

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Melissa R. Thomas,

Appellant,

v.

Case No. 11-LAY-05-0188

Marion County,
North Central Ohio Rehabilitation Center,

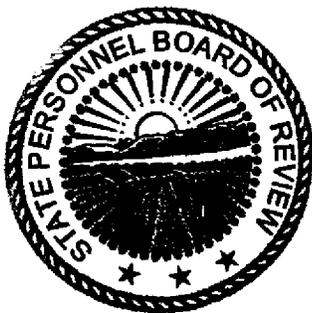
Appellee.

ORDER

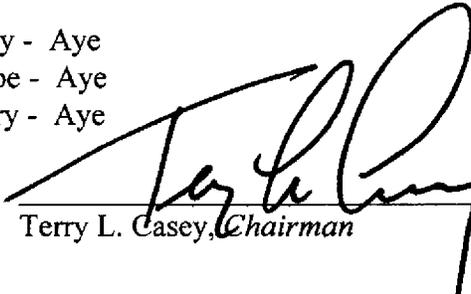
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 lack of subject matter jurisdiction over the parties, pursuant to O.R.C. §§ 124.01(B) and 124.03.



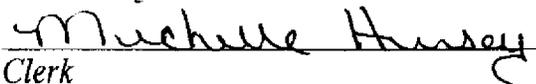
Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

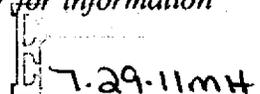
CERTIFICATION

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, July 29, 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**

Melissa R. Thomas,

Case No. 11-LAY-05-0188

Appellant

v.

June 29, 2011

Marion County, North Central Ohio
Rehabilitation Center,

Jeannette E. Gunn
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on for consideration pursuant to Appellee's Motion to Dismiss, filed with this Board on June 13, 2011. Appellant filed no memorandum *contra*. Appellee asserts that this Board lacks jurisdiction over the instant appeal, because Appellee's employees are not included in the classified or unclassified civil service as defined by R.C. 124.11.

Based upon the uncontroverted evidence contained in the record, I make the following findings of fact:

Appellee is a multi-county facility, housing juveniles primarily from Crawford, Hardin, Marion, Morrow and Wyandot Counties. A majority of the funding for the facility is provided by the Ohio Department of Youth Services.

Appellee is governed by a seven-member board comprised of the Juvenile and/or Family Court judges of Crawford, Hardin, Marion, Morrow and Wyandot Counties.

Appellant was hired by Appellee in May 2007 and is scheduled to be laid off from employment with Appellee on June 30, 2011.

CONCLUSIONS OF LAW

At the outset of any appeal, this Board must determine whether or not it has jurisdiction over the parties to an appeal and the subject matter of the appeal. The civil service laws of the State of Ohio provide the Board with subject matter jurisdiction over employees in the classified state service; state service is defined by the Ohio Revised Code as all offices and positions in the service of the state and the counties and general health districts of the state. R.C. 124.01(B).

The State Personnel Board of Review has consistently held that Appellee's employees are not employees in the classified "state service," as contemplated by R.C. 124.01(B). See, *Force v. Marion County, North Central Ohio Rehabilitation Center* (April 6, 2011), SPBR Case No. 10-REM-09-0254; *Gunka v. Marion County, North Central Ohio Rehabilitation Center* (April 3, 2007), SPBR Case No. 06-REM-06-0270; *Ringer v. Marion County, North Central Ohio Rehabilitation Center* (April 20, 2007), SPBR Case No. 06-REM-06-0266.

This Board determined in *King, II v. Marion County Juvenile Court*, SPBR Case No. 96-REM-10-0535, that Appellee constituted a hybrid organization and that its employees are not in service to the state, a county, or a general health district. The Board applied the two-part test set forth by the Tenth District Court of Appeals in *In re Ford* (1982), 3 Ohio App.3d 416, to conclude that Appellee's employees were not "in the service of the state" within the contemplation of the definition set forth in R.C.124.01, i.e. (1) employment by a State agency, and (2) compensation being paid in whole or in part from State funds. The Board found that Appellee did not meet the *Ford* court's definition of a state agency because it did not exercise its powers throughout the State of Ohio. Although Appellee does receive its funding from the State of Ohio, Department of Youth Services, thereby fulfilling the second part of the definition, *Ford* requires that Appellee's employees meet both parts of its two-pronged test.

The Board further found in *King* that because Appellee's area of operation exceeds the boundaries of a single county, and because it is administered by a board representing multiple counties, Appellee cannot exercise its powers for the exclusive benefit of one participating county, and its employees may, therefore, not be considered in service to a county. *Snyder v. Washington County Career Center* (June 27, 1996), PBR Case No. 96-SUS-05-0207. The Board noted:

While it is true that all of the entities served by Appellee are counties, Appellee remains a creature separate and apart from the political subdivisions it serves. The nature of Appellee's beneficiaries does not confer the status of "service to the counties" upon Appellee's employees. Although such determination is not binding upon this Board, ... the Attorney General concluded, in 1983 Ohio Op. Atty Gen. No. 064, that a joint board of county commissioners created pursuant to either R.C. 2151.65 or 2151.70 to establish a multi-county detention and treatment facility for the training and treatment of juveniles stands apart from the counties which participate in its establishment. A joint board so formed is not a "county board," and is not an instrumentality of the county; therefore, an entity formed by the joint board cannot be an instrumentality of the county, as the joint board cannot confer a status it does not itself possess.

The parties did not argue in either *King* or the case at bar that Appellee's employees are in service to a general health district.

Upon a review of the information contained in the record, it is evident that the facts upon which this Board based its determination of jurisdiction in *King* have not changed. Appellee remains a multi-county facility, funded primarily by the Ohio Department of Youth Services and governed by a seven-member board comprised of the Juvenile and/or Family Court judges of Crawford, Hardin, Marion, Morrow and Wyandot Counties. Appellee does not exercise its powers throughout the State of Ohio and, therefore, still does not meet the *Ford* court's definition of a state agency; Appellee is still an entity created separate and apart from the counties it serves, thereby excluding its employees from the status of county employees. As concluded by this Board in *King*, Appellee constitutes a political subdivision separate and apart from the entities involved in its creation. While Appellee's employees may be members of the civil service, they are not employees of a political subdivision included in the definition of "state service," as set forth in R.C. 124.01(B).

Therefore, in keeping with this Board's previous determinations and based upon a review of all of the information contained in the record, I find that Appellee's employees are not "employees in the classified state service" over which this Board may exercise its jurisdiction pursuant to R.C. 124.03. I respectfully **RECOMMEND**

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that the instant appeal **DISMISSED** for lack of subject matter jurisdiction over the parties, pursuant to R.C. 124.01(B) and 124.03.


Jeannette E. Gunn
Administrative Law Judge

JEG: