adopts the Recommendation of the Administrative Law Judge. *It is noted that Appellant identifies a number of troubling issues. However, those issues do not appear to fall within the subject matter and remedial authority set forth in either R.C. 124.341 or R.C. 124.56.*

Wherefore, it is hereby **ORDERED** that these cases are **DISMISSED** due to a lack of jurisdiction pursuant to section 4167.13 of the Ohio Revised Code.

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, May 11, 2016.

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 May 18, 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 Numbers: 2015-WHB-07-0102 and 2015-INV-07-0103

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: May 26, 2016

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Amy Rinehart	Case Nos. 2015-WHB-07-0102 2015-INV-07-0103
Appellant	
v.	February 22, 2016
South Western City School District	Marcie M. Scholl
Appellee	*Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon the filing of Appellee's response to this Board's letter requesting information regarding the allegations of the Appellant, filed on December 18, 2015, and Appellant's reply, filed on February 17, 2016.

With regard to the investigation request filed by Appellant Rinehart, this Board has no jurisdiction over an investigation request into a city school district. Unlike a court of general jurisdiction, this Board has only the jurisdiction bestowed upon it by statute. Section 124.03 of the Ohio Revised Code grants jurisdiction to this Board over appeals from employees in the classified state service. Section 124.01 of the Ohio Revised Code defines "state service" as:

> "State service" includes all offices and positions in the service of the state and the counties and general health districts of the state. **"State service" does not include offices and positions in the service of the** cities, city health districts, and **city school districts of the state**. (Emphasis added).

Also, section 124.40 of the Ohio Revised Code only grants this Board jurisdiction to investigate civil service commissions. The Board has no authority to conduct an investigation of a city school district. Therefore, it is my **RECOMMENDATION** that Appellant Rinehart's request for an investigation be

DISMISSED due to a lack of subject matter jurisdiction pursuant to sections 124.01, 124.03 and 124.40 of the Ohio Revised Code.

In looking at Appellant Rinehart's whistleblower appeal, she has alleged she was retaliated against for filing a complaint with the Bureau of Workers Compensation (BWC) Public Employment Risk Reduction Program. She alleges in her notice of appeal that she received a Letter of Documentation and was denied an opportunity to interview for other positions.

Appellee was asked to respond to Appellant Rinehart's allegations and did so on December 18, 2015. Appellee stated that Appellant Rinehart was issued a Letter of Documentation for miscalculating an insulin dosage for a student (which Appellant Rinehart admitted to) and not because she filed an OSHA complaint with BWC. Appellee also states the Letter had no impact on Appellant Rinehart's salary, benefits or any job duty.

Section 4167.13(A) of the Ohio Revised Code provides:

> (A)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 reading the above OSHA statute and the case law that has emanated from whistleblower claims, (see See, *McDonnell Douglas Corp. v. Green* (1973), 422 U.S. 792, 802; *Melchi v. Burns International Security Services, Inc.*, 597 F. Supp. 582 (E.D. Mich., N.D. 1984); *Canino v. EEOC*, 707 F.2d 468, 471 (9th Cir. 1983); *Cohen v. Fred Meyer, Inc.*, 686 F.2d 793. 796 (9th Cir. 1982); *Burris v. United Telephone Co. of Kansas, Inc.*, 683 F.2d 339, 343 (10th Cir. 1982); *Hopkins v. City of Midland*, 158 Mich. App. 361, 378 (1987); *Tyrna v. Adano, Inc.*, 159 Mich. App. 592, 601 (1987)), it is clear that in order for an Appellant to invoke the OSHA statute and its protections, the Appellee had to levy an adverse employment action and/or discriminate against the Appellant. The Appellant has offered no proof of any such discrimination or adverse employment action.

Appellee attached to its response affidavits from Amber Hufford, Student Services Coordinator, Kevin Scott, Director of Classified Personnel, and Clinton Rardon, Principal at Park Street Intermediate School. All three persons stated that at no time was Appellant Rinehart subjected to any disciplinary action nor was she threatened with termination and she did not suffer any loss of pay, benefits or job duties as a result of the Letter of Documentation she received.

Therefore, the Letter of Documentation does not rise to the level of an adverse employment action or discrimination as those terms are contemplated by the statute. Appellant Rinehart did not suffer any adverse conditions by being given the Letter of Documentation and the school district did not consider it to be a disciplinary action. Furthermore, Appellant Rinehart was given the opportunity to write a response to the Letter of Documentation which would then have been placed in her file along with the Letter. There is no evidence to establish if she did or did not avail herself of that option.

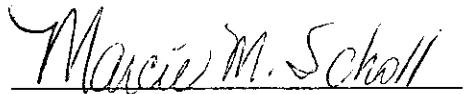
Appellant Rinehart's other allegation is that she was denied an option to interview for other positions in the district. She alleged she was told that the posting or interviews for a position she was interested in was going to be held in August, when in reality the interviews were held in June and the position was filled in June. The three people who filed affidavits with Appellee's response denied telling Appellant Rinehart that interviews would be held in June and they also stated that there was no record of Appellant Rinehart applying for any educational aide positions.

Appellant Rinehart had a duty to apply for any position she was interested in and to check the posting dates herself. It must be assumed that if a position is posted, any individual can see or check on postings that have been issued. If Appellant Rinehart missed an application deadline, that is not the fault of Appellee, regardless of whether or not she was given the incorrect information as to a posting date. There has been no evidence presented to show that Appellee somehow conspired to tell Appellant Rinehart a false date for the posting in order to prevent her from applying for a position. The fact that Appellant Rinehart missed applying for a position and hence did not get hired for that position, does not rise to the level of discrimination or an adverse employment action.

Appellant Rinehart notified this Board that she resigned her position with the Appellee because she was "not invited to interview for any of the open jobs". If she did not apply for any jobs, she obviously would not be asked to interview for a job. Appellant Rinehart provided no proof that she applied for any open position and the affidavits of the three administrators indicate they have no record of Appellant Rinehart applying for any positions.

The fact that she resigned her position of medicine monitor and then transferred to the substitute pool, does not establish any liability on the part of the Appellee. Appellant Rinehart appears to have transferred and then later resigned voluntarily, with no suggestion or prompting by the Appellee. In further information provided to this Board by Appellant Rinehart on February 17, 2016, she states she ". . . called and emailed the subs coordinator numerous times to remove me from the position...". She also states "At this point I do not see how my relationship with SWC can be mended with an employment option since any position offered would involve being under the indirect supervision of Mr. Scott and Ms. Hufford; . . .".

The burden of proving a *prima facie* case of an adverse employment action or discrimination lies with the Appellant. In the instant case, there has been no evidence to establish that Appellee took an adverse employment action against Appellant Rinehart or that they discriminated against her. She did not suffer any disciplinary action, loss of pay or benefits by Appellee. Therefore, inasmuch as Appellant Rinehart has not met her *prima facie* burden of proving any adverse employment action or discrimination, it is my **RECOMMENDATION** that this case be **DISMISSED** due to a lack of jurisdiction pursuant to section 4167.13 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge