

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

TIMOTHY L. HAMMERSMITH,
DAVID BELL,
TAMARA ROBERTS,
ERROL G. BAKER,
STEVE MCDONALD,
JAMES BENNETT, JR.,

Appellants,

v.

Case Nos. 10-MIS-07-0200
10-MIS-07-0201
10-MIS-07-0202
10-MIS-07-0203
10-MIS-07-0204
10-MIS-07-0205

BOWLING GREEN STATE UNIVERSITY,

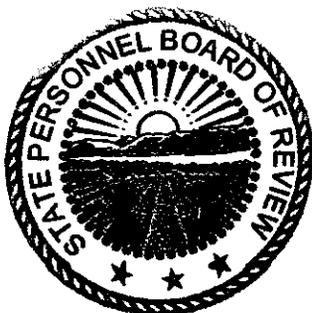
Appellee,

ORDER

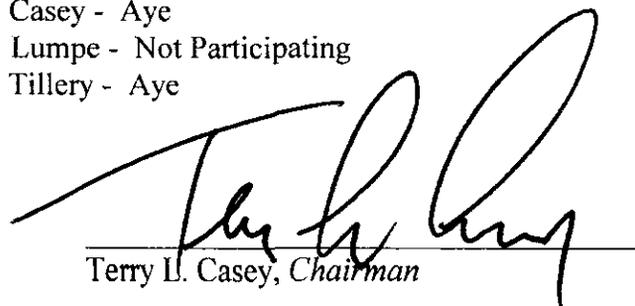
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the entirety of the records, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the instant appeals are **DISMISSED**, as Appellants have failed to demonstrate that an adverse employment action over which this Board may assert jurisdiction has occurred.



Casey - Aye
Lumpe - Not Participating
Tillery - Aye


Terry L. Casey, *Chairman*



CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes ~~(the original)~~ a true copy of the original order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, November 30, 2011.



Clerk

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

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

Timothy L. Hammersmith, *et al.*,

Case Nos. 10-MIS-07-0200, *et seq.*

Appellant

v.

October 27, 2011

Bowling Green State University,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon a review of all of the information contained in the record. Appellants are employed by Appellee in positions classified as Maintenance Repair Workers 2 (MRW2). Prior to June 2010, Appellants were supervised by employees classified as Building Maintenance Superintendents 2 (BMS2). Pursuant to a reorganization of the reporting structure within Appellee's Residence Hall staff, supervision of Appellants' positions was shifted to employees classified as Housekeeping Managers 2 (HM2) and Housekeeping Managers 3 (HM3). Appellants subsequently filed an appeal with this Board on July 14, 2010, arising from this reorganization.

A status conference was held on February 22, 2011. Upon discussion between the parties, the issues raised by Appellants were narrowed to: 1) is an HM2 a "higher-level supervisor" as referenced in the function statement of the MRW2 classification specification utilized by Appellee; and 2) if a HM2 is not a "higher-level supervisor" as referenced by the classification specification, then is Appellee's placement of Appellants' positions under the supervision of an employee so classified an action which constitutes a reduction in position? Because the issues to be addressed by the Board require a legal conclusion rather than a determination of facts, written briefs were requested from the parties.

CONCLUSIONS OF LAW

Appellants' *pro se* appeal raises a number of issues, some of which this Board has no jurisdiction to consider, and some over which it may properly extend

its authority. Appellee correctly asserts that this Board does not generally have the authority to review Appellee's choice of organizational structure, or to examine pay equity among the classifications properly established by Appellee. Where Appellee's exercise of its statutory powers results in an adverse employment action that constitutes a violation of Ohio Civil Service law, however, this Board has jurisdiction to hear an appeal of the action. R.C. 124.14(f). Ohio Administrative Code Section 124-05-02 provides that in the absence of a formal employment action, an employee has the right to prove that an adverse action has occurred. *Veney v. Massillon Psychiatric Center*, 93APE12-1684, 1994 WL 250243 (Ohio App. 10th Dist. 1994). In the instant matter, Appellants alleged sufficient facts in their July 2010 appeal to suggest that a potential reduction in position had occurred as a result of Appellee's reorganization. This Board has jurisdiction to examine such allegations. R.C. 124.03.

A reduction in position may occur when there is an action taken which diminishes an employee's duties or responsibilities to the extent that an audit of the employee's position would result in a reclassification to a classification assigned a lower pay range. O.A.C. 124-1-02(Z). The parties agree that Appellants' job duties have not changed, however, it is clear that their reporting responsibilities have been altered. The classification specification for the MRW2 classification provides in its function statement that incumbents work "under general supervision from building maintenance supervisor, building maintenance superintendent or other higher-level supervisor ..." The function statement of the classification specifications utilized by Appellee corresponds to the class concept found in State classification specifications; O.A.C. 123:1-7-15 notes that this section sets forth mandatory duties that must be satisfied at least twenty percent of an employee's time, unless otherwise stated therein. Therefore, where an employee does not meet the requirements set forth in the function statement or class concept of a classification specification, the employee's position may not be properly placed in that classification. In order to determine if Appellee's reassignment of Appellants' supervision diminished their reporting responsibilities to the extent that an audit of their positions would result in reclassification to a classification assigned to a lower pay range, this Board must determine if Appellants' supervision by an employee classified as an HM2 constitutes working under the general supervision of a "higher-level supervisor."

The word "supervises" is defined by O.A.C. 123:1-7-15, for the purpose of classifying positions and making job audit decisions, as meaning that an employee

assigns and reviews work, completes employee performance evaluation forms, recommends or authorizes leave and recommends or initiates disciplinary action for at least two full-time permanent civil service employees or the equivalent. The parties do not dispute that the HM2s are Appellants' supervisors.

Appellants argue, however, that HM2s are not "higher-level supervisors," as the term is utilized in the function statement for the MRW2 classification specification. No definition of "higher-level" is offered in the classification specification or in relevant case law.

Appellee argues that HM2s are "higher-level" supervisors simply by merit of the fact that their position appears linearly above that of Appellants on the table of organization chart prepared by Appellee. Appellee also cites to *Bell v. State of Ohio Department of Administrative Services*, 93AP-626, 1993 WL 360305 (Ohio App. 10th Dist. 1993), suggesting that whether an individual's role as supervisor is appropriate rests upon the duties of his or her subordinates. In this instance, however, the inquiry found in *Bell* must be reversed; the present issue is not whether Appellants fit into a broad category of possible subordinate employees listed in a supervisor's job function statement, as in *Bell*, but rather whether or not the supervisors fit into the broad category of "higher-level supervisor" set forth in the subordinate employees' job function statement. Therefore, although Appellee's briefs focused on the job duties of the Appellants to determine if the supervisor-subordinate relationship was appropriate, the proper inquiry should be into the duties of the HM2s assigning work to the MRW2s.

If the function statement is read giving each word meaning, an examination of both supervisory status and organizational level is required. Appellee's rationalization that the HM2 positions appear above Appellants' MRW2 positions on its table of organization is unpersuasive – any supervisory position typically appears above a subordinate position on a table of organization. If every supervisor were at a higher level than their subordinate, the "higher-level" language of the function statement would be superfluous and moot, as was the term "lower level" in *Bell*.

Accordingly, this Board must consider the nature and scope of supervisory duties which would constitute "higher-level" supervision. Given the specific examples of appropriate supervisors set forth in the function statement, Building Maintenance Supervisor and Building Maintenance Superintendent, the Board may infer that more advanced classification specifications within the same classification

group are “higher-level” supervisors. However, the language of the MRW2 function statement does not restrict supervision only to employees in the same classification series, group, or career progression.

Employees holding positions in advanced classification specifications within a classification group typically have additional training and/or skills, as contrasted with employees in lower classifications. Appellants argue that HM2s are not “higher-level” supervisors because they do not have advanced training in the maintenance and maintenance repair skills required for MRW2s. If supervision of MRW2s were limited to those supervisory positions which were in the same classification series, group, or career progression, advanced training in job-specific skills might indeed be a necessity to be considered a “higher-level” supervisor. However, as noted above, no such restriction appears in the function statement of the MRW2 classification specification. MRW2s are required to have training in job-specific skills; by contrast, HM2s are required to have additional skills and training in procedures and safety practices which include budgeting and inventory control, and six months of training and/or experience in supervision.

Advanced positions are also typically assigned to a higher pay range than lower classifications. Appellants further note that, unlike Building Maintenance Supervisors and Building Maintenance Superintendents, HM2s are assigned to the same pay grade as Appellants. Both the HM2 classification and the MRW2 classification are assigned to pay range 007.

Continuing to use the Building Maintenance Supervisor and Building Maintenance Superintendent classification specifications as a guide, I note that the scope of the duties assigned to these supervisory positions is more extensive than merely supervising subordinate employees. Similarly, the scope of duties assigned to the HM2 classification extends beyond supervision of subordinate employees, to include development of procedures, programs and policies; program evaluation; inventory control; and budget planning.

Ideally, a “higher-level” supervisor would exhibit all of the above-referenced indicia, thereby making their status unambiguous. In the absence of clear-cut hallmarks, however, this Board must examine the evidence in context. Upon a review of all of the information provided, I find that an HM2 meets the definition of a “higher-level” supervisor, as the term is used in the function statement of the MRW2 classification specification, in this specific instance. As such, Appellee’s

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reassignment of the supervision of Appellants from employees classified as BMS2s to employees classified as HM2s did not constitute an action which would diminish Appellants' responsibilities to the extent that an audit of their positions would result in their reclassification to a classification assigned a lower pay range. I further find that the temporary assignment of supervisory responsibilities to employees in a lower pay range than Appellants in an HM2s absence does not constitute an action which would result in Appellants' reclassification to a classification in a lower pay range.

Therefore, I respectfully **RECOMMEND** that the instant appeals be **DISMISSED**, as Appellants have failed to demonstrate that an adverse employment action over which this Board may assert jurisdiction, has occurred.



Jeannette E. Gunn
Administrative Law Judge

JEG:

Timothy Hammersmith, *et al.*

<u>NAME</u>	<u>CASE NUMBER</u>
Timothy L. Hammersmith	10-MIS-07-0200
David Bell	10-MIS-07-0201
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