

IN THE SUPREME COURT OF OHIO

LLOYD E. ATKINSON,	)	SUPREME COURT
	)	CASE NO. 2006-1881
Appellant,	)	
	)	
v.	)	ON APPEAL FROM THE FRANKLIN
	)	COUNTY COURT OF APPEALS,
PORTAGE AREA REGIONAL	)	TENTH APPELLATE DISTRICT
TRANSPORTATION AUTHORITY,	)	
	)	COURT OF APPEALS
Appellee.	)	CASE NO. 06-APE-02-137

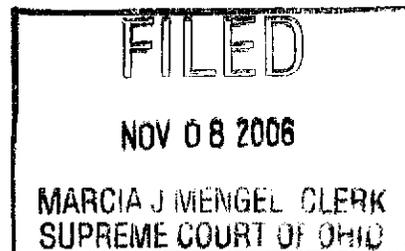
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APPELLEE PORTAGE AREA REGIONAL TRANSPORTATION  
AUTHORITY'S MEMORANDUM IN RESPONSE TO  
APPELLANT'S MEMORANDUM IN SUPPORT OF JURISDICTION

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James P. Wilkins (0017517) (Counsel of Record)  
[jwilkins@kwwlaborlaw.com](mailto:jwilkins@kwwlaborlaw.com)  
Thomas Evan Green (0075022)  
[tgreen@kwwlaborlaw.com](mailto:tgreen@kwwlaborlaw.com)  
KASTNER WESTMAN & WILKINS, LLC  
3480 West Market Street, Suite 300  
Akron, OH 44333  
330-867-9998 (Phone)  
330-867-3786 (Fax)

Attorneys for Appellee,  
Portage Area Regional Transportation Authority



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**STATEMENT OF PARTA’S POSITION AS TO WHETHER  
THE CASE IS OF PUBLIC OR GREAT GENERAL INTEREST**

Appellee Portage Area Regional Transportation Authority<sup>1</sup> (“PARTA”) submits that this case is not of public or great general interest. Simply put, although Appellant Lloyd Atkinson (“Appellant”) asserts that discovery, evidentiary hearings and *alter ego* analysis are necessary to resolve this case, the case actually requires mere statutory application – an application that the State Personnel Board of Review (“SPBR”) and the two Courts below got right. Furthermore, the authority relevant to this case is both on-point and unanimous. Therefore, there is no basis for regarding this case as one of public or great general interest.

Appellant would have this Court mandate that the parties submit to discovery, and SPBR conduct an evidentiary hearing to determine whether Appellant’s employment with PARTA, a regional transit authority (“RTA”) established pursuant to Rev. Code §§ 306.30, *et. seq.*, is subject to SPBR’s jurisdiction. An examination of the basis of SPBR’s jurisdiction reveals that such a hearing is unnecessary. In fact, as set forth below, the statute is so clear that it is apparent that only the Ohio Legislature may afford Appellant his requested relief.

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<sup>1</sup> PARTA is incorrectly named as “Portage County, Portage Area Regional Transportation Authority” in Appellant’s Notice of Appeal and Memorandum in Support of Jurisdiction. “Portage County” is not part of PARTA’s name, nor is the County itself party to this appeal.

**ARGUMENT IN SUPPORT OF PARTA'S POSITION  
REGARDING APPELLANT'S PROPOSITION OF LAW**

In Appellant's Memorandum, he asserts that when a jurisdictional question is raised at SPBR, that agency must accept evidence "to establish (1) whether the employer discharges duties or exerts powers constituting a portion of the sovereignty of the state or any of its political subdivisions and (2) whether the employee's compensation is paid, in whole or in part, out of 'general or special revenues' of the state or any of its political subdivisions." (App. Memo. 9). Purportedly in support of this assertion, Appellant cites to *In re Appeal of Ford*, 3 Ohio App. 3d 416 (Franklin App. 1982). *Ford*, however, is not the proper starting point for an analysis of SPBR's jurisdiction. That analysis begins and ends by applying Chapter 124.

**A. Mere Application Of Chapter 124 Reveals  
That RTA Employees Are Not Subject To That Statute.**

SPBR's jurisdiction is derived solely from Rev. Code Chapter 124. *Ketron v. Ohio Department of Transportation*, 61 Ohio App. 3d 657, 659 (Franklin App. 1991). "The board, having been created by statute, possesses only such powers and duties as are conferred on it by the provisions of the enabling legislation." *Id.* at 659 (citing *Hansen v. SPBR*, 51 Ohio App. 2d 7, 13 (Cuyahoga App. 1977) (internal quotation marks omitted)).<sup>2</sup> See also *State ex rel. Carver v. Hull*, 70 Ohio St. 3d 570, 577 (1994) (finding that SPBR exceeded its authority by determining recall rights, because such powers are not enumerated in the enabling legislation).

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<sup>2</sup> SPBR's jurisdictional limitations are acknowledged by its own opinions. See *Miller v. Solid Waste Authority of Central Ohio*, No. 94-REM-03-0076 (June 3, 1994) (Scholl, ALJ); *Langer v. Solid Waste Authority of Central Ohio*, No. 94-REM-03-0077 (June 6, 1994) (Scholl, ALJ).

Rev. Code § 124.03 states, in pertinent part, that SPBR “shall exercise the following powers and perform the following duties: (A) Hear appeals, as provided by law, of employees in the classified state service....” Therefore, SPBR may hear Appellant’s appeal only if he was an employee “in the classified state service.” The term “state service” is defined to “...include[ ] all such officers and positions in the service of the state, the counties, and general health districts thereof, except the cities, city health districts, and city school districts.” Rev. Code § 124.01(B). “Classified service” is defined in Rev. Code § 124.11, which states, in pertinent part, “The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts thereof shall be divided into the unclassified service and the classified service.”<sup>3</sup>

Appellant clearly was not in the “classified state service.” As set forth above, unlike other political subdivisions, RTAs are not included within the definitions of “state service” or “classified service.” Rev. Code §§ 124.01(B); 124.11. It is that simple.

The simplicity of this statutory application has not been overlooked by SPBR or Ohio’s courts. In fact, the authority relevant to the issue of whether an employee of a RTA is entitled to Chapter 124 protections is unanimous. *Spitaleri v. Metro Regional Transit Authority*, 67 Ohio App. 2d 57, 63 (Summit App. 1980) (affirming dismissal of complaint seeking benefits of Rev. Code Chapter 124); *Gehring v. Miami Valley Regional Transit Authority*, Montgomery App. No. CA 8172, 1983 Ohio App. LEXIS 12734, at \*3 (April 25, 1983) (affirming dismissal of appeal by an employee terminated by a RTA, holding that the employee not entitled to the termination

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<sup>3</sup> The distinction between the unclassified and classified service is not important to the disposition of the instant appeal.

procedures set forth in Rev. Code § 124.34). *See also In re Appeal of Ford*, 3 Ohio App. 3d 416, 418 (Franklin App. 1982) (citing *Spitaleri* with approval).<sup>4</sup>

Moreover, if there were any doubt as to whether RTA employees were subject to the protections of Rev. Code Chapter 124 – and PARTA submits that there is not – the doubt would be resolved by referring to Rev. Code Chapter 306, which is the statutory provision governing the creation and operation of RTAs and county transit systems.

As identified in *Spitaleri* and *Gehring* – two cases that held that employees of a RTA are not subject to Rev. Code Chapter 124 – Rev. Code Chapter 306 contains provisions for both RTAs, at §§ 306.30, *et. seq.*, and county transit systems, at §§ 306.01 through 306.13. *See, e.g., Spitaleri*, 67 Ohio App. 2d at 62. While county transit system employees are unmistakably placed into the civil service by the applicable legislation, *see* § 306.04(B), such is not the case with RTA employees. *See* §§ 306.30, *et seq.* As the *Spitaleri* court acknowledged:

[W]hen certain benefits are not specifically provided for in a statutory scheme, the absence indicates a legislative intent not to include such benefits. As stated [by the Attorney General in an opinion regarding regional airport authority employees,] *expressio unius est exclusio alterius*, the mention of one thing implies the exclusion of another thing.

67 Ohio App. 2d at 63. This unmistakable logic is supported by decisions of this Court. *See, e.g., Maggione v. Kovach*, 101 Ohio St. 3d 184, 187 (2001) (applying *expressio unius est exclusio alterius* to exclude “commercial property” from a statutory scheme from which such term is not mentioned “one way or the other”).

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<sup>4</sup> Additionally, SPBR itself “has consistently held that it does not have jurisdiction over regional entities and their employees....” *Miller v. Solid Waste Authority of Central Ohio*, No. 94-REM-03-0076, at 3 (June 3, 1994) (Scholl, ALJ); *Langer v. Solid Waste Authority of Central Ohio*, No. 94-REM-03-0077, at 3 (June 6, 1994) (Scholl, ALJ). In both *Miller* and *Langer*, SPBR held that when an employee of an entity is not covered by Rev. Code Chapter 124, that employee is not a “classified employee” in the “service of the state” subject to the SPBR’s jurisdiction. *Id.*

Because Appellant's proposition of law ignores this simple statutory application, it must be disregarded, and his appeal must be dismissed.

**B. Appellant's Analysis Of Ford Is Misplaced.**

An examination of *In re Ford*, the case relied upon heavily by Appellant, reveals that this case is completely inapplicable to the civil service standing of an RTA employee.

In *Ford*, the Court considered whether employees of the State Teachers Retirement Board met the definition of "in the service of the state," pursuant to Rev. Code § 124.01(B). 3 Ohio App. 3d at 417. To resolve that question, the court examined two issues: "[1] whether various agencies created by statute to perform a public function are state agencies and [2] whether service for such agencies constitutes state service within the contemplation of R.C. 124.01...." *Id.* (emphasis added).

The *Ford* court resolved these issues by, first, finding that the State Teachers Retirement Board is a state agency. *Id.* at 419. The court noted, "[h]owever, [that] R.C. 124.01 does not refer to state agencies but, instead, makes repeated reference to 'all offices and positions of trust or employment in the service of the state' and defines 'state service' so as to include 'all such offices and positions in the service of the state.'" *Id.* at 418-19. As a result, the court reasoned that the "key issue...is not whether the Board is a state agency but whether or not employment with that Board constitutes employment 'in the service of the state'...." *Id.* at 419.

To resolve this second issue, whether employment with a state agency constitutes "employment in the service of the state," the court found that since "the employees of the State Teachers Retirement Board are paid solely from trust funds of the Board and not from any state funds, special or general[,] the employees "are not engaged in employment in service of the state," and hence are not subject to Rev. Code Chapter 124. *Id.* at 420.

Clearly, *Ford* establishes the test as to whether the employees of certain state agencies are “in the service of the state” such that they are subject to Chapter 124. *Id.* at 419.<sup>5</sup> This test has no application to political subdivisions like RTAs, however, because Rev. Code Chapter 124 explicitly specifies which political subdivisions are included within civil service. *See* Rev. Code § 124.01(A) (including city health districts, general health districts, and city school districts). This very point is acknowledged by *Ford*:

R.C. 124.01 includes . . . only specified political subdivisions within the definition of civil service, so that ***employment with all other political subdivisions***, such as townships, local school districts, conservancy districts, court districts, ***and other political subdivisions***, whether constituting more than one or only part of one county, ***are not included within the definition of civil service.***

3 Ohio App. 3d at 419 (emphasis added).<sup>6</sup> Therefore, unlike with respect to state agencies, where there is some analysis as to which such agencies are included in the applicable statutory definitions, no analysis is necessary for political subdivisions, since the applicable subdivisions are specifically enumerated in the statute.

Furthermore, the proposition of law articulated in Appellant’s Memorandum fails under minimal scrutiny as it would lead to absurd results. For instance, Appellant suggests that SPBR would accept evidence and analyze, among other things, “whether the employer discharges duties

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<sup>5</sup> Although the analyses of the two Attorney General opinions cited by Appellant are not as succinct and well-developed as the *Ford* analysis, these two opinions answer essentially the same question as *Ford*. *See* 1939 Ohio Atty. Gen. Op. No. 182 (1939) (analyzing the civil service status of Bridge Commission of Ohio employees); 1962 Ohio Atty. Gen. Op. No. 3334 (1962) (analyzing the civil service status of Ohio Turnpike Commission employees). Thus, Appellant’s reliance upon these opinions is equally misplaced.

<sup>6</sup> This portion of the *Ford* opinion makes Appellant’s blatant misstatement of the *Ford* test for “employment in the service of the state” particularly egregious. Throughout his Memorandum, Appellant inserts the words “political subdivision” in places where *Ford* simply did not do so. (*See, e.g.*, App. Memo. 3-4, 9, 10).

or exerts powers constituting a portion of the sovereignty of...any of [the state's] political subdivisions.” (App. Memo. 9). Does Appellant propose that SPBR accept evidence and analyze whether a political subdivision discharges duties and powers constituting part of its own sovereignty? If so, PARTA submits that the answer would be uniformly affirmative, resulting in all political subdivisions being subsumed under Chapter 124. Clearly the Legislature did not intend that result when promulgating Chapter 124. *See* Rev. Code § 124.01(A), (B) (listing only certain political subdivisions).

Additionally, Appellant urges that SPBR be required to accept evidence and analyze “whether the employer pays employees’ compensation in whole or in part, out of ‘general or special revenues’ of the state or any of its political subdivisions.” (App. Memo. 9). Again, does Appellant propose that SPBR analyze whether a political subdivision compensate its employees using its own revenues? If so, PARTA again submits that the answer would be uniformly affirmative. As a result, employees of all political subdivisions would be subject to Chapter 124, which clearly was not intended.

Appellant’s proposition of law is clearly and severely flawed. As stated above, the analysis of whether employees of a particular state agency are “in the service of the state,” as set forth in *Ford*, simply does not translate into the context of whether employees of a certain political subdivision are civil service employees. Indeed, the employees of those particular political subdivisions that are subject to Chapter 124 are specifically enumerated in the statute.

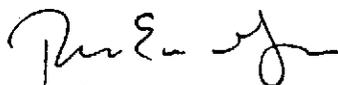
### **CONCLUSION**

This case is not one of public or great general interest. Appellant’s proper avenue for relief is the Ohio Legislature, the only governmental body permitted to alter the Chapter 124 statutory definitions. Until those definitions are amended, RTA employees are not subject to

Rev. Code Chapter 124. Because RTA employees are not subject to Chapter 124, SPBR is not required to hold evidentiary hearings as to the operations and finances of RTAs like PARTA.

As such, PARTA respectfully urges this Court to decline jurisdiction in this case, and to dismiss Appellant's appeal.

Respectfully submitted,



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James P. Wilkins (0017517)

[jwilkins@kwwlaborlaw.com](mailto:jwilkins@kwwlaborlaw.com)

Thomas Evan Green (0075022)

[tgreen@kwwlaborlaw.com](mailto:tgreen@kwwlaborlaw.com)

KASTNER WESTMAN & WILKINS, LLC

3480 West Market Street, Suite 300

Akron, OH 44333

330-867-9998 (Phone)

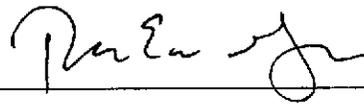
330-867-3786 (Fax)

Attorneys for Appellee, Portage Area  
Regional Transportation Authority

**CERTIFICATE OF SERVICE**

A copy of the foregoing Appellee Portage Area Regional Transportation Authority's Memorandum In Response To Appellant's Memorandum In Support Of Jurisdiction was served upon the following person(s) via ordinary U.S. Mail, this 7 day of November 2006:

S. David Worhatch, Esq.  
4920 Darrow Road  
Stow, OH 44224-1406



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