

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

MARICELDA LOSOYA-RUSH,

Appellant,

v.

Case Nos. 10-REC-12-0339

10-RED-12-0340

10-MIS-12-0341

BOWLING GREEN STATE UNIVERSITY,

Appellee

ORDER

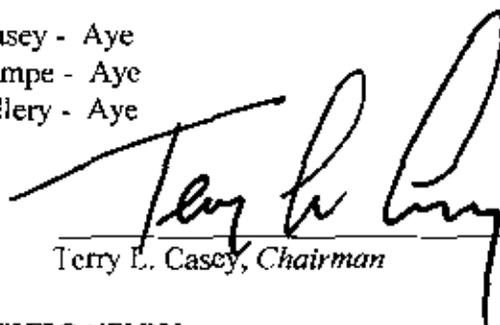
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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 Appellee's determination that Appellant is properly classified as a Library Associate be **DISAFFIRMED**, since that classification no longer exists, and that Appellant be properly classified as a Librarian 1 (Non-Degreed), classification number 64311C, with the first pay period immediately following the date of Appellant's audit request, pursuant to R.C. 124.03 and R.C. 124.14



Casey - Aye
Lumpe - Aye
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, September 28, 2011.


Clerk

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

Maricelda Losoya-Rush

Case Nos. 10-REC-12-0339
10-RED-12-0340
10-MIS-12-0341

Appellant

v.

August 31, 2011

Bowling Green State University

Marcie M. Scholl
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on May 10, 2011; however, the record was kept open until May 16, 2011, for the submission of additional documentation. Present at the hearing were the Appellant, Maricelda Losoya-Rush, represented by Thomas A. Sobecki, Attorney at Law and Appellee Bowling Green State University designee Leslie Fern, Employee Relations Employment Specialist, represented by Rema A. Ina, Assistant Attorney General. In addition, Patricia D. Collins, who is the Appellant in a consolidated case, was also present.

The subject matter jurisdiction of the Board was established pursuant to sections 124.03 and 124.14 of the Ohio Revised Code.

STATEMENT OF THE CASE

Appellant Losoya-Rush testified she has been with Bowling Green State University (BGSU) for approximately twenty-three years. She is currently classified as a Library Associate 1, and she obtained this position sometime between 1998 and 2000. She currently works in the cataloging department of the library along with two other people. Her current immediate supervisor is Julie Rabine, who holds the position of Coordinator of Acquisitions and Cataloging. Ms. Rabine does not work in the cataloging department. Appellant Losoya-Rush testified she does not supervise any employees.

Appellant Losoya-Rush testified she was told at a meeting held on April 15, 2010, that current library employees would need to take on additional duties because two employees were retiring. After that meeting, Christine Plotts, another librarian in the Acquisitions and Cataloging department, started training Appellant Losoya-Rush for the additional duties, which included original cataloging. Prior to this training, Appellant Losoya-Rush did not perform original cataloging.

Prior to April 15, 2010, Appellant Losoya-Rush performed copy cataloging, which occupied approximately 50-70% of her time. She explained that copy cataloging was the process of transferring bibliographical information available on the Online Computer Library Center (OCLC) to the information in Millennium, which is the BGSU local library database. To complete the process of transferring information into the Millennium database, Appellant Losoya-Rush would look for the title of the book in the OCLC database. If the book information was present in the OCLC, she would ensure that the information in the database matches the book information. If the information did match, she would follow steps to update the OCLC to show that BGSU possessed the book and would add the book to the Millennium database. If there was no bibliographical information in OCLC, Appellant Rush-Losoya testified that she would then take the book to another librarian to enter the information into OCLC.

In addition to copy cataloging, Appellant Losoya-Rush testified she was responsible for withdrawing books that were being permanently removed from the library. This process involves deleting the information from the Millennium database as well as removing information from the OCLC database that BGSU had the book. She testified she spent approximately 15-20% of her time on withdrawals. She also testified she was responsible for ordering supplies and working on other miscellaneous projects.

Beginning April 15, 2010, Appellant Losoya-Rush testified she was given the additional responsibility of performing original cataloging, which occupied 70% of her time. Unlike copy cataloging, Appellant Losoya-Rush testified that original cataloging involved the process of generating a bibliographical record for a book in the OCLC database. The process of generating a bibliographical record involves determining the format of the entry and deciding the subject heading of the entry. She testified that this process is more complex than copy cataloging and needs to be more precise because the information will be available to everyone with access to OCLC. After the information is entered, Appellant Losoya-Rush testified she

updates the record in OCLC. She stated this work is independently done and there is no review process. Furthermore, Appellant Losoya-Rush testified that the act of original cataloging might involve independent research if the information is missing from the book or if she needs to determine the subject heading in order to properly classify the book in the OCLC database.

Appellant Losoya-Rush testified she performed this independent research herself. She testified that she retained all of her original duties in addition to the original cataloging duties. She also stated that she did not assign work to any employees, was not responsible for setting library policy, and did not have any budgetary responsibilities. In addition, she did not maintain library statistics or handle reference requests.

Appellant Losoya-Rush testified she did not receive any additional compensation when she initially began the new duties in April, 2010. She testified that in December 2010, she received a lump sum, which she was told was for a special project, but she testified she was not responsible for any special projects. Appellant Losoya-Rush testified she was told by Kay Flowers, Dean of the Library, sometime in November, 2010, to stop her original cataloging duties by December 1, 2010. After December 1, 2010, Appellant Losoya-Rush testified she no longer did original cataloging and only performed her pre-April 15, 2010, duties.

Appellant Losoya-Rush testified she received no new position description on or around April 15, 2010, nor did she receive anything in writing telling her to begin the original cataloging. She testified she filed a request for an audit sometime around June 30, 2010, because she felt the duties she was doing then were going to be permanent. When returned, the audit results concluded that Appellant Losoya-Rush was properly classified as a Library Associate 1.

In looking at Appellee's Exhibit 4, the Ohio Classification Specification for the Librarian 2 position, Appellant Losoya-Rush testified that she did not perform any lead work and she did not perform any acquisition activities nor clerical duties. She also testified that she did not visit other libraries to obtain useful information or contact field sources.

Appellant Losoya-Rush testified that she did perform the majority of duties identified in Appellee's Exhibit 5, the BGSU Classification Specification for the Librarian 2 position. Appellant Losoya-Rush testified she created the original bibliographical records starting April 15, 2010. In addition, she testified she revised and edited the classification and cutter number. She maintained a current awareness of changing national practices and she reviewed someone else's copy cataloging work. She also met with cataloguers to discuss various problems she encountered with original cataloging.

On questioning by her counsel, Appellant Losoya-Rush testified that there was no mention at the April 15, 2011 meeting that the original cataloging duties would be temporary. She identified the last three pages of Appellant's Exhibit D as her job description, which contains the original cataloging duties. Appellant Losoya-Rush identified Appellant's Exhibit G as the Classified Staff Handbook for BGSU, and she identified herself as classified staff. She affirmed that section J. on page 37, states that a temporary reassignment must exceed a minimum of two weeks (14 calendar days) but not exceed ten weeks in duration.

Appellant Losoya-Rush identified Appellant's Exhibit J as an e-mail received on June 30, 2010 from Leslie Fern stating that Appellant Losoya-Rush's additional duties were to be temporary. Appellant Losoya-Rush testified that this was the first time that she was made aware that her new duties were temporary, and that she was under the impression that her audit would result in her reclassification.

Appellant Losoya-Rush identified Appellant's Exhibit R as a policy and procedures manual that Christine Plotts created and used to train Appellant Losoya-Rush. She testified she received a copy of this before Ms. Plotts retired. Appellant Losoya-Rush identified Appellant's Exhibit R as a description of the original cataloging duties that were the responsibility of Ms. Plotts before she retired. Appellant Losoya-Rush testified she was never told not to perform Librarian 2 duties by Julie Rabine or Cliff Glaviano. In addition, she testified that Cliff Glaviano trained her to do additional duties, such as internet resources and original cataloging.

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Appellant Losoya-Rush identified Appellant's Exhibit P as a memorandum from Kay Flowers dated November 23, 2010, outlining the new work flow structure of the librarian staff. Appellant's Exhibit Q was identified as a memorandum from Leslie Fern discussing Appellant Losoya-Rush's audit and the final decision, dated November 29, 2010. Appellant Losoya-Rush testified she filed her appeal with this Board after receiving this memorandum.

On cross-examination, Appellant Losoya-Rush testified Appellee's Exhibit 1 was incorrect. Specifically, she testified that Kay Flowers was no longer Dean and that Sara Bushong was the acting Dean. In addition, there was another employee in the cataloging department. She stated that Appellee's Exhibit 1 accurately reflected Appellant Losoya-Rush's position under the supervision of Julie Rabine. Appellee's Exhibit 2 was identified as Appellant's Job Analysis Questionnaire, which was signed on June 23, 2010. Appellant Losoya-Rush testified that it was submitted on approximately June 30, 2010.

Appellant Losoya-Rush identified Appellee's Exhibit 7 as an e-mail exchange between herself and her supervisor along with other individuals from Human Resources. Appellant Losoya-Rush identified the August 10, 2010 e-mail in Appellee's Exhibit 7 as Leslie Fern's statement that the current temporary duties were in line with Appellant's job description.

Appellee's Exhibit 12 was identified as a payment form from BGSU. Appellee Losoya-Rush stated she did receive \$889.44 from BGSU as her lump sum payment. She stated she received the payment but did not sign the form. She stated that the payment was in addition to her regular paycheck and she was unaware of why she received the money. She testified she was told that it was for special projects coordination and for her extra-duties. She testified that it was around this time she was told to stop the original cataloging.

Appellee's Exhibit 5 was identified as the BGSU Librarian 2 position description. Appellee Losoya-Rush testified she did not supervise the work flow of the cataloging duties and she did not perform any clerical duties as described in the exhibit. In addition, she testified she had no supervisory duties at any time. She stated she did perform some planning and research activities from April through November, 2010.

On re-questioning by her counsel, Appellant Losoya-Rush identified Appellee's Exhibit 3 as the Ohio Classification Specification for Library Associate 1. She explained that the phrase "some portions of original cataloging" as stated in Appellee's Exhibit 3 means that someone else does the majority of the work for original cataloging. She testified she did not perform any of the duties in Appellee's Exhibit 5, which is the BGSU Librarian 2 description, in her capacity as Library Associate 1. Appellant Losoya-Rush testified she refused to sign the additional payment information because she felt that the work she was given was not temporary but permanent and she believed that her signature would be interpreted as her consent that the work was temporary. Appellant Losoya-Rush testified that she did not receive any documents assigning her to special projects. She testified that prior to July 1, 2010, her, Cliff Glaviano and Christine Plotts were the only individuals in her department.

Clifford Glaviano testified that he is not currently employed by BGSU and that his last day of employment was June 30, 2010. He stated he had been employed for twenty-six years by BGSU. Prior to his departure from BGSU, Mr. Glaviano's classification was Associate Professor with the title of Coordinator of Cataloging. He testified he was the immediate supervisor of Appellant Losoya-Rush for approximately twenty years.

Mr. Glaviano testified that the purpose of the April 15, 2010, meeting was to discuss the future of cataloging at BGSU since both he and another long-tenured employee were retiring. The result of the meeting was to divide up the work he and Ms. Plotts performed with Appellant Collins and Appellant Losoya-Rush. Mr. Glaviano testified that there was no mention that the new duties assumed by the Appellants was temporary, nor did he believe that the new duties were temporary. Mr. Glaviano testified that he was under the impression that the Job Analysis Questionnaire was the next step in order for Appellant Losoya-Rush to be reclassified.

On questioning by Appellant's counsel, Mr. Glaviano testified he approved the training of Appellant Losoya-Rush by Ms. Plotts. He stated that BGSU was looking to fill a new position to do new cataloging.

Christine Plotts testified she was employed at BGSU from 1970 until June 30, 2010. She testified she was classified as a Librarian 2 when she left. Ms. Plotts stated she was told by Cliff Glaviano to train Appellant Losoya-Rush to perform her duties, which she did. Ms. Plotts testified she was present at the April 15, 2010 meeting and nothing was said at that meeting about Appellant Losoya-Rush only performing Ms. Plotts' duties on a temporary basis. She testified that the training was too involved to lead to temporary duties.

On questioning by Appellant's representative, Ms. Plotts testified that her former duties were in line with the job description provided in Appellee's Exhibit 5, the BGSU specification for Librarian 2. She stated that the Librarian 2 duties included original cataloging and complex problem solving relating to original cataloging. She testified that Julie Rabine stated at one of the meetings that re-classification would be considered after the assignment of new duties. She testified that there was no indication that the new duties for Appellant Losoya-Rush would be temporary. Ms. Plotts then identified Appellant's Exhibit R as the procedure that was used for training.

Julie Rabine testified she is employed as the Coordinator of Acquisitions and Cataloging and has held that position since July 1, 2010. She testified she currently supervises Appellant Losoya-Rush. Ms. Rabine testified that the duties Appellant Losoya-Rush was trained on were only to be performed by her until a temporary person could be hired. She testified that attempts to hire a temporary cataloger were unsuccessful, but a full-time faculty cataloger was hired on May 2, 2011.

Ms. Rabine testified that after the search for the temporary cataloger was not successful, Human Resources informed her that Appellant Losoya-Rush could not continue her temporary work for that long. In response to Human Resources, a new work flow was created and Appellant Losoya-Rush was told to stop her cataloging duties. In addition, she testified that the new work flow was created to centralize the cataloging process within the library as a whole.

Ms. Rabine testified that Appellant Losoya-Rush was performing all the cataloging within the Acquisitions and Cataloging department. She testified that the department was in a state of flux and it was not clear what duties were going to be assigned to each employee.

On questioning by Appellant's counsel, Ms. Rabine testified that her signing off on Appellant Losoya-Rush's Job Analysis Questionnaires was her affirmation of the duties she was performing and the support of her right to file a job audit. She identified Appellee's Exhibit 6 as an e-mail stating her belief that the new duties assumed by the Appellant were temporary.

Sara Bushong testified she is Dean of the University Libraries as of the date of the hearing. Before that, she was interim Dean for one month and prior to that, she was Associate Dean from July 2010 to April 2011. Prior to that, she was Interim Dean from July 2009 to June 30, 2010. She testified that at the time of the spring meeting in April 2010, she wanted to ensure that the knowledge of retiring staff would be transferred to current employees. She testified that Appellant Losoya-Rush took on additional duties to ensure this transfer of knowledge. Ms. Bushong testified that the lump sum payment to Appellant Losoya-Rush was in recognition of the additional duties she performed.

Leslie Fern testified she is the Employee Relations Employment Specialist at BGSU and has held that position for five years. She testified she performed the job audit of Appellant Losoya-Rush. Ms. Fern testified that Appellant Losoya-Rush was appropriately classified in her current job description, as the classification of Library Associate 1 allows for portions of original library cataloging. Furthermore, she testified that the audit considered the time period between June 28 and October 10, 2010.

