

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

Hans Schnapp,

*Appellant,*

v.

Case No. 2015-WHB-02-0021

Lucas County Board of Elections,

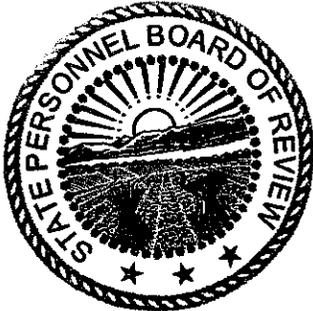
*Appellee,*

**ORDER**

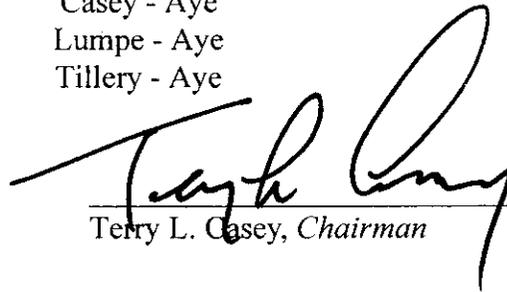
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 appeal is **DISMISSED** for lack of jurisdiction.



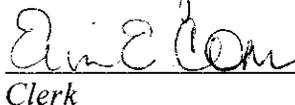
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
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, July 22, 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 July 29, 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: 2015-WHB-02-0021

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: August 6, 2015

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

Hans Schnapp

Case No. 15-WHB-02-0021

*Appellant*

v.

June 26, 2015

Lucas County Board of Elections,

Jeannette E. Gunn

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on for consideration upon Appellant's filing of a notice of appeal on March 6, 2015; this Board's Procedural Order and Questionnaire issued on April 8, 2015; and Appellant's response to the Questionnaire, filed on May 1, 2015.

In his response to this Board's April 8, 2015, Questionnaire, Appellant provided copies of the documents he alleged constituted written reports identifying violations of state or federal statutes, rules, or regulations or the misuse of public resources. Appellant provided eight attachments to his response, along with a brief summary of some of his allegations, stating, "I believe my actions were whistleblowing activities that resulted in me suffering harassment and retaliation, which ultimately resulted in the loss of employment on February 3, 2015."

**CONCLUSIONS OF LAW**

This Board has jurisdiction to consider retaliatory discipline arising pursuant to a report of violations of state or federal statutes, rules, or regulations; or the misuse of public resources. See, R.C. 124.341.

In a "whistleblower" appeal, the employee bears the burden to prove, by a preponderance of the evidence, that the disciplinary or retaliatory action taken by the employee's appointing authority was the result of the employee making a report

under the pertinent statute. Case law has established that the framework for the order and presentation of evidence first articulated by the United States Supreme Court in *McDonnell Douglas v. Green* (1973), 411 U.S. 792, is appropriate in a whistleblower appeal brought under R.C. 124.341. See, *Leslie v. Ohio Department of Development* (2006), Franklin County No. 05CVF-05-4401, unreported.

An employee must first establish a *prima facie* case to support his or her claim under R.C. 124.341. The burden of production then shifts to the appointing authority to rebut the employee's evidence by articulating a legitimate, non-retaliatory reason for its employment decision. If the appointing authority satisfies that burden of production, the burden of persuasion shifts to the employee to prove that the appointing authority's stated reason is a pretext for retaliation.

R.C. 124.341 states, in pertinent part:

(A) If an employee in the classified or unclassified civil service becomes aware in the course of employment of a violation of state or federal statutes, rules, or regulations or the misuse of public resources, and the employee's supervisor or appointing authority has authority to correct the violation or misuse, the employee may file a written report identifying the violation or misuse with the supervisor or appointing authority. In addition to or instead of filing a written report with the supervisor or appointing authority, the employee may file a written report with the office of internal audit created under section 126.45 of the Revised Code or file a complaint with the auditor of state's fraud-reporting system under section 117.103 of the Revised Code.

If the employee reasonably believes that a violation or misuse of public resources is a criminal offense, the employee, in addition to or instead of filing a written report or complaint with the supervisor, appointing authority, the office of internal audit, or the auditor of state's fraud-reporting system, may report it to a prosecuting attorney, director of law, village solicitor, or similar chief legal officer of a municipal corporation, to a peace officer, as defined in section 2935.01 of the Revised Code, or, if the violation or misuse of public resources is within the jurisdiction of the inspector general, to the inspector general in accordance with section 121.46 of the Revised

Code. In addition to that report, if the employee reasonably believes the violation or misuse is also a violation of Chapter 102, section 2921.42, or section 2921.43 of the Revised Code, the employee may report it to the appropriate ethics commission.

In order to establish a *prima facie* case, an employee in the classified or unclassified civil service must demonstrate that he or she properly reported an alleged violation or violations of state or federal statutes, rules, or regulations, or misuse of public resources that he or she became aware of during the course of his or her employment, and the employee must demonstrate that one or more prohibited retaliatory actions were taken by Appellee. Upon a review of the information contained in Appellant's response to this Board's questionnaire and the attachments provided by Appellant, I find that the written reports identified by Appellant did not comply with the requirements of R.C. 124.341(A) and Appellant is, therefore, not entitled to "whistleblower" protection under the statute.

