

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

GREGG BOYLES,

*Appellant,*

v.

Case No. 11-ABL-02-0062

GEAUGA COUNTY CORONER,

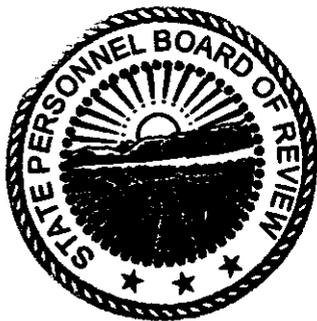
*Appellee*

**ORDER**

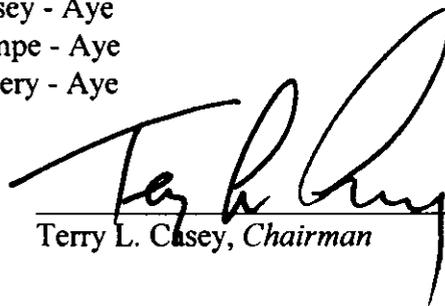
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, 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 appeal is **DISMISSED** due to a lack of jurisdiction by this Board to consider Appellant Boyles' appeal on the basis that he was employed pursuant to a purchased personal services contract which took him out of the realm of a civil service employee, or in the alternative, that he was an unclassified employee pursuant to section 124.11(A)(9) of the Ohio Revised Code over which this Board does not possess jurisdiction.



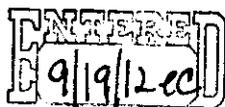
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

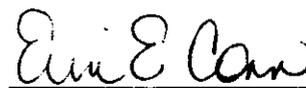
  
Terry L. Casey, *Chairman*

**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 19, 2012.



  
Erin E. Conn  
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**

Gregg Boyles

Case No. 11-ABL-02-0062

*Appellant*

v.

May 16, 2012

Geauga County Coroner

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 October 12, 2011. Present at the hearing were the Appellant, Gregg Boyles, represented by Joseph M. Hegedus, Attorney at Law, and Appellee Geauga County Coroner Kevin Chartrand, M.D., represented by Susan T. Weiland, Assistant Prosecuting Attorney.

The purpose of the record hearing was to determine if Appellant Boyles was or was not an unclassified employee at the time of his job abolishment. Appellee alleged Appellant Boyles was an unclassified employee pursuant to section 124.11(A)(9) of the Ohio Revised Code. If this Board determines that Appellant Boyles was an unclassified employee at the time of his job abolishment, then the appeal will be dismissed as this Board does not possess jurisdiction over the job abolishment of an unclassified employee. If, however, this Board determines that Appellant Boyles was a classified employee, then another hearing will be convened on the merits of the job abolishment.

**STATEMENT OF THE CASE**

Appellee's first witness was Kevin Chartrand. He testified that he is a self-employed physician and has been the county coroner since August 30, 2006, with the most recent election taking place in 2008. Dr. Chartrand identified Appellee's Exhibit 1 as a table of organization dated February 28, 2011, showing two full-time investigators and one part-time investigator. The part-time investigator position was eliminated at the end of 2010 and the full-time investigator positions were eliminated in February, 2011. He stated the investigators reported directly to him and that the Deputy Coroner acted in his stead during his absence. The investigators set their

own schedule and divided the work between them without any input from Dr. Chartrand. Appellant Boyles had keys to the three rooms in the office, giving him access to all files and evidence.

Appellant Boyles began his employ in September 2004 as a part-time investigator and in January 2006, he became a full-time investigator. Dr. Chartrand testified he had a good working relationship with Appellant Boyles, as they worked on cases together and went to conferences together. Appellant Boyles would call Dr. Chartrand regarding any problems with cases, decisions or findings.

In looking at Appellee's Exhibit 2, Dr. Chartrand identified it as the position description for an Investigator/Clerk and testified that it was an example of Appellant Boyles' duties, as Appellant Boyles' did more than what was listed. Dr. Chartrand testified Appellant Boyles maintained data on the computers and arranged for the cell phone contracts. He also contacted other coroner's offices on behalf of the office and was in routine communication with the Cuyahoga county coroner's office.

Appellant Boyles had the authority to spend any reasonable amount of money that would augment the running of the office, such as safety items, which Dr. Chartrand trusted Appellant Boyles to purchase with no monetary limit. He testified Appellant Boyles purchased gas masks, gun holsters, jackets, safety vests and other protective items, none of which Dr. Chartrand first approved.

Appellee's Exhibit 3 was identified as an Accounting Forms Authorization which permitted Appellant Boyles to sign his name or Dr. Chartrand's name on all accounting forms. The form was signed by Appellant Boyles in 2006, but was still valid as it has never been revoked. Dr. Chartrand testified he trusted Appellant Boyles had the proper judgment to sign forms that bound Appellee to a contract, such as the contract for cell phones which Appellant Boyles signed. Appellee's Exhibit 4 was identified by Dr. Chartrand as a purchase order dated October 28, 2009 for the purchase of five cell phone lines in the amount of \$3,539.40. He stated the purchase order was signed by Appellant Boyles and testified Appellant Boyles did not seek his approval before entering into the contract for the cell phones, although he did mention to Dr. Chartrand that he was looking at cell phone contracts.

Appellee's Exhibit 5 was identified by Dr. Chartrand as a purchase order dated March 2, 2011 for a Verizon cell phone. He testified Appellant Boyles was laid off by then and when Dr. Chartrand contacted the service provider to cancel the cell phones, it was quite a task as Verizon had Appellant Boyles listed as the authorized official for the office, thereby making it difficult for Dr. Chartrand to cancel the contract.

Dr. Chartrand testified Appellant Boyles had access to all mail and that he opened all of the mail addressed to Dr. Chartrand, even that marked as confidential. Dr. Chartrand stated Appellant Boyles was not authorized to sign payroll but he did give presentations on behalf of the office and assisted with community outreach presentations.

Dr. Chartrand explained that in conducting investigations, Appellant Boyles collected evidence, preserved the scene, prepared the body for transport, took blood samples and worked with the local agencies involved. He would obtain information which was useful in determining the mode, manner and cause of death and would speak with family members on behalf of Appellee as well as represent Appellee at the scene. Appellant Boyles could talk with the media on behalf of the Appellee although if a case appeared to be controversial, Dr. Chartrand would ask the investigators to defer comment. He testified he did not micro-manage the investigations as he trusted Appellant Boyles to properly collect evidence and to manage the paperwork. There was no procedural manual for Appellant Boyles to follow and it was up to him to decide if an incoming call was or was not a coroner's case. He also had to remove all the personal belongings from the body, including jewelry and other possessions and had to determine which of those to release to the family and which to keep as evidence. Appellant Boyles was also responsible for deciding whether or not to send the body for an autopsy, as there was a pre-signed form for him to use. Dr. Chartrand testified he relied on Appellant Boyles' reports in rendering his verdicts.

Appellee's Exhibit 6 was identified as a letter from Appellant Boyles, dated June 25, 2009, to Dr. Chartrand. Dr. Chartrand testified the office had a computer malfunction and Appellant Boyles took care of the problem and notified him after the fact. It is Dr. Chartrand's note that appears at the bottom of the letter stating "Noted 7/1/09" which is the date he was apprised of the problem and solution.

On cross examination, Dr. Chartrand identified Appellant's Exhibit A as the letter notifying Appellant Boyles of the abolishment of his position, dated February 2, 2011. He testified he signed the letter but legal counsel wrote the letter. Dr. Chartrand testified he approves purchase orders and explained that their purpose is to let the company who is receiving it know that there are funds available to pay for the purchase. He stated he does not know if Appellant Boyles ever signed any accounting forms even though he was authorized to do so. Appellant's Exhibit D was identified by Dr. Chartrand as Appellant Boyle's employment contract, which he testified he signed. Appellant's Exhibit E was identified by Dr. Chartrand as the Geauga County Personnel Manual and he stated that employees are not exempted from the provisions. He testified Appellant Boyles had no supervisory duties and he did not promulgate any office policy nor did he draft the budget for submission to the Commissioners. Dr. Chartrand stated the office did not have a secretary or clerk as that work was done by the investigators.

Dr. Chartrand testified that he did not report to the Coroner's office every day and if the employees wanted to talk to him, they would go to his private office or call him.

Appellant Boyles testified he drafted Appellee's Exhibit 6 regarding the computer problems and solutions. He had handled an investigation and the family requested to see the case photos but he could not find them due to an equipment failure. He stated Dr. Chartrand instructed him what to do to fix the problem. With respect to the cell phones, Appellant Boyles testified Dr. Chartrand was having problems reaching the investigators so he directed Appellant Boyles to get cell phones for the investigators. He also testified that he did not sign any accounting forms, even though he was authorized to do so. In looking at his employment contract, Appellant Boyles testified he met with Dr. Chartrand when he became Coroner and he signed the addendum to the contract.

Appellant Boyles confirmed that he had no supervisory duties and never signed payroll documents. When he requested leave time, he would complete the request form and put it in Dr. Chartrand's box for signature. He stated he entered into the contract with Verizon at the direction of Dr. Chartrand and testified he was always told he was a classified employee. Appellant Boyles testified he checked either with the Deputy Coroner or with Dr. Chartrand on every case, although he did judge whether or not the referred cases were theirs or not. He did one training

session on his own and he talked to Dr. Chartrand every day. He testified he did not open any confidential information that was not an autopsy report.

### **FINDINGS OF FACT**

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

1. At the time of Appellant Boyle's job abolishment, he had been employed by Appellee for approximately ten years, first as a part-time investigator and then as a full-time investigator.
2. Appellant Boyles was employed pursuant to an Employment Contract which set out the terms and conditions of his employment, including his job duties, his rate of pay (which was subject to negotiation not less than annually), the reasons he could be terminated and his benefits.
3. Appellant Boyles reported directly to Dr. Chartrand and was responsible for setting his schedule, coordinating his hours with the other investigator.
4. Appellant Boyles had keys to the office, giving him access to all documents, records and evidence. He also had access to all mail coming into the office.
5. Appellant Boyles conducted his investigations with a lot of autonomy and very little monitoring. At the investigations, he was frequently the only investigator and made the determination as to whether or not a referral was under the Appellee's jurisdiction. During the investigations, he was representing the Appellee.
6. Appellant Boyles signed a purchase order, as an authorized official, to purchase cell phones for the office. His signature on the purchase order bound the Appellee to the purchase.

## CONCLUSIONS OF LAW

This purpose of the hearing was to determine if this Board has jurisdiction over the abolishment of Appellant Boyles' position of Investigator. Appellee had the burden of proving that Appellant Boyles was an unclassified employee at the time of his job abolishment, thereby divesting this Board of jurisdiction to review his job abolishment. Appellee has met its burden.

While Appellee has met its burden in proving by a preponderance of the evidence that Appellant Boyles was an unclassified employee pursuant to section 124.11(A)(9) of the Ohio Revised Code, this Board is also without jurisdiction to review the appeal of Appellant Boyles as the evidence has established that Appellant Boyles was a contract employee and not a classified employee. Appellant's Exhibit D was admitted into evidence and is titled "EMPLOYMENT CONTRACT". The contract is between Appellee and Appellant Boyles. In reading the terms and conditions of the contract, it is clear that Appellant Boyles was under a purchased personal services contract with the Appellee and was not a classified employee.

The contract states that Appellant Boyles' employment is "upon the terms and conditions of this Agreement" and is for "a set term with an annual negotiation of compensation, benefits and perquisites". There is a paragraph in the contract which states that the parties shall negotiate Appellant Boyles' salary not less than annually. Therefore, Appellant Boyles was not subject to any salary schedule, nor was his compensation set by his employer. Instead it was negotiated by the parties every year. Appellant Boyles' duties were set out in a position description attached to the contract instead of being subject to a classification plan. The contract provides that his duties may be "extended or curtailed" depending on the demands of the Appellee. Appellant Boyles' benefits, such as vacation, sick and personal leave, holidays and fringe benefits, are all determined by the contract. Even though most of those benefits mirror what is given to classified employees pursuant to statute, Appellant Boyles' benefits were not determined by statute but were determined by his employment contract. The termination notice in the contract provides that Appellant Boyles could be terminated

"upon written notice by the Employer in the event of any acts by the Employee constituting substantial malfeasance, misfeasance, and/or

nonfeasance or **constituting a substantial breach of any his duties under this Contract.**" (Emphasis added),

The threshold for the termination of Appellant Boyles' service isn't that of a classified employee, which is found in section 124.34 of the Ohio Revised Code. Instead, his threshold is defined by the contract and includes a breach of contract. The Agreement also contains a paragraph which states that "This Agreement contains the entire understanding of the parties...". It also states that Appellant Boyles acknowledges that "his services are unique and personal", thereby taking himself out of the realm of the classified employee whose duties are part of a classification plan.

The original contract was signed by then Coroner Evans and Appellant Boyles and has been continuing in nature by signed Addenda, between Coroner Chartrand and Appellant Boyles. The contract is not between a labor union and Appellee, as the evidence established that Appellant Boyles is not represented by a labor union and there is no negotiated contract between the Appellee and a labor union. The contract is simply a contract between two parties for the "unique and personal" services of Appellant Boyles. Although the Employment Contract purports to have Appellant Boyles covered by certain statutes of the Ohio Revised Code, such as section 124.38, the contract cannot, in and of itself, give classified status to Appellant Boyles where none exists. Appellant Boyles was either a classified employee covered by all of the laws pertaining to classified employees, such as being under a county classification and compensation plan, subject to all of the provisions regarding benefits and subject to section 124.34 of the Ohio Revised Code, or he was under a purchased personal services contract. He can't take bits and pieces of the Ohio Revised Code and decide which pieces are most advantageous to him and ignore the rest through a contract. The Employment Contract does not even address the subject of a job abolishment or layoff, only that of "malfeasance, misfeasance, nonfeasance or a substantial breach of any of his duties under this Contract." Clearly, Appellant Boyles was not a classified employee.

Appellant Boyles appears to have received salary increases each year under the Employment Contract and not pursuant to any salary schedule applicable to county employees. His salary was negotiated under the provisions of the contract, not under the provisions of the Ohio Revised Code applicable to classified employees.

The purchased personal services contract, or Employment Contract, that governed the employment of Appellant Boyles does not confer unclassified status upon Appellant Boyles. Indeed the designation of an unclassified employee is one set by statute for those employees who are in civil service to the state and whose terms and conditions of employment are set by statute, not by a purchased personal service contract. A civil service employee is either classified, which means he or she is protected by all of the civil service statutes, or is unclassified pursuant to the duties performed or pursuant to a specific statutory designation. The unclassified employee's tenure is subject only to the pleasure of the appointing authority and is not subject to limitations of malfeasance, misfeasance, nonfeasance or breach of duty. Appellant Boyles was neither classified nor unclassified as he was an independent contractor working pursuant to the terms and conditions of a negotiated purchased personal services contract. His duties were subject only to that contract, as were his salary, benefits and his termination. Therefore, this Board does not possess subject matter jurisdiction over Appellant Boyles' appeal as he was not a civil servant but was instead an independent contractor working under a purchased personal services contract.

In the event that this Board does not agree with the above legal conclusions and determines that Appellant Boyles was a civil servant, this Board would still be divested of jurisdiction over his appeal, as his duties place him into the unclassified service pursuant to section 124.11(A)(9) of the Ohio Revised Code. That statute states as follows:

(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).

As can be seen from reading the above statute, any county employee who reports to and is directly responsible to an elected county official and who holds a fiduciary or administrative relationship to that official, is in the unclassified service. The evidence clearly established that Appellant Boyles reported directly to Coroner Chartrand, who is an elected county official. The evidence also established that pursuant to the duties assigned to Appellant Boyles, he was employed in a fiduciary capacity.

The definition of fiduciary relationship is found in this Board's administrative rule 124-1-02(I) of the Ohio Administrative Code. It states as follows:

- (I) "Fiduciary relationship" generally means 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.

The evidence established that Appellant Boyles was in a fiduciary relationship with Dr. Chartrand as Dr. Chartrand placed a great deal of trust and confidence in him to carry out his duties on his behalf. Appellant Boyles reported directly to an elected official, had the autonomy to set his own schedule, had keys to the office, signed a binding purchase order in the capacity of "authorized official" and represented the Appellee on all of his investigations, dealing with the family of victims and other agencies.

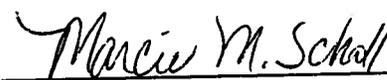
One of the criteria in determining if an employee occupies a fiduciary relationship to the appointing authority is if the duties performed could be "delegated to the average employee with knowledge of the proper procedures." If it is to be assumed *arguendo* at this point that Appellant Boyles was not on a purchased personal services contract which excluded him from the civil service, then the

Employment Contract defines his duties. In paragraph 15. "Assignment", it specifically states:

The Employee acknowledges that his services are **unique and personal**. Accordingly, the Employee may not assign his rights or delegate his duties or obligations under this Contract. (Emphasis added).

The above language states that Appellant Boyles' provided services to the Appellee which were unique and personal and could not be assigned to another employee. By virtue of that language, Appellant Boyles should be estopped from arguing that he was in the classified service, as his services were personal to the appointing authority, thereby making the performance of his duties by "an average employee with knowledge of the proper procedures" impossible.

Therefore, it is my **RECOMMENDATION** that this appeal be **DISMISSED** due to a lack of jurisdiction by this Board to consider Appellant Boyles' appeal on the basis that he was employed pursuant to a purchased personal services contract which took him out of the realm of a civil service employee, or in the alternative, that he was an unclassified employee pursuant to section 124.11(A)(9) of the Ohio Revised Code over which this Board does not possess jurisdiction.



Marcie M. Scholl

Administrative Law Judge