Ms. Fern explained that when an employee is assigned temporary duties, outside of his or her classification, the employee is awarded a five percent (5%) increase for up to ten weeks. Ms. Fern testified that her office was notified in June through the job audit process about Appellant Losoya-Rush potentially working out of class. When Ms. Fern was notified about the job audit, she testified that she could not proceed with the job audit because the duties were temporary, as indicated by Ms. Rabine.

Ms. Fern also testified that at the same time, she concluded that the additional duties were in line with Appellant Losoya-Rush's current classification. Ms. Fern testified that the audit was re-opened in October to provide a more thorough review of the duties performed by Appellant Losoya-Rush.

Ms. Rabine testified that the lump sum payment was done as a reimbursement for the work done by Appellant Losoya-Rush. She testified that this reimbursement was typically done in situations where people had done extra work. Ms. Rabine stated the reimbursement rate was five percent (5%) for the hours from July 1, 2010 to November 30, 2010.

The record was left open until May 24, 2010 to determine if the BGSU Librarian 2 Classification Specification had been filed with the Secretary of State. On May 16, 2011, Appellee stated in a letter that there was no indication that the BGSU Librarian 2 Classification Specification had been filed with the Office of the Secretary of State.

FINDINGS OF FACT

Since there was no discrepancy in any of the witnesses' testimony as to the duties performed by Appellant Losoya-Rush for the time period of April 2010 to December 2010, I hereby find that the duties as testified to were, in fact, the duties performed by Appellant Losoya-Rush.

CONCLUSIONS OF LAW

At the record hearing, two different classification specifications were presented for the classification of Librarian 2, one being the state classification and the other promulgated by BGSU. The record was kept open to ascertain if the specification promulgated by BGSU was ever filed with the Secretary of State's office or approved by the Department of Administrative Services. On May 16, 2011, Appellee responded that the specification in question was created by Appellee in 1989 and that there was no record of it ever being filed with the Secretary of State's office. Since BGSU does not have its own classification plan, it uses the state specifications; therefore the specification promulgated by BGSU is not valid and not considered in the analysis. Also, administrative notice was taken of the fact that the only state specification applicable to universities in the Librarian series is that of Librarian 1 (non-degreed). The classification specifications for Library Assistant (18311) and Library Associate (18322) were deleted from the classification plan sometime in 2008.

Therefore, that means that the only classification available to Appellant Losoya-Rush is that of Librarian 1 (non-degreed). There are no other options available. BGSU cannot create any classification specifications because they have not promulgated their own classification plan. Pursuant to section 124.14(F)(1) and (2) of the Ohio Revised Code, a state university can promulgate their own classification plan, but it must be done so in accordance with administrative rules adopted under section 111.15 of the Ohio Revised Code and must be filed with the Secretary of State and the Legislative Service Commission. Until doing so, a university must follow the rules as promulgated by the director of the Department of Administrative Services. Section 124.14(F)(2) of the Ohio Revised Code states as follows:

(2) Each board of trustees shall adopt rules under section 111.15 of the Revised Code to carry out the matters of governance described in division (F)(1) of this section. Until the board of trustees adopts those rules, a state university or college shall continue to operate pursuant to the applicable rules adopted by the director of administrative services under this chapter.

Since Appellee notified this Board that the specification used by BGSU, Librarian 2, was never filed with the Secretary of State's office and because BGSU has not developed its own classification plan, the only option available to them is to use the state's specifications developed for counties and universities. If BGSU wanted to create their own classification plan, they would have to do so for all classifications, not just one here and there. They cannot pick and choose between the state specifications and their own – it must be all or none. It is unfortunate that BGSU has not created its own classification plan, as the specifications created by the Department of Administrative Services are very outdated and have not been revised to reflect the current technology. Even so, this Board has no choice but to utilize the state specifications since Appellee BGSU has not created its own classification plan. In lieu of creating its own plan, BGSU could request the Department of Administrative Services to update the Librarian 1 classification specification and to create other specifications for that series.

Since the Librarian 1 classification specification is so outdated, the classification specifications for the Researcher series, the Management Analyst series and the Data Librarian 1 were also reviewed. None of those specifications described Appellant Losoya-Rush's duties any better than the Librarian 1

specification. The Researcher series required the incumbent employee to collect information relative to transportation projects, to develop policy, conduct field tests, develop research tools and act as a research coordinator. None of these duties apply to Appellant Losoya-Rush. The Management Analyst series requires the incumbent to supervise either other employees or programs, neither of which Appellant Losoya-Rush does. The Data Librarian 1 must report to a Senior Data Librarian and the primary duty is to catalog, file and retrieve magnetic tapes and securely label and deliver such tapes. Clearly this duty does not apply to Appellant Losoya-Rush.

ranked duty are as follows:

Selects, classifies & catalogues books, documents, pamphlets, newsclips, microfiche, slides, films or other library service materials; reviews printed & non-printed library materials & recommends acquisition of new &/or updated materials, supplies &/or equipment; screens materials to insure subject matter is appropriate for & pertinent to needs & interests of assigned library service area; coordinates library services with other departments, libraries or agency divisions; assists in development & implementation of programs for furnishing library materials to segregated units, infirmaries, dormitories &/or other units removed from library itself; maintains running inventory of library service materials & equipment & coordinates use & scheduling of audio-visual equipment & supplies.

In examining the duties of Appellant Losoya-Rush and comparing her duties to the classification specification for Librarian 1, she does catalogue books, as her primary duty prior to April 15 and after December 1, 2010 was copy cataloguing, which meant she transferred bibliographical information between two systems. Her other major duty prior to April 15, 2010 was to withdraw books which were being permanently withdrawn, which is similar to coordinating library services. After April 15, 2010, Appellant Losoya-Rush began the original cataloguing duties, which involved selecting a subject heading at times, classifying and cataloguing the book. Akin to maintaining an inventory, Appellant Losoya-Rush testified she ordered supplies. She also testified she performed some clerical duties and worked on projects, which is in accordance with the rank two and four duties as found on the

classification specification. Therefore, Appellant Losoya-Rush does do a majority of the functions of the Librarian 1 classification.

As for all of the testimony about the duties that were assumed after April 15, 2010, it has become a moot point. Since there is only one specification, which does not mention copy or original cataloguing, it does not make any difference as to whether or not those duties were or were not temporary. There is only one game in town, so to speak, and all of the library duties must fall into the parameters of that classification specification. It does appear that Appellee wasn't quite sure as to the nature of the added duties, as they could not be classified as "temporary duties", for those are not to exceed a period of ten weeks. Obviously, the work was performed for a period of longer than ten weeks, since Appellant Losoya-Rush testified she did the duties from April 15 to December 1, 2010. As such, the lump sum payment is a mystery. Appellee testified it was given to Appellant Losoya-Rush for her work on a special project, but there was no mention of any rule or policy which permits a lump sum payment for special projects. If the work was to be permanent, then no lump sum payment should have been given. The temporariness or permanency of the duties was never discussed until Appellant Losoya-Rush filed for a job audit and at that point, it seemed that Appellee had to decide what to do. Management did not appear to have made sound and planned out management decisions before assigning additional duties to Appellant Losoya-Rush and it appeared that decisions were made as problems or issue arose. BGSU could have handled the entire situation differently and better with clearer communication and decisions. That being said, since there is only one option for the classification of Appellant Losoya-Rush, there was no reduction in her duties after December 1, 2010.

Therefore, it is my **RECOMMENDATION** that Appellee's determination that Appellant Losoya-Rush is properly classified as a Library Associate 1 be **DISAFFIRMED**, since that classification no longer exists, and that she be properly classified as a Librarian 1 (Non-Degreed), classification number 64311C, effective with the pay period immediately following the date of her audit request.



Marcie M. Scholl
Administrative Law Judge

mms: