

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Tony Bell,

Appellant,

v.

Case No. 09-RED-06-0298

Montgomery County Sheriff,

Appellee.

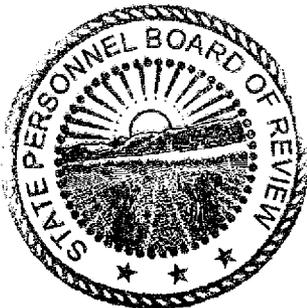
ORDER

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 a lack of jurisdiction, pursuant to O.R.C. § 124.03.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



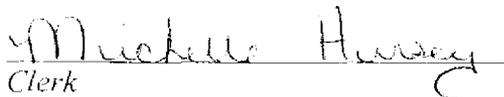


J. Richard Lumpe, *Chairman*

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, October 1, 2010.



Michelle Hursey
Clerk

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

10/1/10MH

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

Tony Bell

Case No. 09-RED-06-0298

Appellant

v.

June 21, 2010

Montgomery County Sheriff

Marcie M. Scholl

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on March 3, 2010. Present at the hearing were the Appellant, Tony Bell, represented by Jeffrey M. Silverstein, Attorney at Law and Appellee Montgomery County Sheriff Al Plummer, represented by Julie Ann Droessler, Assistant Prosecuting Attorney.

The parties stipulated that effective May 18, 2009, Appellant Bell was reduced in pay and position from Administrator, Information Systems, pay rate of \$44.92 to Information Technology PC Network Specialist, pay rate \$31.25.

The purpose of the hearing was to determine if this Board has jurisdiction over the instant appeal, as Appellee alleges that at the time Appellee took the action of reducing Appellant Bell, he was an unclassified employee. If this Board determines that Appellant Bell was indeed an unclassified employee at the time of his demotion, then the appeal would be dismissed, as this Board does not possess jurisdiction over unclassified employees. (See section 124.03 of the Ohio Revised Code). If, however, this Board determines that Appellant Bell was a classified employee at the time of his demotion, then since the parties have stipulated to the fact that Appellant Bell was reduced in position and pay for a non-disciplinary reason, this Board would have no choice but to order Appellee to restore Appellant Bell's previous classification and rate of pay.

STATEMENT OF THE CASE

Appellee's first witness was Michael R. Nolan, a retired Chief Deputy as of January 31, 2010. Prior to retiring, Mr. Nolan was Chief Deputy for Appellee for approximately eighteen months and was employed by Appellee since April 1988. He became a Major over Support Services in August 2005 and in July 2008, he was promoted to Chief Deputy. At that time, Dave Vore was the sheriff. The office had union and non-union positions with the ranks of captain and above being non-union positions as well as the confidential secretaries and the IT employees. As Major, Mr. Nolan testified he had responsibility for the IT employees, dispatch, foreclosure, training and the budget. Appellant Bell was in the IT section and reported directly to the sheriff. Mr. Nolan testified that although it appeared on paper that he was Appellant Bell's supervisor, in reality, he had no control over Appellant Bell and he did not complete his performance evaluations. Mr. Nolan testified the sheriff told him he would get rid of him before he would get rid of Appellant Bell.

Mr. Nolan testified he was told by Sheriff Vore not to do an evaluation for Appellant Bell as the command staff was told Appellant Bell was being removed from the classified rank since he was a fiduciary employee. Appellant Bell was given two pay raises when that happened, either in 2003 or 2004.

Appellant Bell's duties included the purchasing of equipment, maintaining the dispatch system and the computers at the jail. He created the regional dispatch center with the help of others. Mr. Nolan testified he trusted Appellant Bell with the decision making in the IT area as Mr. Nolan stated he did not understand the computers. He testified Sheriff Vore was totally pleased with Appellant Bell. Mr. Nolan testified he disagreed at times with Appellant Bell and the Sheriff told him he would fire him if he didn't like what Appellant Bell was doing. Mr. Nolan explained he had studied the staffing numbers for the regional dispatch center and as it was his job to determine the number of needed staff, he did so and came up with approximately ninety-five to ninety-six staff. Appellant Bell figured the center would need between 125 and 130 employees. When Mr. Nolan disagreed with Appellant Bell's figures, the Sheriff told him he was going to listen to Appellant Bell and would discuss the situation with him. Mr. Nolan then moved to the jail division and had nothing to do with the IT section at that point. He stated his move to the jail occurred after the disagreement over the staffing numbers.

Mr. Nolan testified Appellant Bell put in a lot of uncompensated hours and at one time or another, Appellant Bell supervised two or three employees. Appellant Bell had direction over hiring, but only the Sheriff could fire an employee. Mr. Nolan testified that he had no input into the hiring of IT employees, as the Sheriff and Appellant Bell hired them.

The system that is used in the Sheriff's office is the TIBURON systems and Mr. Nolan testified that if the system goes down, the office is severely crippled. Direct access and control of the system was the responsibility of Appellant Bell and he was the only one who knew the master password. The password was sealed and kept in an envelope in the safe in the Chief Deputy's office. Mr. Nolan testified he could get into the safe but he knew not to open the envelope.

In July 2008, Sheriff Vore was gone and Chief Deputy Plummer became Sheriff and Mr. Nolan became Chief Deputy. Until the first of the year in 2009, Appellant Bell remained as manager of the IT department. Mr. Nolan testified that they received numerous complaints from agencies that they were trying to get on board for the regional center. Other police chiefs were not happy with Appellant Bell as they claimed it took too long to get information from him and that he was incompetent. Mr. Nolan testified the office began looking into the situation and Sheriff Plummer brought in someone to analyze the system. Appellee's Exhibits C and D were identified by Mr. Nolan as memos regarding the complaints about Appellant Bell in May 2009. Mr. Nolan testified he had concerns about Appellant Bell's work prior to this time period also.

Mr. Nolan identified Appellee's Exhibit J as purchase orders dated September 13 and 26, 2007. He explained he approved purchase orders as Major as they were forwarded to him by the system, including the ones requested by Appellant Bell. Mr. Nolan testified he did not deny any of Appellant Bell's requests, as they had all been discussed prior to submission with the Sheriff. He stated he met with both Sheriff Vore and Plummer two times a week and he testified Appellant Bell attended the meetings with the Majors and also the command staff meetings, which usually just had the Captains in attendance. Mr. Nolan stated he did approve Appellant Bell's sick and vacation leave.

Appellant Bell was a reserve deputy, which Mr. Nolan explained was a volunteer, uniformed deputy with arrest powers who can carry concealed weapons, but do not get paid. Only unclassified employees could serve as reserve deputies due to a lawsuit regarding the Fair Labor Standards Act. The lawsuit was in the 1990's, before Mr. Vore was Sheriff, but he was working in the department. Mr. Nolan testified that in 2004, Appellant Bell was a reserve deputy. As the IT person, Appellant Bell became a civilian and gave up his paid deputy status, but he remained a reserve deputy until 2009, when he was reduced in classification and pay and became a classified employee. Mr. Nolan then identified Appellee's Exhibit I-3 and I-4 as the termination of Appellant Bell's peace officer status on May 18, 2009 and his appointment date of June 2, 2004, respectively. Appellee's Exhibit I-4 was identified as another notification of appointment to a peace officer for Appellant Bell on October 14, 2004.

On cross examination Mr. Nolan testified Appellant Bell was a full-time deputy in his capacity as the IT person. When Sheriff Vore assigned him the computer duties, Appellant Bell was in a bargaining unit. In looking at Appellee's Exhibit H, Appellant Bell's performance evaluation, dated March 4, 2005, Mr. Nolan testified Appellant Bell was performing the IT functions then. The performance evaluation shows no deficiencies and was signed by both Chief Deputy Plummer and Sheriff Vore.

Mr. Nolan stated the fiscal officer for the department was Kim Marr and she oversees Appellee's forty-five (45) million dollar budget. She reviews the requests for expenditures, creates purchase orders and pays the invoices. Sheriff Vore told Mr. Nolan they were going to be making purchases and he could not sit on them. Mr. Nolan testified that technically, he could have checked the "not approved" box on the purchase orders, but it would not have been good for his career to do so. He testified it was his opinion that Appellant Bell had gotten in over his head as he believed that Appellant Bell had no formalized training on computers and that the money that was at stake for the regional center was going to come back and bite them.

Mr. Nolan testified that to his knowledge, Appellant Bell has always lived outside of Montgomery county. He identified Appellant's Exhibit 2 as the Professional Conduct Rules and he confirmed that Rule 25 of that document states that "fiduciary and administrative employees must live in Montgomery county". Mr. Nolan stated that the purchase order in Appellee's Exhibit J-2 was submitted by

Appellant Bell and Kim Marr generated the computer document. He stated that on the table of organization, Appellant Bell always reported to a Major, but in reality, he reported to Mr. Nolan, the Sheriff and Major Laravie. Mr. Nolan testified Appellant Bell always attended the first part of the command staff meetings to receive technical problems or questions regarding the system and then he would leave.

On redirect examination Mr. Nolan testified a fiduciary employee works at the whim of the Sheriff, is non-bargaining unit, is unclassified and is appointed by the Sheriff. He explained this is because of the nature of the duties, which are not those that a normal person would have as the person answers directly to the Sheriff and is not a "worker bee" like the other employees. The fiduciary employee is in a higher structure, managing and evaluating people under him and has input into how the office is operated. Mr. Nolan testified Sheriff Vore told him not to evaluate Appellant Bell, stating he was "one of us". Appellant Bell never asked Mr. Nolan why he did not get evaluated. Appellant Bell did all the purchasing regarding the regional dispatch center and he spent into the millions of dollars. Mr. Nolan testified Appellant Bell was the only person who was relied on to make those purchases. He stated as the IT person, Appellant Bell's duties did not change, but he took over the development of the Regional Dispatch Center.

Appellee's next witness was Robert Streck, a Captain for approximately three years and a fourteen year employee of Appellee. As Captain, he oversees Support Services, but over the last year, he has only been responsible for the Regional Dispatch Center (RDC). Mr. Streck testified he was promoted by Sheriff Vore into the Support Services division, where he supervised training, foreclosures, records and dispatch. In October 2006, he oversaw the first line supervisors of those sections and he was to assist with the concept of the RDC project.

Captain Streck testified he worked with Appellant Bell and they became the two people assigned with the task of building the RDC. He approved the hiring process and handled the political side of the project with the other agencies. Appellant Bell did the technology purchases and put in the completed bids. Captain Streck testified they worked together on picking out the consoles and Appellant Bell did the phone systems, CAD and the computers. Captain Streck testified he had no supervisory authority over Appellant Bell, as he reported to Sheriff Vore. Captain Streck stated he reported to Mr. Nolan. He testified Appellant Bell did not go to Mr. Nolan with any issues, but instead went to Sheriff Vore.

Captain Streck testified Appellant Bell did not attend the command staff meetings, but he did go to the Majors' meetings and the monthly staff meetings, consisting of the lieutenants and above and Captain Wren. Appellant Bell represented the Support Services division and the IT division. Captain Streck testified that when he first became Captain, he met with Sheriff Vore and Appellant Bell and he was told Appellant Bell would be going to Sheriff Vore with any issue concerning the RDC and that Mr. Nolan would not be in his chain of command for those issues. Captain Streck testified he never saw Appellant Bell report to Mr. Nolan for anything, as it was always his understanding that Appellant Bell was not in Mr. Nolan's chain of command. He stated Appellant Bell was a reserve deputy and it was his belief that Appellant Bell could do so because he was not under contract but was serving at the will of the Sheriff. Appellant Bell supervised employees in the IT division and completed their performance evaluations and he had the authority to purchase equipment.

On cross examination Captain Streck explained that in October 2006, the RDC was a concept. He made recommendations as to the staffing levels and there was a large debate between Appellant Bell and Mr. Nolan as to how many people were needed to staff the RDC. Captain Streck stated he, Chief Deputy Plummer, Sheriff Vore and Appellant Bell went to meetings with other jurisdictions to try to get them on board with the RDC. Sheriff Vore did most of the talking and the rest of them were there to answer questions.

Captain Streck testified that no dispatchers are reserve deputies and he stated he had to sign documents agreeing to be in the unclassified service. He stated that sometime in approximately 2008, Appellant Bell was not permitted to complete evaluations, as there were complaints against him, so Major Brands did the evaluations. He was the Major over Support Services. Eventually Appellant Bell once again did the evaluations.

On redirect examination Captain Streck testified he was in a room with Sheriff Vore, Mr. Nolan and Appellant Bell debating the number of staff needed for the RDC. Mr. Nolan's numbers were compared to Appellant Bell's numbers and there was a lot of yelling at that meeting. Sheriff Vore was very angry at Mr. Nolan and it was very clear that Sheriff Vore trusted Appellant Bell with the RDC. A little while after that, Mr. Nolan left Support Services.

Appellee's next witness was Kimberly J. Marr, Fiscal Officer with Appellee. As such, it is her responsibility to maintain and manage the budget. Ms. Marr stated she gathers all the information but the Sheriff is the one with final approval. She explained the system used for the budgeting is the Performance Financial System, which is county wide. The Majors put the information into the system and she verifies that funds are in place. For those employees who have no access to the system, she gets the purchase authorization forms, ensures the money is there and then enters the information into the computer.

Ms. Marr testified Appellant Bell had no access the system, so he submitted handwritten purchase authorization orders to her and he was the only employee that did so. Ms. Marr identified Appellee's Exhibits J1 through J12 as documents submitted by Appellant Bell for purchases. She indicated that no Major's approval appears on any of the documents, as Appellant Bell approved all of them. Ms. Marr testified these were all submitted while Sheriff Vore was in office and he never questioned any of the submittals by Appellant Bell. The purchases ranged from a low price of \$182,075.00 to a high of \$2,411,983.00.

On cross examination Ms. Marr testified the money for those purchases came from the county. She explained that Appellant Bell wrote the justifications to purchase on the forms and he had to gather all of the information to take before the Data Processing Board or the Board of County Commissioners to review and approve. She stated the Date Processing Board has to review any IT purchase over a certain dollar amount. Ms. Marr testified Appellant Bell decided what items were necessary to purchase and to her knowledge, he was the only person to do so. No justification was needed and he was permitted to spend whatever dollar amount was needed with approval from the Sheriff or a Major, although the Data Processing Board did approve the items for purchase. She testified she did not know if Appellant Bell appeared before the Data Processing Board or the Board of County Commissioners.

Appellee's next witness was Glenn McIntosh, an employee of Appellee for twenty-five and a half years and a Major since 2005. He stated he was promoted under Sheriff Vore and in 2007, he became in charge of the personnel division. Major McIntosh testified Appellant Bell was in charge of IT and did a lot of work for the jail such as camera work and courthouse security. He stated Appellant Bell's supervisor was Sheriff Vore although the written table of organization showed him reporting to Major Nolan, but, in reality, he did not report to him. Major McIntosh

testified he took any computer problems directly to Appellant Bell and stated Appellant Bell had free reign in and out of Sheriff Vore's office, as he was always working directly with the Sheriff. Major McIntosh testified that even as a Major, he did not have the free reign with Sheriff Vore that Appellant Bell had.

Major McIntosh testified that by law, the Sheriff is in charge of courthouse security. Back door access to the courthouse was granted only to sergeants, but a different system was being put in place and Appellant Bell was in charge of making new cards for an alternate access point. The sergeants used to make the cards, but Sheriff Vore delegated that authority to Appellant Bell. Major McIntosh testified he had to go through Appellant Bell for any purchases for IT in the jail, as Sheriff Vore told him to do so.

At the Monday Major meetings, Appellant Bell attended the beginning of the meeting and after Mr. Plummer became Sheriff, Appellant Bell still attended those meetings for awhile. Major McIntosh testified Appellant Bell attended the monthly staff meetings, reporting on the IT area. Major McIntosh testified he maintains the performance evaluations and personnel records for Appellant Bell and he stated Appellant Bell does not have any performance evaluations on file after 2005. He testified Appellant Bell's pay was equal to that of a Captain at the time Plummer became Sheriff in July 2008.

Appellee's Exhibit I was identified by Major McIntosh as the letter he sent to Appellant Bell telling him he was a classified employee. The letter is dated January 4, 2010. Major McIntosh explained that he found out in December 2009 that Appellant Bell was still a reserve deputy, which he should not have been, as classified employees cannot be reserve deputies. He stated this was due to a lawsuit and that it was common knowledge, as many commissions had to be cancelled.

In looking at the General Orders, chapter three, Appellant's Exhibit 2, Major McIntosh testified that while that rule states that fiduciary and administrative employees have to live in the county, Sheriff Vore could make exceptions to the rules and he believes that he did so with respect to Appellant Bell and Ms. Marr, as they were both unclassified employees.

On cross examination Major McIntosh testified that when Major Bush was over Support Services, he knew that Appellant Bell reported to him and he stated it was 2005 when he had direct knowledge that Appellant Bell reported to the Sheriff. He explained that Appellant Bell's duties changed from 2005 to 2009 and in May 2009, Appellant Bell was no longer in charge of IT. He was reduced in pay and responsibilities as he no longer supervised anyone.

Appellee's last witness was Phil Plummer, Sheriff since 2008 and with the Appellee for approximately twenty-two years. He testified that in his last position as Major, he was also Personnel Director, and as such, he had to meet with the union if there was any change in the bargaining unit. In May 2004 Sheriff Plummer testified he met with the union regarding Appellant Bell's position as they were losing his position when Major Bush sent a letter to the union notifying them Appellant Bell was becoming a fiduciary employee and leaving the bargaining unit. He testified he does not know if Sheriff Vore made Appellant Bell aware of his fiduciary status or not. Sheriff Plummer testified that when he was Chief Deputy, he managed the managers and was over the day to day operations, but he had no direct control over Appellant Bell as Sheriff Vore did that. He testified Major Bush was over Appellant Bell but when Mr. Nolan took over for Major Bush, he did not supervise Appellant Bell.

Sheriff Plummer testified that as Chief Deputy, he sat across from Sheriff Vore's office and consistently, on a day to day basis, Appellant Bell walked right into Sheriff Vore's office and had closed door meetings, pertaining to the RDC. Sheriff Plummer testified he strongly suggested where to locate the RDC physically and Sheriff Vore told him if he brought it up again, he would fire him. He stated the only thing he did for Appellant Bell was approve his leave time when he became Chief Deputy.

Sheriff Plummer testified he took away Appellant Bell's management authority while he investigated complaints against Appellant Bell. He stated again that Sheriff Vore was the only person over Appellant Bell and that Appellant Bell had a direct pipeline to Sheriff Vore. Appellant Bell sat on the Data Processing Board in place of Sheriff Vore and also in place of Sheriff Plummer until May 2009. Appellant Bell ran his own budget and approved all IT purchases, keeping the IT budget in the millions. Sheriff Plummer testified he relies on his IT director to select equipment and relies on his expertise, placing a high degree of trust in the position. He testified Appellant Bell was reduced due to performance issues, although he did

not make any changes to that position until May 2009, stating he continued to rely on Appellant Bell as Sheriff Vore did.

In looking at Appellee's Exhibit I, Sheriff Plummer testified Appellant Bell was terminated as a deputy on June 2, 2004 and was made reserve deputy on October 25, 2004, as he was an unclassified employee as the IT director. The reserve deputy had a one year certification and Appellant Bell was still under that. The oath of office was dated October 25, 2004, the date Sheriff Vore made Appellant Bell a reserve deputy. Sheriff Plummer testified that all of the purchase orders in Appellee's Exhibit J were done when he was Chief Deputy or Sheriff and he testified he did not disapprove any of them as he trusted Appellant Bell's judgment. He testified he did not have a lot of meetings with Appellant Bell as he gave Nolan more of the day to day operations to supervise.

Sheriff Plummer testified he had several complaints from the deputies and from people outside of the office about Appellant Bell. He hired a consultant to go through and review the IT operations and several deficiencies were noted. Appellee's Exhibit F was identified as the report of the review. Appellant Bell managed the entire IT section, which housed the most critical pieces of equipment for the office and all of the TIBURON system. Appellant Bell had to oversee employees and the budget. The IT section is one of the most trust demanding jobs in the department and while he was doing the job, Sheriff Plummer testified he had trust and confidence in him. After the report came out and the complaints surfaced, Mr. Nolan suggested Appellant Bell be removed from a position of management. Sheriff Plummer testified Appellant Bell still represented him on the Data Processing Board and still did the courts building in July 2008.

In looking at Rule 25 of the General Orders, Sheriff Plummer testified that as sheriff, he can make exceptions to the rule and stated he has done so with Appellant Bell. He testified Ms. Marr currently lives out of the county and those are the only two fiduciaries that he has changed the policy for, but stated he can change it or make exceptions whenever he likes.

On cross examination Sheriff Plummer stated he does not know when Rule 25 was actually written, that it had always been a "word of mouth" policy. He stated Appellant Bell did the IT functions while he was still a deputy and was eventually assigned full-time IT duties. He was a civilian doing IT functions and for approximately ten years, he did the IT functions as a classified employee in the

bargaining unit, but even then, he had access to Sheriff Vore. Sheriff Plummer testified Appellant Bell was in charge of TIBURON for approximately ten years and stated he was paid the salary of an unclassified employee.

On redirect examination Sheriff Plummer testified Appellant Bell was changed to an unclassified employee in 2004 because he was a manager, had charge of a budget, worked with other police departments and represented the Sheriff.

Appellant Bell testified he has no degree but has worked with computers since high school. He started in December 1989 as a correction officer in the jail and then in 1991 or 1993, he was promoted to a deputy assigned to court detail for four to six months. After that, he went to IT full-time and was in the bargaining unit as a deputy. In 2002 and 2003, he reported to Major Bush and Major Bush went to the Sheriff on any issues. In 2004, Appellant Bell testified he was not made aware that he was unclassified, but he became the supervisor of one employee. He stated he first sat on the Data Processing Board in 1997-1998 for Sheriff Haines and he was in the bargaining unit then. He explained the Data Processing Board meets once a month and they must approve any purchase of equipment or software over \$25,000.

Appellant Bell stated he has always had specific responsibility over projects and every January he completes a purchase authorization for TIBURON maintenance and does so without anyone telling him to do so. He testified that every year he requested what kind of hardware/software he wanted and stated he asked the staff and some division commanders what they wanted. He then put the requests on a form and forwarded it to the Major of Support Services. If the purchase was under \$1,000, then no purchase order was needed.

In looking at the purchase orders in Appellee's Exhibit J, Appellant Bell stated he discussed the RDC with a lot of people and he put together the cost estimate for equipment. He testified he worked with multiple people to come up with what was needed and there was only one other person from Appellee that he talked to. Appellant Bell testified he only made recommendations to the Data Processing Board, as they made the decision. Once the equipment purchases were approved, the county put money in an account and he drew from it to make the purchases. He stated he did the justification for the new servers to the Data Processing Board, the Sheriff and the Board of County Commissioners.

Appellant Bell testified he only went to the monthly meetings for six or seven months while Mr. Plummer was the Chief Deputy. He stated he was granted access to the entire security system for the courts and it was Sheriff Vore, Plummer and the judges who decided who had access. Appellant Bell testified he programmed the security system to give access to those persons. He stated he reported to Major Bush, then when he retired, he reported to Mr. Nolan for a period of two months, then Chief Deputy Plummer started to approve his leave slips. He also stated that for a five to six month period in 2007, he was paid over time.

Appellant Bell testified he and Major Bush looked at two phone switch-in systems and it was Major Bush who decided which system to go with. Six months before Sheriff Vore retired, he told Appellant Bell to only talk to him about the RDC. Appellant Bell testified he could have done some policy changes, such as changing some of the verbiage, but that he still had to have counter signatures. He stated he worked with vendors on pricing and purchasing and, in some instances, he had to work with the Prosecutor's office, the Data Processing Board and the Commissioners.

On cross examination Appellant Bell testified that Mr. Nolan did not do any performance evaluations of his, as Appellant Bell asked to be removed from Mr. Nolan's supervision. He confirmed he made presentations to the Board of Commissioners and that he made a recommendation on hiring. Appellant Bell testified that in the fall of 2007, he was given a raise which equaled that of a Captain.

FINDINGS OF FACT

After thoroughly reviewing the testimony of the witnesses and the documents admitted into evidence, I find the following facts:

1. Appellant Bell has been employed with the Appellee since December 1989. In approximately 2004, Appellant Bell began supervising an employee and was the head of the IT department.
2. Appellant Bell remained in that position until his reduction in May 2009. At the time of his reduction, he was making the same salary as a Captain.

3. The IT department housed all of the critical pieces of equipment for the Appellee, including the TIBURON system, which is the system which the office operates on. Appellant Bell purchased all of the hardware, software and maintenance for that system. He also was the only person to have direct access and control of the master password for that system.
4. From 2004 to 2009, Appellant Bell served as a Reserve Deputy, which was only for unclassified employees.
5. In July 2008, Mr. Nolan became Chief Deputy and on the table of organization, he was to supervise Appellant Bell; however, in reality, he did not supervise Appellant Bell as Appellant Bell answered directly to then Sheriff Vore. Chief Deputy Nolan did not conduct performance evaluations for Appellant Bell and had no control over him except to approve his sick and vacation leave.
6. Appellant Bell and Sheriff Vore were responsible for hiring employees for the IT department. At some point in time, Appellant Bell became responsible for creating the Regional Dispatch Center and he conferred directly with Sheriff Vore on that project.
7. Appellant Bell submitted all of the purchase authorizations for the Regional Dispatch Center. He sought approval from the Data Processing Board and the Board of County Commissioners and was the person whom the Sheriff relied on to make those purchases, which ranged from \$182,075 to \$2,411,983. None of the purchase authorizations submitted by Appellant Bell were approved by a Major.
8. Appellant Bell was relied on by Sheriff Plummer to do anything related to the IT department and he kept Appellant Bell in that position when he became Sheriff in July 2008 until May 2009.
9. Appellant Bell also had security access to the courthouse and was the person responsible for creating access cards to the courthouse. He was chosen for that duty by the Sheriff and the judges.
10. Appellant Bell attended Captain's meetings and command staff meetings during the initial part of the meetings to make his report. He also represented the Sheriff's office on the Data Processing Board and made

presentations on behalf of the Appellee to the Board of County Commissioners and to other governmental agencies.

11. Appellant Bell made some policy changes and worked directly with the vendors for the purchases made for the IT department.

CONCLUSIONS OF LAW

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Pursuant to section 124.03 of the Ohio Revised Code, this Board has authority only over classified state employees. Therefore, since Appellee has alleged Appellant Bell was an unclassified employee at the time of his reduction, it was necessary to hold a hearing to determine the jurisdiction of this Board over Appellant Bell's appeal of his reduction. After reviewing Appellant Bell's job duties, it is clear that Appellee has met its burden of proving by a preponderance of the evidence that Appellant Bell was an unclassified employee at the time of his reduction.

Appellee has alleged that Appellant Bell was an unclassified employee pursuant to sections 124.11(A)(9) and (28) of the Ohio Revised Code. The pertinent parts of that statute state as follows:

The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts of the state shall be divided into the unclassified service and the classified service.

(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter:

9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency and **those persons employed by and directly responsible to elected county officials** or a county administrator **and holding a fiduciary or administrative relationship to such elected county officials** or county administrator, and the employees of such county officials whose

fitness would be impracticable to determine by competitive examination, provided that division (A)(9) of this section shall not affect those persons in county employment in the classified service as of September 19, 1961. Nothing in division (A)(9) of this section applies to any position in a county department of job and family services created pursuant to Chapter 329. of the Revised Code. (Emphasis added).

(28) **For cities, counties, civil service townships, city health districts, general health districts, and city school districts, the deputies and assistants of elective or principal executive officers authorized to act for and in the place of their principals or holding a fiduciary relation to their principals;**

As can be seen by reading the above statutes, an county employee is in the unclassified service if he or she is "directly responsible to an elected county official" and a "holds a fiduciary or administrative relationship to such elected county official". Paragraph twenty-eight of that statute holds that a county employee who "acts for and in the place of their of principals" is also an unclassified employee. Appellee has proved that Appellant Bell was unclassified pursuant to these statutes.

There are many cases which have held that the method to determine if an employee meets the parameters set by the statute is to examine the duties that the employee performed. The case of *Yarosh v. Becane* (1980), 63 Ohio St.2d 5, held that it is the duties of the employee, rather than the designation of the appointing authority, which is determinative of whether an employee is classified or unclassified. See also *In re Termination of Employment* (1974) 40 Ohio St. 2d 107; and *Rarick v. Bd. of County Commissioners* (1980) 63 Ohio St. 2d 34.

Appellant Bell argued that since he was hired into what was designated as a classified position, Appellee could not argue that he was an unclassified employee. He also argued that he was unaware that the designation of his position was being changed to unclassified, although the evidence established that only unclassified employees could hold the reserve deputy designation. The fact of the matter is that the designation placed on Appellant Bell is of no value in determining his status pursuant to section 124.11 (A)(9)and (28) of the Ohio Revised Code. Appellee could have designated him classified, unclassified or neither and it would not matter. What matters is the duties performed by Appellant Bell, as it is those duties that

determine if he is classified or unclassified. If he performs that duties that make him unclassified, then, **by law**, he is unclassified regardless of what designation Appellee placed on him.

Case law has held that in order for a position to be considered as fiduciary, the employee must complete the assigned job duties with a high degree of trust, confidence, reliance, integrity and fidelity, above and beyond the technical competence required to complete the job. *State, ex. Rel. Charlton v. Corrigan* (1988), 36 Ohio St.3d 68, 71. The term "administrative" is defined in this Board's administrative rules 124-1-02(C) of the Ohio Administrative Code. That definition states:

"Administrative relationship" generally means a relationship where an employee has substantial authority to initiate discretionary action and/or in which the appointing authority must rely on the employee's personal judgment and leadership abilities. The average employee would not possess such qualities or be delegated such discretionary authority. Whether one position occupies an administrative relationship to another is a question of fact to be determined by the board.

The above definitions describe Appellant Bell's duties. The evidence established Appellant Bell had substantial discretionary authority, as he only had to answer to the Sheriff and the Sheriff placed complete trust in him. Mr. Nolan testified he did not supervise Appellant Bell, even though it appeared that he did on paper. In reality, Appellant Bell answered to no one but the Sheriff, the county elected official. Mr. Nolan testified he was told by Sheriff Vore that he would be fired before the Sheriff would fire Appellant Bell. Captain Streck confirmed Appellant Bell never reported to Mr. Nolan and Major McIntosh testified Sheriff Vore was Appellant Bell's supervisor. He also stated Appellant Bell had free reign in and out of Sheriff Vore's office.

The purchase order authorizations contained in Appellee's Exhibit J are for large sums of money, well over one hundred thousand dollars, and the majority of those contain no one's signature but Appellant Bell's. Mr. Nolan testified he did not approve any of them, as he would normally do, as he was told by the Sheriff to let them go through. While the evidence established Appellant Bell had to seek approval of the Data Processing Board and the Board of County Commissioners,

the evidence also established that Appellant Bell was trusted by the Sheriff to make the proper purchases and he represented the Sheriff and the office before both of the approving entities. He made presentations to them and even sat as the Sheriff's designee on the Data Processing Board. Appellant Bell had complete authority over the TIBURON system, being the only person with access to and knowledge of the master password. He also was the person designated by the Sheriff and county judges to have security access and to make the access cards to the courthouse.

Appellant Bell also represented the Appellee before other jurisdictions when communicating with them about the Regional Dispatch Center. He met directly with vendors of the different equipment he was purchasing and he was trusted by both Sheriff Vore and Plummer to make the correct purchases and to staff the Regional Dispatch Center. Appellant Bell also testified he made policy changes and the evidence established that it was a well-known fact that reserve deputy status can only be held by an unclassified employee. Appellant Bell held that designation for approximately five years.

Sheriff Plummer testified he made an exception for both Appellant Bell and Ms. Marr, to the rule that an unclassified employee has to live within the county. He testified that the rule is internal to the office and that he can make exceptions to it. The evidence established that Sheriff Vore had placed complete trust and confidence in Appellant Bell. This was established through the testimony of Mr. Nolan, Sheriff Plummer, Captain Streck and Major McIntosh. While former Sheriff Vore did not testify, the other witnesses all gave testimony as to the relationship they witnessed between Appellant Bell and Sheriff Vore. Sheriff Plummer testified that when he took office in July 2008, he did not make any changes to Appellant Bell's duties as the IT administrator. He testified he placed complete trust and confidence in him and relied on him to do all things dealing with the IT department. Appellant Bell did not offer any testimony or witnesses to rebut Appellee's evidence.

Appellee's witnesses testified they did not have the access to Sheriff Vore that Appellant Bell had, even though those employees held the rank of Major, Captain and Chief Deputy. The evidence established Appellant Bell was paid the same rate of pay as a Captain and basically had the authority to do whatever he thought was necessary to run the IT department and to create the Regional Dispatch Center. The documents and evidence corroborate the testimony of Appellee's witnesses.

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The evidence has established that Appellant Bell directly reported to the Sheriff, holding both an administrative and fiduciary relationship to him, as well as acting for and in the place of the Sheriff, all of which made him an unclassified employee at the time of his reduction in pay and position. It is therefore my **RECOMMENDATION** that this appeal be **DISMISSED** for a lack of jurisdiction pursuant to section 124.03 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge

:mms