

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

ROCCO VADALA,

*Appellant,*

v.

Case Nos. 10-RMD-06-0188  
10-RMD-06-0189

TRUMBULL COUNTY SHERIFF,

*Appellee*

**ORDER**

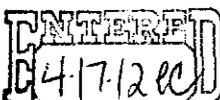
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned remand cases.

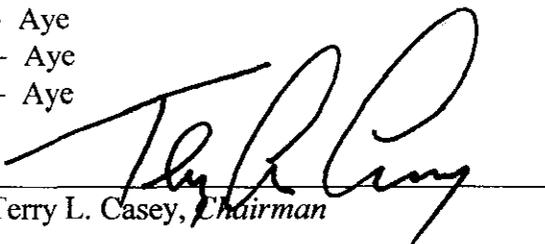
After a thorough examination of the entirety of the records, including a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the findings of the Administrative Law Judge and the Recommendation of the Administrative Law Judge as that Recommendation goes to the determination that Appellant's position with Appellee was exempted from the classified service pursuant to R.C. 124.11 (A) (9). Because the Honorable Paul H. Mitrovich of the Court of Common Pleas of Trumbull County has already made a determination that these matters were timely filed with the Board, we see no reason to further review any timeliness issues in the instant remand cases.

As noted, the Board agrees with the Administrative Law Judge's determination that Appellant's position was exempted from the classified service by virtue of Appellant's fiduciary relationship to the Trumbull County Sheriff and that, as a result, the Board lacks jurisdiction over the actions complained of. We further note that the parties had a full record hearing before the Administrative Law Judge. At the hearing, Appellant's duties and actions were carefully examined and the parties were allowed the opportunity to make extensive presentations. After a full examination of the extant records, then, we find that this record hearing would appear to satisfy the requirement for same set forth in Judge Mitrovich's June 22, 2010 Opinion and Judgement and, accordingly, find there is no remedy or award of benefits that the Board may provide to Appellant at this time.

Wherefore, it is hereby **ORDERED** that the instant remand cases be **DISMISSED** for lack of jurisdiction over their respective subject matter, pursuant to R.C. 124.03 and R.C. 124.11 (A) (9).

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, April 17, 2012.



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**

Rocco Vadala,

*Appellant*

v.

Trumbull County Sheriff,

*Appellee*

Case Nos. 10-RMD-06-0188  
10-RMD-06-0189

December 8, 2011

Jeannette E. Gunn  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on pursuant to an order of remand from the Trumbull County Court of Common Pleas, reversing this Board's May 12, 2009, Order, which dismissed the above-referenced appeals as untimely filed. The Trumbull County Court of Common Pleas found that although Appellant had received notice of his layoff in August 2008, he did not receive actual notice of his termination from employment with Appellee until December 2008. The matter was subsequently returned to the Board for further consideration.

Appellee asserted a second jurisdictional bar upon remand, arguing that Appellant was an unclassified employee. Section 124.03 of the Revised Code limits the Board's jurisdiction to actions concerning classified employees. Therefore, the threshold issue of jurisdiction must again be addressed by this Board prior to any examination of the merits of Appellant's removal.

A hearing was conducted on June 22, 2011, to determine Appellant's classified or unclassified status at the time of his layoff and/or removal from employment. The testimony at record hearing was limited to Appellant's actual job duties. Appellant was present at record hearing and appeared *pro se*. Appellee was present through its designee, Sheriff Thomas Altieri, and was represented by Jeffrey Adler, Assistant Prosecuting Attorney.

## STATEMENT OF THE CASE

Thomas Altieri testified that he has held the office of Trumbull County Sheriff since January 1993 and confirmed that he hired Appellant as an administrative assistant in August 2000. He indicated that Appellant was not required to take a civil service test prior to being hired into the position and that he was not aware of any formal interview process. The witness noted that he and Chief Deputy Cook both knew Appellant prior to hiring him.

Sheriff Altieri indicated that Appellant worked in the jail facility as a Case Manager to learn about the position and its duties. He explained that Case Managers are responsible for identifying the offenders who are eligible to participate in programs and arranging for instructors to come to the facility. The witness stated that he considered Appellant to be part of the management team and noted that Appellant worked on a variety of projects, including supervising and managing the Jail Reduction program, working on the Department website, and grants writing. Sheriff Altieri recalled that Appellant wrote a grant and received funding for a House Arrest program; he noted that although the program was never fully implemented, Appellant had full authority over the program and he trusted Appellant to manage it without immediate supervision.

Sheriff Altieri testified that Appellant did not directly report to anyone other than himself, although he did have a daily supervisor who handled administrative issues. The witness indicated that he trusted Appellant to perform his job duties without direct supervision and noted that Appellant had the leeway to set his own working hours. He noted that Appellant did not have a written job description, but worked on whatever duties he assigned him. Sheriff Altieri observed that he trusted Appellant to do jobs that he would not assign to any other employee.

The witness recalled that when he ran for re-election in 2004 Appellant helped on his campaign. Sheriff Altieri indicated that Appellant was part of his campaign committee, and was involved in campaign activity. He testified that Appellant was very active in the Democratic party during his employment with Appellee, and served as President of the Young Democrats, as well a precinct committee person.

Sheriff Altieri testified that Appellant had some decision making authority for the Department, depending on the topic. He confirmed that Appellant did not have

the authority to sign the Sheriff's name to documents or contracts, or issue discipline.

Don Guarino testified that he is presently employed in the Trumbull County Sheriff's Department as Chief of Operations. He noted that he is in charge of jail operations, the Department's drug task force, and oversight of all employees.

The witness recalled that when he began his position as Chief of Operations in late March 2008, he requested a list of job duties from Appellant but never received one. Chief Guarino noted that he supervised Appellant for approximately three months, and during that time Appellant did not make decisions on behalf of the Department or formulate policy. He indicated that he did not assign work to Appellant and that he had no personal knowledge of the duties Appellant may have performed prior to the time he began supervising him. The witness stated that during the time period of late March 2008 to early August 2008, the only job duty he knew that Appellant performed was writing grants.

Chief Guarino noted that when he began his supervision of Appellant, Appellant was not clocking in and out and came and went when he wanted to. He confirmed that in July he instructed Appellant to begin using the time clock and told him that he wanted him to work regularly scheduled hours.

Chief Guarino recalled that he notified Appellant that his position was being abolished, but that Sheriff Altieri wanted to offer him a different position as Jail Administrator. He noted that in order to qualify for the position, Appellant had to attend corrections officer school. The witness recalled that Appellant went to classes for two days and then quit, indicating that he did not want the Jail Administrator position.

Ernie Cook testified that he is currently employed by Appellee as Chief Deputy, a position he has held for approximately eleven years, and 9-1-1 Director. He noted that as Chief Deputy he is responsible for administering grants, making some policy decisions and coordinating Department divisions.

Chief Cook recalled that Appellant was hired by Appellee in August 2000 as a Case Management Officer and was one of several applicants for the position. He noted that he did not participate in the decision to hire Appellant, but indicated that Appellant was interviewed by members of the community corrections board. The

witness observed that Appellant had prior experience in probation and had been Chief Probation Officer for the Eastern District Court in Trumbull County.

Chief Cook explained that, as a Case Management Officer, Appellant interviewed eligible offenders to determine if they met the criteria for certain programs and looked for sanctions that did not involve incarceration. He testified that this required Sheriff Altieri to place a high degree of trust in Appellant; selecting inmates who were able to go out into public for some of the programs required an individual with greater knowledge and experience than the average Corrections Officer. The witness observed that Appellant's training and experience gave him good offender "radar."

Chief Cook recalled that eventually additional duties, including grants writing, were assigned to Appellant, making his position a kind of hybrid. He noted that Appellant "took care of loose ends" and was a problem solver; Appellant was generally considered the Department's troubleshooter.

Chief Cook testified that he supervised Appellant from 2000 until early 2008 and stated that he trusted Appellant to perform his duties on his own and without supervision. He confirmed that he reviewed Appellant's grant applications prior to their submission, but trusted his judgment. The witness indicated that Appellant had the ability to manage duties as he saw fit and had some decision making ability, but did not make policy for the Department. Chief Cook observed that while some of the tasks performed by Appellant were clerical in nature, his duties were varied and his job was not routine.

Appellant testified that he was employed by Appellee from 2000 to 2008. He recalled that he submitted a resume and job application, and was interviewed by the head of the community corrections board and the jail warden for the position of Case Manager. Appellant confirmed that he was acquainted with both Sheriff Altieri and Chief Deputy Cook prior to being hired. He indicated that he was never told by anyone that his position was unclassified.

Appellant explained that the first position he held, Case Manager, was grant-funded. He stated that his duties were to identify offenders who had served their time or completed jail programs that qualified them for early release and submit their names to the appropriate judge, and to coordinate the work release program for inmates. Appellant noted that when the grant funding for that position ended, he moved to an Administrative Assistant position; although he continued to perform

some of his prior Case Manager duties, he also began writing grants, researching house arrest and video arraignment programs, and working on other projects. Appellant recalled that for a while he staffed the sex offender program and checked addresses and processed paperwork for newly registered offenders.

Appellant indicated that he did not decide which grants to apply for, but did research and summarize them for Chief Cook's review. He noted that he did not serve as project manager for any grants. Appellant characterized his grant writing activities as research and clerical in nature.

He recalled that when Chief Guarino became his supervisor in 2008, he specified the hours he wanted Appellant to work and also moved Appellant's office location. Appellant confirmed that prior to that time he did not have to clock in and out, and could come and go from the office as he pleased.

#### **FINDINGS OF FACT**

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

Appellant was hired by Appellee in 2000 as a Case Manager. Prior to being hired, Appellant had been employed as Chief Probation Officer for the Eastern District Court in Trumbull County.

As a Case Manager, Appellant was assigned to work in the jail and was responsible for supervising and managing the Jail Reduction program, which entailed identifying offenders who were eligible for release and/or early release, and for facilitating programs offered to inmates in the jail, including the work release program. The Case Manager position was grant funded.

When the grant funding for the Case Manager position ended, Appellant moved to an Administrative Assistant position. In addition to continuing to perform some of his previous Case Manager duties, Appellant also assumed responsibility for writing grants, and took on other special projects as assigned by Sheriff Altieri, taking care of "loose ends" and acting as the Department's troubleshooter.

Appellant had full autonomy over the programs he managed, performed his job duties without direct supervision, and set his own working hours. His direct

supervisor(s) handled administrative issues, but did not manage his work. In 2008, Chief Guarino assigned regular work hours to Appellant and instructed him to begin clocking in and out.

During his employment with Appellee, Appellant engaged in activities related to Sheriff Altieri's political campaign. He was active in the Democratic party during his employment with Appellee and served as president of the Young Democrats and a precinct committee person.

Appellant did not have the authority to sign the Sheriff's name to documents or contracts, or issue discipline. He did not supervise any other employees. Appellant did not formulate Department policy.

Appellant was notified in August 2008 that his position was being abolished and that he would be laid off. He was subsequently offered a position as Jail Administrator but declined that position.

### **CONCLUSIONS OF LAW**

This Board does not possess subject matter jurisdiction over unclassified employees, since Ohio Revised Code Section 124.03 limits this Board's jurisdiction to actions concerning classified employees. Civil service employment in the State of Ohio is divided into the classified and unclassified services; the division between these two types of public employment is outlined in R.C. 124.11(A), which describes a variety of positions in the public sector which are placed in the unclassified service. In this instance, Appellee asserts that Appellant's position was exempted from the unclassified service pursuant to R.C. 124.11(A)(9). At the time of Appellant's removal, that section of the Ohio Revised Code exempted from the classified service:

(9) ... 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 ...

R.C. 124.11(A)(9) references both a “fiduciary” relationship and an “administrative” relationship. Neither term is defined by the Revised Code, but they are defined within the Administrative Code. O.A.C. 124-1-02 defines a “fiduciary relationship” in subsection (I) as:

... a relationship where the appointing authority reposes a special confidence and trust in the integrity and fidelity of an employee to perform duties which could not be delegated to the average employee with knowledge of the proper procedures. These qualifications are over and above the technical competency requirements to perform the duties of the position. Whether one position occupies a fiduciary relationship to another is a question of fact to be determined by the board.

An “administrative relationship is defined in subsection (C) as:

... 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.

An examination of the testimony and evidence contained in the record indicates that Appellant independently managed the programs assigned to him by the Sheriff and performed his work without direct supervision. For the majority of the time he was employed by Appellee, Appellant did not have regularly scheduled work hours. Although he was assigned a regular work schedule approximately one month prior to the end of his employment with Appellee, Appellant still retained the discretion to carry out his job duties in whatever manner he saw fit. Sheriff Altieri testified that he relied on Appellant’s previous experience and qualifications to carry out his job duties and no special training was given to him. He stated further that Appellant reported directly to him and that he trusted Appellant to perform his duties without supervision.

I find that the manner in which Appellant performed his job duties is indicative of a fiduciary and administrative relationship to Sheriff Altieri, an elected county official; Appellant was directly responsible to him. Sheriff Altieri placed a special

confidence and trust in Appellant's integrity and fidelity when he assigned him to work without supervision in the performance of his job duties. Similarly, the Sheriff relied on Appellant's personal judgment and leadership abilities in assigning him duties of a "troubleshooting" nature without additional training or supervision.

An additional hallmark of Appellant's unclassified status is his participation in partisan political activity during his employment with Appellee. The record contains undisputed testimony that Appellant engaged in activities related to Sheriff Altieri's political campaign, and served as president of the Young Democrats and a precinct committee person while employed by Appellee. R.C. 124.57 specifically prohibits classified employees from serving as an officer in a political organization or taking part in politics in any manner other than to vote and freely express their political opinions.

The testimony and evidence presented collectively constitute a preponderance of reliable, probative and substantial evidence to support a conclusion that Appellant occupied a fiduciary and/or administrative relationship with Appellee. See, *Carter v. Butler County Sheriff* (Apr. 12, 1994), Butler Co., No. CV93-11-1705, unreported; *aff'd* (Nov. 7, 1994), Butler App. No. CA94-05-111, unreported, 1994 WL 606164; dismissed (1995) 71 Ohio St.3d 1497. This relationship is sufficient to place Appellant's position in the unclassified civil services.

Appellant's original appeals to this Board, SPBR Case No. 08-LAY-12-0652 and 08-REM-12-0653, were filed on December 15, 2008. A report and recommendation was issued on March 31, 2009, addressing both matters. Appellant filed objections to only the recommendation made in SPBR Case No. 08-REM-12-0653; the Board subsequently issued an Order dismissing both cases for lack of jurisdiction due to untimely filing on May 12, 2009. Appellant appealed the Board's Order to the Trumbull County Court of Common Pleas, which determined, as previously noted, that Appellant received notice of his layoff in August 2008, but did not receive actual notice of his termination from employment with Appellee until December 2008. Upon remand to the Board, the matters were designated SPBR Case No. 10-RMD-06-0188, which corresponded to Appellant's appeal of his layoff, and 10-RMD-06-0189, which corresponded to Appellant's appeal of his removal.

Accordingly, as all of the parties and the reviewing court agree that Appellant received notice of his layoff in August 2008, and the date of Appellant's initial appeal of that layoff is clearly established by documentary evidence contained in the

O.A.C. Section 124-1-03(A). Appellant filed the appeal of his layoff approximately one hundred and twenty (120) days after receiving actual notice of his layoff from employment with Appellee.

With regard to SPBR Case No. 08-REM-12-0653/10-RMD-06-0188, based upon the above analysis and conclusion that Appellant had a fiduciary and/or administrative relationship to Appellee, thereby placing his position in the unclassified civil service pursuant to the provisions of R.C. 124.11(A)(9), I respectfully **RECOMMEND** that Appellant's appeal of his removal from employment be **DISMISSED** for lack of jurisdiction over the parties. R.C. 124.03.

  
Jeannette E. Gunn  
Administrative Law Judge

JEG: