

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

Kendall E. Dunfee,

*Appellant.*

v.

Case No. 09-ABL-04-0224

City of Athens,

*Appellee*

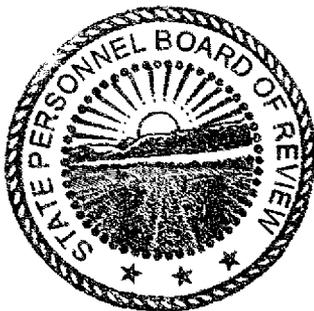
**ORDER**

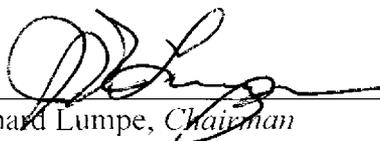
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and 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 be **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to O.R.C. §§ 124.03 and 124.328.

Lumpe - Aye  
Sfalcin - Aye  
Tillery - Aye



  
\_\_\_\_\_  
J. Richard Lumpe, *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 constitute (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 30, 2009.

  
\_\_\_\_\_  
*Clerk*

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

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

KENDALL E. DUNFEE,

Case No. 09-ABL-04-0224

*Appellant*

v.

June 25, 2009

CITY OF ATHENS,

JAMES R. SPRAGUE

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

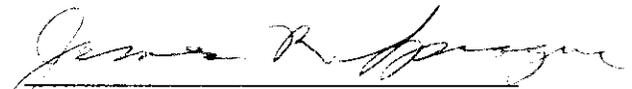
This matter came on due to Appellant's April 28, 2009 filing of an appeal from the abolishment of Appellant's position of Utilities Inspector held with Appellee, City of Athens. An initial review of the record indicates that Appellant was neither formally provided with his appeal rights concerning the abolishment of his position nor was he offered a formal opportunity to participate in the employer's available COBRA program.

R.C. 124.03(A) sets forth this Board's general subject matter jurisdiction. R.C. 124.328 provides this Board with additional authority to review the merits of the abolishment of a position encumbered by an employee of the state, including a state university, a county, or a general health district. While this Board's jurisdiction extends to cities, city health districts, and city school districts regarding both whistleblower and "OSHA" claims, it does not extend to those entities regarding abolishments.

Since it appears that the City of Athens Civil Service Commission could potentially have jurisdiction over this matter, Appellant may wish to contact that entity to determine its jurisdiction over this matter. Further, the United States Department of Labor may have jurisdiction over Appellant's allegation regarding a possible denial of the ability to participate in the employer's COBRA program

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** this appeal for lack of jurisdiction over its subject matter, pursuant to R.C. 124.03 and R.C. 124.328.

KENDALL E. DUNFEE  
Case No. 09-ABL-04-0224  
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\_\_\_\_\_  
JAMES R. SPRAGUE  
*Administrative Law Judge*

JRS: