

ORIGINAL

IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. John D. Freshwater

Relator,

v.

MOUNT VERNON CITY SCHOOL
DISTRICT BOARD OF EDUCATION, et al

Respondents.

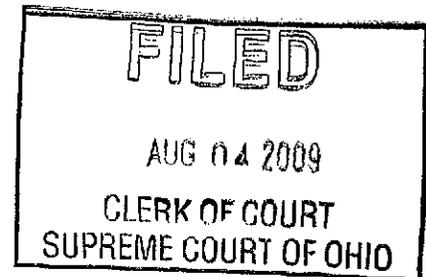
CASE NO.

09-1408

**COMPLAINT AND PETITION IN MANDAMUS OR FOR AN ALTERNATIVE WRIT
OF PROHIBITION**

R. Kelly Hamilton (0066403)
BOWSHIER † HAMILTON, LLC
Office: 4030 Broadway, Grove City, Ohio 43123
Mail to: P.O. Box 824, Grove City, Ohio 43123
Phone 614-875-4174; Fax 614-875-4188
Attorney for Relator John D. Freshwater

David Millstone
4900 Key Tower, 127 Public Square
Cleveland, Ohio 44114
Phone 419.479.8500
Attorney for Respondent Mt. Vernon BOE



IN THE SUPREME COURT OF OHIO

State of Ohio ex rel. John D. Freshwater
7760 New Delaware Road
Mount Vernon, Ohio 43050

CASE NO.

Relator,

v.

MOUNT VERNON CITY SCHOOL
DISTRICT BOARD OF EDUCATION
300 Newark Road, Mount Vernon, Ohio 43050

And

Barbara J. Donohue, Treasurer for
MOUNT VERNON CITY SCHOOL
DISTRICT BOARD OF EDUCATION
300 Newark Road, Mount Vernon, Ohio 43050

And

Ian Watson, President for
MOUNT VERNON CITY SCHOOL
DISTRICT BOARD OF EDUCATION
300 Newark Road, Mount Vernon, Ohio 43050

Jody Goetzman, member of
MOUNT VERNON CITY SCHOOL
DISTRICT BOARD OF EDUCATION
300 Newark Road, Mount Vernon, Ohio 43050

Respondents.

**COMPLAINT AND PETITION IN MANDAMUS OR FOR AN ALTERNATIVE WRIT
OF PROHIBITION**

Relator files this original action in the name and on the relation of the State of Ohio for a *Writ of Mandamus*, peremptory or alternative, to the Treasurer and elected members of the Mount Vernon City School District Board of Education, including those elected members specified herein who are sought by Relator to testify in a hearing pursuant to Revised Code §3319.16. Alternatively, Relator seeks a *Writ of Prohibition* or any combination of writs as

deemed by this Court necessary to achieve and sustain the constitutional and statutory rights of the Relator.

PARTIES

1. Relator, John D. Freshwater (Freshwater), is a citizen and taxpayer residing within the jurisdiction of Respondent, the Mount Vernon City School District Board Of Education (BOE).
2. Relator Freshwater is also a public school teacher employed by Respondent BOE but has been suspended without pay since approximately July 21, 2008.
3. Respondent BOE is a school district within the meaning of R.C. 3311 and members of the board of education are within the meaning of R.C. 3313.
4. Respondent BOE consists of five (5) elected members.
5. Respondents Ian Watson (Watson) and Jody Goetzman (Goetzman) are those elected members of Respondent BOE who are specifically desired by Relator Freshwater to be ordered to appear for testimony pursuant to the hearing provided in R.C. §3319.16.
6. Respondent Barbara J. Donohue, is the Treasurer for Respondent BOE.

SUMMARY OF ACTION

7. Relator Freshwater is the subject of an administrative hearing pursuant to R.C. §3319.16 based upon Respondent BOE's notice of its intention to consider the termination of Relator Freshwater's employment contract.
8. As set out hereinafter, Respondents, collectively and or individually and or in concert with one or more of each other, have refused and continue to refuse to perform mandatory statutory duties, have engaged in non-permissive action and refuse to proceed with legal process whereby Respondents thwart and deny Relator Freshwater due process of law.

FACTS

9. Relator Freshwater is a teacher who has been continuously employed by Respondent BOE since approximately 1987. (Exhibit 1 - Affidavit Freshwater)
10. On June 20, 2008, Respondent BOE resolved by a vote to consider the termination of Relator Freshwater's teaching contract. (Exhibit 1 - Affidavit Freshwater)
11. Relator Freshwater was subsequently notified by the Respondent Treasurer of the Respondent BOE's resolution. (Exhibit 1 - Affidavit Freshwater)
12. Pursuant to R.C. §3319.16, Relator Freshwater filed with the Respondent Treasurer a written demand for a hearing before the board. (Exhibit 1 - Affidavit Freshwater)
13. Respondent BOE demanded appointment of a referee whereby such was chosen according to R.C. §3319.161. (Exhibit 1 - Affidavit Freshwater)
14. The parties began presenting evidence to the referee on or about October 2, 2008. (Exhibit 1 - Affidavit Freshwater)
15. The parties have presented evidence to the referee for approximately twenty (20) days to include October 3, 28, 29, 30 and 31, 2008; and in 2009, on January 6, 7, 8, 9, 14, 15, 16, February 27, March 25, 26, 27, May 7 and 8. (Exhibit 1 - Affidavit Freshwater)
16. Pursuant to R.C. §3319.16 Relator Freshwater has submitted *Requests to Issue Subpoenas* to counsel for Respondent BOE whereupon Respondent Treasurer issues the requested subpoenas. (Exhibit 1 - Affidavit Freshwater)
17. On or after January 2, 2009, Relator Freshwater submitted specific *Requests to Issue Subpoenas* to counsel for Respondent BOE seeking to have subpoenas issued to Respondent Watson to appear for testimony and produce specified documents. (Exhibit 1 - Affidavit Freshwater)

18. Respondent Watson did not appear nor produce the requested documents at any of the next scheduled hearing dates which occurred on January 6, 7, 8, 9, 14, 15 and 16, 2009. (Exhibit 1 - Affidavit Freshwater)
19. On or about February 27, 2009, Relator Freshwater submitted another specific *Requests to Issue Subpoenas* to counsel for Respondent BOE seeking to have subpoenas issued to Respondent Watson to appear for testimony and produce specified documents.
20. Respondent Watson did not appear nor produce the requested documents at any of the next scheduled hearing dates which occurred on March 25, 26 and 27, 2009. (Exhibit 1 - Affidavit Freshwater)
21. On or about April 28, 2009, Relator Freshwater submitted specific *Requests to Issue Subpoenas* to counsel for Respondent BOE seeking to have subpoenas issued to Respondent Watson to appear for testimony and produce specified documents. Additionally, Relator Freshwater's *Requests to Issue Subpoenas* sought to have Respondent Goetzman appear for testimony. (Exhibit 1 - Affidavit Freshwater)
22. On May 6, 2009, legal counsel for Respondent BOE advised Relator Freshwater that Respondent BOE had "quashed those subpoenas and neither individual will be appearing." (Exhibit 2) (Exhibit 1 - Affidavit Freshwater)
23. On May 7, 2009, counsel for Relator Freshwater and counsel for Respondent BOE discussed the statutory process for compelling the presence of witnesses desired by Relator Freshwater with acknowledgment by the referee who was appointed by the superintendent of public instruction. (Exhibit 1 - Affidavit Freshwater)
24. During testimony in the hearing on May 7 and 8, 2009, two separate witnesses testified under oath that they had communications with Respondents Watson and Goetzman prior to Respondent BOE's resolution of June 20, 2008, which advised Relator Freshwater of

Respondent BOE's intent to consider the termination of Relator Freshwater's teaching contract. (Exhibit 1 - Affidavit Freshwater)

25. Sworn testimony by one witness on May, 8, 2009, revealed the witness had spoke with Respondent Watson, "(M)ore than probably ten" different times about the subject matter which forms the allegations against Relator Freshwater and Respondent BOE's resolution to consider the termination of Relator Freshwater's employment contract. (Exhibit 1 - Affidavit Freshwater)
26. Sworn testimony by another witness on May, 8, 2009, revealed the witness had telephoned Respondent Watson at his home to discuss allegations against Relator Freshwater. (Exhibit 1 - Affidavit Freshwater)
27. Sworn testimony by one witness on May, 8, 2009, revealed the witness had spoke with Respondent Watson about "(T)he Tesla coil burn and the discussions with Steve Short and our concerns about what's going on at FCA... Ten Commandments, those things." (Exhibit 1 - Affidavit Freshwater)
28. Sworn testimony by one witness on May, 8, 2009, revealed the witness had spoke with Respondent Goetzman in January 2008 about the subject matter which forms the allegations against Relator Freshwater and Respondent BOE's resolution to consider the termination of Relator Freshwater's employment contract. (Exhibit 1 - Affidavit Freshwater)
29. Counsel for Relator Freshwater and counsel for Respondent BOE, with acknowledgement by the referee, agreed Relator Freshwater would make *Application* to the Knox County Court of Common Pleas pursuant to R.C. 3319.16 seeking to compel the production of documents and appearance of witnesses. (Exhibit 1 - Affidavit Freshwater)

30. On or about June 2, 2009, Relator Freshwater filed an *Application To Compel Attendance Of Witnesses In The Employment Hearing Of John Freshwater*. (Exhibit 3 - Certified Copy)
(Exhibit 1 - Affidavit Freshwater)

31. On July 7, 2009, the Knox County, Ohio Court of Common Pleas, denied Relator Freshwater's *Application To Compel Attendance Of Witnesses In The Employment Hearing Of John Freshwater* on the basis that:

"The statute clearly limits the common pleas court's jurisdiction to compelling attendance at a hearing when a person fails to comply with a subpoena. In this case, the Board has quashed the subpoenas effectively divesting this Court of jurisdiction in the matter, and it is ORDERED Petitioner's Application to Compel Attendance of Witnesses In the Employment Hearing of John Freshwater is denied." (Exhibit 4 - Certified Copy)

32. R.C. §3319.16 provides in relevant part that:

Both parties may be present at such hearing, be represented by counsel, require witnesses to be under oath, cross-examine witnesses, take a record of the proceedings, and require the presence of witnesses in their behalf upon subpoena to be issued by the treasurer of the board.
(Exhibit 1 - Affidavit Freshwater)

33. Furthermore, R.C. §3319.16 states:

In case of the failure of any person to comply with a subpoena, a judge of the court of common pleas of the county in which the person resides, upon application of any interested party, shall compel attendance of the person by attachment proceedings as for contempt. (Exhibit 1 - Affidavit Freshwater)

34. Although Respondent Treasurer allegedly issued the subpoenas requested by Relator Freshwater, the five members of Respondent BOE, including BOE members Respondent Watson and Respondent Goetzman voted to quash the subpoenas effectively denying Relator Freshwater the statutorily defined process to *require the presence of witnesses in Relator Freshwater's behalf upon subpoena to be issued by the treasurer of the board*. (Exhibit 1 - Affidavit Freshwater)

35. Relator Freshwater cannot meaningfully have redress and access to the statutorily defined process for enforcement of compelling witnesses to testify in the employment hearing if the Knox County Court of Common Pleas held and maintains statutory authority does not exist for the Court of Common Pleas to compel witnesses when Respondent BOE has exercised an unlimited, unauthorized authority to choose which subpoenas Relator Freshwater may enforce via a non-existent power to quash a subpoena. (Exhibit 1 - Affidavit Freshwater)
36. Relator Freshwater has been denied due process of law and will continue to be denied due process of law if Respondent BOE is permitted to vote and quash the statutorily defined process for issuing subpoenas. (Exhibit 1 - Affidavit Freshwater)
37. R.C. §3319.16 is mandatory rather than permissive and the statute is not susceptible to two or more opposing interpretations. (Exhibit 1 - Affidavit Freshwater)
38. Respondents, collectively and or individually and or in concert with one or more of each other are exercising non-existent governmental authority in a manner that frustrates and opposes the major purpose of R.C. §3319.16. (Exhibit 1 - Affidavit Freshwater)
39. Public employment is a statutorily created property right that cannot be taken without some measure of due process. (Exhibit 1 - Affidavit Freshwater)
40. R.C. §3319.16 is a remedial statute that should be construed in favor of teachers. (Exhibit 1 - Affidavit Freshwater)

CONCLUSION

41. All necessary steps have been taken by Relator Freshwater preliminary to the performance of Respondents BOE, Treasurer, Watson and Goetzman of their clear, mandatory, statutorily-imposed official duties as stated herein.
42. Respondents, collectively and or individually and or in concert with one or more of each other, have: (1) refused, and still refuse to perform such duties expressly imposed upon them by law;

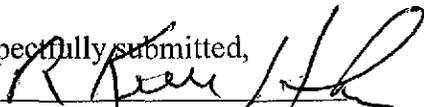
(2) without authority and in violation of the meaning and intent of R.C. §3319.16 subverted constitutional and statutory protections through the use of extra-judicial action and beyond Respondent BOE's legitimate powers and jurisdiction.

43. Unless Respondents, collectively and or individually, perform such duties, Relator Freshwater cannot substantively or procedurally progress his position in a public hearing contesting the specifications detailed in Respondent BOE's notice of its intention to consider the termination of his contract.
44. Relator Freshwater has fulfilled all of the conditions precedent to invoke the plain and obvious meaning and protections of R.C. §3319.16.
45. Relator Freshwater has a clear and obvious right to the statutory process and to require the performance of an act that is clear and it is apparent that Respondents, collectively and or individually, have no valid excuse for not doing those actions to which Relator Freshwater is entitled.
46. As a result of Respondents collective and or individual action, whether in concert with one or more of each other, Relator Freshwater will be irreparably harmed as the Knox County, Ohio Court of Common Pleas has held it does not have any statutory authority upon appeal pursuant to R.C. §3319.16 to require or enforce Respondents BOE, Watson and Goetzman to appear for testimony.
47. Relator Freshwater has a beneficial interest in Respondents collective and individual performance of the clear and official duties identified above pursuant to R.C. §3319.16.
48. Relator Freshwater has no plain and adequate remedy in the ordinary course of law and can only compel Respondents, collectively and individually, to perform their duties identified herein by way of an immediate issuance of the Writ of Mandamus as requested in this complaint.

WHEREFORE, Relator Freshwater presents a reasonable application for the invocation of R.C. 33191.6 and **PRAYS** this Court issue an Order mandating:

- A. All Respondents abide by a peremptory mandamus or other alternative writ issued by this Court whereby Respondent Treasurer is to issue the subpoenas requested by Relator Freshwater to Respondents BOE, Watson and Goetzman.
- B. Respondent BOE be directed to comply with R.C. §3319.16 and are prohibited from quashing or otherwise interfering with the issuance of Relator Freshwater's requested subpoenas to Respondents Watson and Goetzman.
- C. Respondents Watson and Goetzman immediately appear and give testimony and documents as directed by subpoena.
- D. Relator Freshwater be equitably made whole and Respondent BOE be ordered to pay damages to Relator Freshwater pursuant to R.C. §2731.11.

Respectfully submitted,



R. Kelly Hamilton (Supreme Court No. 0066403)

BOWSHIER † HAMILTON, LLC

Office: 4030 Broadway, Grove City, Ohio 43123

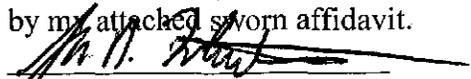
Mail to: P.O. Box 824, Grove City, Ohio 43123

Phone 614-875-4174; Fax 614-875-4188

Attorney for Relator John D. Freshwater

VERIFICATION OF PETITION

I, John Freshwater, have read and reviewed this Complaint and Petition and acknowledge that the assertions are true and accurate to the best of my information and belief as further supported by my attached sworn affidavit.



John Freshwater

AFFIDAVIT

State of Ohio)
) ss
County of Knox)

Before me, the undersigned notary, personally appeared John D. Freshwater, who having first been duly sworn, deposes and says:

1. I, John D. Freshwater, the affiant, state that I have personal knowledge of all matters set forth in this affidavit.
2. I have been continuously employed by the Mount Vernon City School District Board of Education (BOE) since approximately 1987.
3. On or about June 20, 2008, the BOE voted to consider the termination of my teaching contract.
4. I was eventually notified by the BOE's Treasurer of the resolution to consider terminating my contract.
5. Pursuant to R.C. §3319.16, I filed with the BOE's Treasurer a written demand for a hearing before the board.
6. The BOE demanded an appointment of a referee to hear the charges against me. The parties chose attorney R. Lee Shepherd to be the referee.
7. The presentation of evidence to the referee began on or about October 2, 2008. So far, the hearing has consumed approximately twenty (20) days to include October 3, 28, 29, 30 and 31, 2008; and in 2009, on January 6, 7, 8, 9, 14, 15, 16, February 27, March 25, 26, 27, May 7 and 8. Other dates have been scheduled and cancelled due to the BOE's Ian Watson and Jody Goetzman refusing to appear.
8. My attorney and the BOE's attorney and I agreed that the process of submitting or requesting subpoenas involved me and my attorney submitting our *Requests to Issue Subpoenas* to the BOE's attorney and the BOE's Treasurer would then issue the requested subpoenas.
9. On or after January 2, 2009, me and my attorney submitted *Requests to Issue Subpoenas* to the BOE's attorney directing and seeking that subpoenas be issued by the BOE's Treasurer to the BOE's President Ian Watson. Watson was to appear for testimony and produce specified documents.
10. The BOE's Watson did not appear nor produce the requested documents at any of the next scheduled hearing dates which occurred on January 6, 7, 8, 9, 14, 15 and 16, 2009.
11. On or about February 27, 2009, me and my attorney submitted another specific *Requests to Issue Subpoenas* to the BOE's attorney seeking to have subpoenas issued to the BOE's Watson to appear for testimony and produce specified documents.
12. The BOE's Watson did not appear nor produce the requested documents at any of the next scheduled hearing dates which occurred on March 25, 26 and 27, 2009.
13. On or about April 28, 2009, me and my attorney submitted another specific *Requests to Issue Subpoenas* to the BOE's attorney seeking to have subpoenas

- issued to the BOE's Watson and Jody Goetzman to appear for testimony and produce specified documents.
14. On May 6, 2009, the BOE's attorney sent an email to my attorney that my attorney forwarded to me. The email advised that the BOE had quashed those subpoenas and neither Watson or Goetzman would be appearing.
 15. On May 7, 2009, my attorney and the BOE's attorney talked about the statutory process for compelling the presence of Watson and Goetzman. I heard the conversation as the attorneys talked with Referee Shepherd.
 16. I was present during testimony in the hearing on May 7 and 8, 2009 and have read the certified transcripts of the hearing for those dates. Two separate witnesses – Steve Dennis and Jennifer Dennis - testified under oath that they, either together or separately, had communications with the BOE's Watson and Goetzman prior to the BOE's resolution of June 20, 2008.
 17. Sworn testimony by Steve Dennis on May, 8, 2009, revealed he had spoke with the BOE's Watson, "(M)ore than probably ten" different times about the subject matter which forms the allegations against me.
 18. Sworn testimony by Jennifer Dennis on May, 8, 2009, revealed she had telephoned Respondent Watson at his home to discuss allegations against me.
 19. Sworn testimony by Steve Dennis on May, 8, 2009, revealed he had spoke with the BOE's Watson about "(T)he Tesla coil burn and the discussions with Steve Short and our concerns about what's going on at FCA... Ten Commandments, those things."
 20. Sworn testimony by Jennifer Dennis on May, 8, 2009, revealed she had spoke with the BOE's Goetzman in January 2008 about the subject matter which forms the allegations against me.
 21. My attorney and the BOE's attorney talked in front of the referee with me in the room and agreed I would make *Application* to the Knox County Court of Common Pleas pursuant to R.C. 3319.16 seeking to compel the production of documents and appearance of witnesses.
 22. On or about June 2, 2009, I filed an *Application To Compel Attendance Of Witnesses In The Employment Hearing Of John Freshwater*.
 23. On July 7, 2009, the Knox County, Ohio Court of Common Pleas, denied my *Application To Compel Attendance Of Witnesses In The Employment Hearing Of John Freshwater* on the basis that: "The statute clearly limits the common pleas court's jurisdiction to compelling attendance at a hearing when a person fails to comply with a subpoena. In this case, the Board has quashed the subpoenas effectively divesting this Court of jurisdiction in the matter, and it is ORDERED Petitioner's Application to Compel Attendance of Witnesses In the Employment Hearing of John Freshwater is denied."
 24. My attorney and I have read R.C. §3319.16 and I understand the law provides in relevant part that: *Both parties may be present at such hearing, be represented by counsel, require witnesses to be under oath, cross-examine witnesses, take a record of the proceedings, and require the presence of witnesses in their behalf upon subpoena to be issued by the treasurer of the board.*
 25. My attorney and I have read R.C. §3319.16 and I understand the law provides in relevant part that: *In case of the failure of any person to comply with a subpoena,*

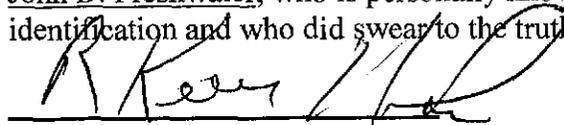
a judge of the court of common pleas of the county in which the person resides, upon application of any interested party, shall compel attendance of the person by attachment proceedings as for contempt.

26. The BOE's Treasurer allegedly issued the subpoenas requested by me and my attorney. However, the five members of the BOE, including BOE members Watson and Goetzman voted to quash the subpoenas effectively denying me the statutorily defined process to *require the presence of witnesses in my behalf upon subpoena to be issued by the treasurer of the board.*
27. I cannot meaningfully have redress and access to the statutorily defined process for enforcement of compelling witnesses to testify in the employment hearing if the Knox County Court of Common Pleas held and maintains statutory authority does not exist for the Court of Common Pleas to compel witnesses when the BOE has exercised authority to choose which subpoenas I may enforce via a power to quash a subpoena.
28. I have been denied due process of law and will continue to be denied due process of law if the BOE is permitted to vote and quash the statutorily defined process for issuing subpoenas.
29. It is my understanding from reading the law that R.C. §3319.16 is mandatory rather than permissive and the statute is not susceptible to two or more opposing interpretations.
30. The BOE and its members are exercising non-existent governmental authority in a manner that frustrates and opposes the major purpose of R.C. §3319.16.
31. It is my understanding from reading the law that public employment is a statutorily created property right that cannot be taken without some measure of due process.
32. It is my understanding from reading the law that R.C. §3319.16 is a remedial statute that should be construed in favor of teachers.

FURTHER AFFIANT SAYETH NAUGHT.


John D. Freshwater

The foregoing affidavit was sworn to and acknowledged before me this August 4, 2009, John D. Freshwater, who is personally known by me or who provided satisfactory identification and who did swear to the truthfulness of the above.


Notary Public



R. KELLY HAMILTON, ATTORNEY AT LAW
Notary Public
in and for the State of Ohio
My Commission Has No Expiration Date
Section 147.03 R.C.

RE: In Re Freshwater - New Counsel for Dennis Family

Wednesday, May 6, 2009 9:52 AM

From:

"Millstone, David J." <DMillstone@ssd.com>

Add sender to Contacts

To:

hamiltonlaw@sbcglobal.net

Cc:

lshepherd@pds-law.com

Kelly:

This will advise you the subpoenas were issued and served on the Dennis family. There is no person known as Jodi Fair to the Board and therefore no subpoena was issued. With respect to Mr. Watson and Dr. Bennett, the Board of Education has quashed those subpoenas and neither individual will be appearing.

Very truly yours,

David J. Millstone

Squire, Sanders & Dempsey, L.L.P.

+1.216.479.8574

dmillstone@ssd.com

Exhibit 2 – Email between counsel for parties

IN THE COURT OF COMMON PLEAS KNOX COUNTY, OHIO

FILED
KNOX COUNTY
COURT OF COMMON PLEAS

IN RE JOHN FRESHWATER
7760 New Delaware Road
Mount Vernon, Ohio 43050

Case No. 090526-2009 JUN -2 PM 2: 51

MARY JO HAWKINS
CLERK OF COURTS

PETITIONER,

Judge:

EYSTER

**APPLICATION TO COMPEL ATTENDANCE OF WITNESSES IN THE
EMPLOYMENT HEARING OF JOHN FRESHWATER**

Now comes Petitioner John Freshwater, by and through counsel, respectfully moving this Honorable Court for an **ORDER** pursuant to Ohio Revised Code 3319.16 compelling the persons named herein to produce documents and appear for cross-examination in an open hearing to be conducted at the next and earliest scheduled hearing, for successive days until their testimony can be taken.

The reasons for this *Application* and the requested Order are more fully set forth in the following Memorandum of Support.

MEMORANDUM IN SUPPORT

I. **Background**

Petitioner John Freshwater is a public school teacher employed by the Mount Vernon City School District Board of Education. Mr. Freshwater is currently suspended and is progressing his position in a public hearing contesting the specifications detailed in the employer's notice of its intention to consider the termination of his contract.

Previously, Petitioner John Freshwater, by and through counsel, complied with the statutorily defined process to compel witnesses by and through the subpoena powers vested in the employer's treasurer. As early as February 27, 2009, Petitioner John Freshwater, by and through counsel, submitted subpoenas for documents from

Exhibit 3 – Certified Copy of
Application filed June 2, 2009

employer's board president, Ian Watson. Again, in both March and April 2009, Petitioner John Freshwater, by and through counsel, submitted subpoenas for the same documents from employer's board president, in addition to demanding Ian Watson's appearance along with two other board members: Jody Goetzman and Margie Bennett. In an email dated May 6, 2009, legal counsel for employer advised Petitioner John Freshwater the school board had "quashed those subpoenas and neither individual will be appearing." On May 7, 2009, counsel for Petitioner and counsel for the school board discussed the statutory process for compelling the presence of witnesses desired by Petitioner with acknowledgment by the referee who was appointed by the the superintendent of public instruction. Counsel for the parties, with acknowledgement by the referee, agreed Petitioner John Freshwater would make this *Application* pursuant to R.C. 3319.16 seeking to compel the production of documents and appearance of witnesses.

II. Law

Ohio Revised Code 3319.16 provides in relevant part that:

Both parties may be present at such hearing, be represented by counsel, require witnesses to be under oath, cross-examine witnesses, take a record of the proceedings, and require the presence of witnesses in their behalf upon subpoena to be issued by the treasurer of the board.

Furthermore, the statute states:

In case of the failure of any person to comply with a subpoena, a judge of the court of common pleas of the county in which the person resides, upon application of any interested party, shall compel attendance of the person by attachment proceedings as for contempt.

Public employment has been deemed to constitute a statutorily created property right that cannot be taken without some measure of due process. *Ohio Assn. of Public School*

Emp., AFSCME, AFLCIO v. Lakewood City School Dist. Bd. of Edn. (1994), 68 Ohio St.3d 175, 177.

III. Basis for Application and Order to Compel Appearance

Pursuant to R.C. 3319.16, Petitioner John Freshwater asserts he has a due process right to compel the appearance of any witness for examination at the hearing which is being heard by the referee. Petitioner John Freshwater has followed the established procedure for the issuance of subpoenas set by the statute and has had success in securing the presence of witnesses heretofore except in the instant matter, where the school board members have voted to quash otherwise lawful and compulsory demands for their testimony and production of documents. R.C. 3319.16 is clear and straight-forward in that the Court of Common Pleas of Knox County, the county in which Petitioner John Freshwater resides, shall compel the attendance of any person if that person fails to comply with a subpoena otherwise issued pursuant to the authority of the treasurer of the employer.

Legal counsel for the employer, David Millstone, has advised the subpoenas requested by Petitioner John Freshwater were quashed for the production of documents by Ian Watson and the presence for testimony from Ian Watson, Jody Goetzman and Margie Bennett. Mr. Millstone has advised any future subpoenas for board member Sharon Fair would also be quashed. Petitioner John Freshwater has but only the recourse provided by R.C. 3319.16 to secure the requests of the subpoenas for presentation to the referee.

IV. Conclusion

Petitioner John Freshwater presents a reasonable application for the invocation of R.C. 33191.6 and requests this Court issue an Order mandating:

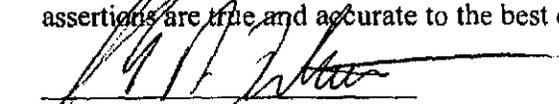
1. The production of documents from board president Ian Watson, Jody Goetzman, Margie Bennett and Sharon Fair at least one week prior to any subpoenaed testimony;
2. The appearance of Ian Watson, Jody Goetzman, Margie Bennett and Sharon Fair for cross-examination by oral testimony at the hearing of Petitioner John Freshwater at the next and earliest scheduled hearing, for successive days until their testimony can be taken.

Respectfully submitted,


R. Kelly Hamilton (Supreme Court No. 0066403)
BOWSHIER † HAMILTON, LLC
Office: 4030 Broadway, Grove City, Ohio 43123
Mail to: P.O. Box 824, Grove City, Ohio 43123
Phone 614-875-4174; Fax 614-875-4188
Attorney for Petitioner

VERIFICATION OF PETITION

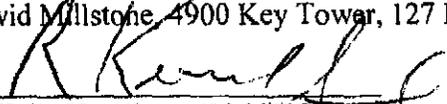
I, John Freshwater, have read and reviewed this Petition and acknowledge that the assertions are true and accurate to the best of my information and belief.


John Freshwater

CERTIFICATE OF SERVICE

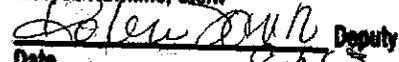
This is to certify that a copy of the foregoing **APPLICATION TO COMPEL ATTENDANCE OF WITNESSES IN THE EMPLOYMENT HEARING OF JOHN FRESHWATER** was delivered this June 2, 2009, by counsel to:

David Millstone, 4900 Key Tower, 127 Public Square, Cleveland, Ohio 44114


R. Kelly Hamilton, (0066403)

This is to certify the foregoing to be a true and correct copy of the original. *Application*
now on file in my office.

Mary Jo Hawkins, Clerk


Date 8-1-09 Deputy

IN THE COURT OF COMMON PLEAS
KNOX COUNTY, OHIO

FILED
KNOX COUNTY
COURT OF COMMON PLEAS

2009 JUL -7 PM 1:21

MARY JO HAWKINS
CLERK OF COURTS

JOHN FRESHWATER

PETITIONER,

-vs-

MOUNT VERNON CITY SCHOOL DISTRICT
BOARD OF EDUCATION

RESPONDENT.

Case No. 09OT06-0312

Judge Otho Eyster

ORDER

This matter came before the Court on Petitioner's Application To Compel Attendance Of Witnesses In The Employment Hearing Of John Freshwater and the Court having considered the memorandums submitted and the applicable law finds;

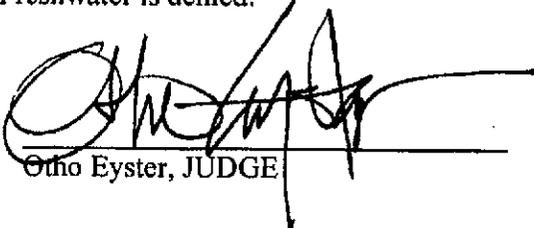
O.R.C. §3319.16, the statute upon which Petitioner bases his application provides "[i]n the case of the failure of any person to comply with a subpoena, a judge of the court of common pleas of the county in which the person resides, upon application of a interested party, shall compel attendance of the person by attachment proceedings as for contempt." The statute clearly limits the common pleas court's jurisdiction to compelling attendance at a hearing when a person fails to comply with a subpoena. In this case, the Board has quashed the subpoenas effectively divesting this Court of jurisdiction in the matter, and it is

KNOX COUNTY COURT OF COMMON PLEAS, MOUNT VERNON, OHIO 43050

ORDERED Petitioner's Application To Compel Attendance Of Witnesses In

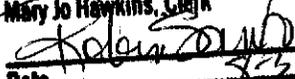
The Employment Hearing Of John Freshwater is denied.

IT IS SO ORDERED.


Orho Eyster, JUDGE

cc:
Brendon Kelley, Esq.
Kelly Hamilton, Esq.

This is to certify the foregoing to be a true
and correct copy of the original. *Order*
now on file in my office.
Mary Jo Hawkins, Clerk

 Deputy
Date 7/25/08