In his response, Appellant identified the following specific communications as constituting written reports: 1) a March 20, 2014, email communication to Ohio Secretary of State (SOS) employees Matthew Damschroder, Halle Pelger, Mathew Masterson and Jack Christopher, as well as Lucas County Board of Elections Member Jon Stainbrook; 2) multiple March 21, 2014, email communications to the same individuals, contained in Appellant's Attachment 2; 3) a July 7, 2014, email communication to Lucas County Assistant Prosecuting Attorneys Brenda Meyer, James Walter, John Borell and Kevin Pituch, as well as SOS employees Matthew Damschroder and Mathew Masterson; 4) a July 11, 2014, email communication to SOS employees Matthew Damschroder and Mathew Masterson; and 5) an October 23, 2014, email communication to Lucas County Prosecutor Julia Bates. Each of the identified reports is reviewed below.

*1. March 20, 2014, email communication to Ohio Secretary of State (SOS) employees Matthew Damschroder, Halle Pelger, Mathew Masterson and Jack Christopher, as well as Lucas County Board of Elections Member Jon Stainbrook.*

Appellant's March 20, 2014, email communication failed to identify any specific violation of a state or federal statute, rule, or regulation, or the misuse of public resources which the individuals to whom he reported had the authority to correct. Appellant referenced another

employee's alleged violation of SOS Directive 2008-56, which was rescinded in September 2012, as well as alleged violations of Lucas County Board of Elections policies, none of which were sufficient to constitute violations of a "state or federal statute, rule, or regulation" or a misuse of public resources.

*2. Multiple March 21, 2014, email communications to the same individuals, contained in Appellant's Attachment 2.*

Appellant's March 21, 2014, email communications contained in Attachment 2 of Appellant's May 1, 2015, response to this Board's Procedural Order and Questionnaire did not identify any specific violation of a state or federal statute, rule, or regulation, or the misuse of public resources which the individuals to whom he reported had the authority to correct.

*3. July 7, 2014, email communication to Lucas County Assistant Prosecuting Attorneys Brenda Meyer, James Walter, John Borell and Kevin Pituch, as well as Ohio Secretary of State (SOS) employees Matthew Damschroder, and Mathew Masterson.*

Although Appellant did reference a violation of a federal statute, rule or regulation (the Fair Labor Standards Act) in his July 7, 2014, email, he failed to demonstrate that he transmitted the report to an appropriate legal official. Appellant made no indication that he believed Appellee's actions constituted a criminal offense, therefore, his report to employees of the county prosecutor's office was not authorized by the provisions of R.C. 124.341(A). Similarly, SOS employees are not empowered to correct the violation alleged by Appellant, therefore, his report was not properly transmitted to them. Appellant's written report would have been properly addressed to his supervisor and/or appointing authority.

*4. July 11, 2014, email communication to SOS employees Matthew Damschroder and Mathew Masterson.*

Appellant's July 11, 2014, email communication did not identify any specific violation of a state or federal statute, rule, or regulation, or the misuse of public resources which the individuals to whom he reported had the authority to correct. I find that a general statement that Appellee's failure to include him in a cross-training class was "a complete waste of Lucas County tax payers money" was insufficient to constitute an allegation of the misuse of public resources. Even if this Board were to determine that Appellant's statement did constitute such an allegation, the SOS employees to whom Appellant transmitted his report had no authority to correct the alleged misuse.

*5. October 23, 2014, email communication to Lucas County Prosecutor Julia Bates.*

Appellant's October 23, 2014, email communication to Prosecuting Attorney Bates failed to identify any specific violation of a state or federal statute, rule, or regulation, or the misuse of public resources which she had the authority to correct. Appellant made no indication that he believed Appellee's actions constituted a criminal offense, therefore, his report to the prosecuting attorney was not made to an appropriate legal official authorized by the provisions of R.C. 124.341(A).

In *Haddox v. Ohio State Attorney General*, the Franklin County Court of Common Pleas stated as prerequisites to whistleblower jurisdiction under R.C. 124.341, an employee must show that he 1) made a written report; 2) transmitted the written report to his supervisor, appointing authority, the state inspector general, or other appropriate legal official; and 3) identified a violation of state or federal statute, rule, or regulation, or misuse of public resources in the report. See *Haddox v. Ohio State Attorney General*, (Franklin 2007), 06CVF-08-10391, (citing *Wade v. Ohio Bur. of Workers' Comp.* (June 10, 1999), Franklin App. No. 98AP-997.) Appellant has failed to provide this Board with any written report that complies with the requirements of R.C. 124.341(A).

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Therefore, following a review of the documents provided by Appellant in support of his assertions, I find that Appellant has failed to demonstrate compliance with the reporting requirements of R.C. 124.341 and to establish a *prima facie* case. Consequently, this Board lacks jurisdiction to consider the instant appeal and I respectfully **RECOMMEND** that this appeal be **DISMISSED**.



Jeannette E. Gunn  
Administrative Law Judge