

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

Tiffany Buck,

*Appellant,*

v.

Case No. 2013-REC-08-0206

Youngstown State University,

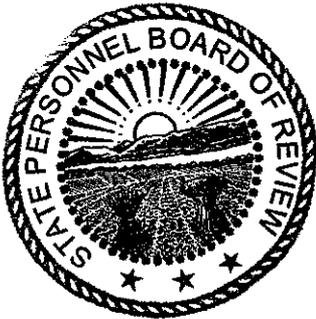
*Appellee,*

**ORDER**

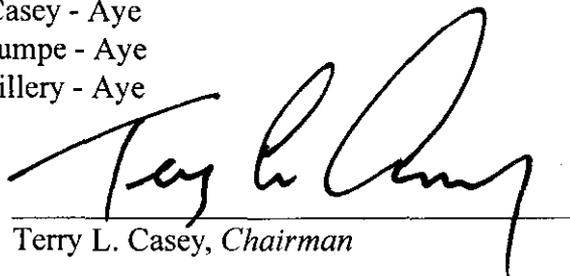
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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. *It is noted that respective counsel filed detailed, well-reasoned briefs and that the Board accorded this matter additional attention as a result of those filings.*

Wherefore, it is hereby **ORDERED** that Appellee's decision is **AFFIRMED** as Appellant Buck is properly classified as a Custodial Work Supervisor.



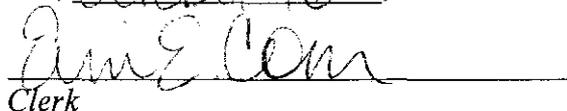
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
\_\_\_\_\_  
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, October 16, 2014.

  
\_\_\_\_\_  
*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**

Tiffany Buck

Case No. 2013-REC-08-0206

*Appellant*

v.

August 11, 2014

Youngstown State University

Marcie M. Scholl

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

A record hearing was held in this matter on November 5, 2013. Closing briefs were filed and the record closed on December 10, 2013. Present at the hearing were Appellant Tiffany Buck, represented by Stanley J. Okusewsky III, Esq., and Appellee Youngstown State University designee Carol Trubee, Manager of Classification and Compensation, represented by Wendy K. Clary, Assistant Attorney General.

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

The parties entered into stipulations and it was agreed to have the parties file closing briefs. The stipulations entered into are as follows:

1. Appellee's Exhibit 3, Appellant Buck's position description, dated August 7, 2013, is an accurate reflection of her duties;
2. Appellant Buck performed the same duties as her predecessor, Mr. Jose Maldonado;
3. Appellee's Exhibit 6, Appellant Buck's questionnaire, is accurate;
4. Appellee's Exhibit 5, Appellant Buck's Personnel Action form, is accurate;
5. The audit was requested by Appellant Buck on April 4, 2013;
6. Appellant Buck stipulated to all of Appellee's Exhibits 1 through 12;
7. Appellant's Exhibit C is a collective bargaining agreement and the relevant portions are being admitted;
8. Appellant's Exhibit A is a former specification for Housekeeping Manager 2, number 42132C;
9. Appellant's Exhibit B is a report and recommendation in the cases of 99-REC-07-0202 and 0203; and

10. Appellant's Exhibit D is a position description for Jose Maldonado, dated November 12, 2003.
11. Appellant's Exhibits A through D were stipulated to by Appellee.

### STATEMENT OF THE CASE

Appellant Buck's position is currently classified as a Custodial Work Supervisor. She is seeking to have her position classified as a Housekeeping Manager 2. As the parties stipulated to and further stated in their briefs, Mr. Maldonado previously held the position that Appellant Buck now holds. The position when Mr. Maldonado held it was classified as a Housekeeping Manager 2. This Board, in case numbers 99-REC-07-0202 and 99-REC-07-0203, held that duties performed by Mr. Maldonado were consistent with the classification specification for a Housekeeping Manager 2, and the Board ordered that he be reclassified as such, effective the pay period immediately following the March 4, 1999, date of his reclassification request.

The classification specification in effect at the time of Mr. Maldonado's audit request and which was used in making the determination by this Board was number 42132C. The Department of Administrative Services (DAS) promulgated that specification (among others) for use by counties and universities and since Appellee adopted DAS' specifications as their own, that was the specification used at the time of Mr. Maldonado's job audit and appeal of that audit. In approximately 2008, DAS rescinded all of the specifications it had promulgated specifically for counties and universities and promulgated new classification specifications for Housekeeping Manager 2 and Custodial Work Supervisor, numbers 42118 and 42115, respectively. According to Appellee's brief, Appellee adopted DAS' new classification plan as its own plan, which includes the Housekeeping Manager 2 and the Custodial Work Supervisor specifications, in 2008 and bargained for the change in the classification plan that same year.

Appellant argues that this Board should use the previous classification specification of Housekeeping Manager 2 that was effective when Mr. Maldonado was in the position in order to determine whether or not Appellant Buck should also be classified as a Housekeeping Manager 2 instead of a Custodial Work Supervisor. The basis of Appellant's argument is that because both classifications are included in the bargaining unit and covered by the collective bargaining agreement between Appellee and the Association of Classified Employees, this Board does not have to apply the specifications promulgated under section 124.14 of the Ohio Revised Code. Appellant also cites administrative rule 123:1-7-01(A) of the Ohio Administrative Code as authority for this Board to deviate from the

application of specifications promulgated under section 124.14 of the Ohio Revised Code. That administrative rule states as follows:

(A) All positions for **employees paid directly by warrant of the director of budget and management** shall be classified in accordance with section 124.14 of the Revised Code **unless** specifically exempted by law or **otherwise covered by a collective bargaining agreement**. (Emphasis added).

Appellant concentrates on the last phrase in the paragraph (covered by a collective bargaining agreement) but ignores the first part of the rule which limits the rule's governance to those "employees paid directly by warrant of the director of budget and management", which would not include employees of the Appellee. Therefore, this administrative rule does not apply to Appellee or any of its employees.

Section 124.14(F) of the Ohio Revised Code clearly gives colleges and universities the authority to promulgate their own rules. If they chose not to do so, then they must abide by the rules promulgated by DAS. That statute states as follows:

(F)

(1) Notwithstanding any contrary provision of sections 124.01 to 124.64 of the Revised Code, the board of trustees of each state university or college, as defined in section 3345.12 of the Revised Code, shall carry out all matters of governance involving the officers and employees of the university or college, including, but not limited to, the powers, duties, and functions of the department of administrative services and the director of administrative services specified in this chapter. Officers and employees of a state university or college shall have the right of appeal to the state personnel board of review as provided in this chapter.

(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.

Appellee stated in its brief, and it was not disputed by Appellant Buck, that in 2008, it negotiated with the Association to adopt the classification plan promulgated

by DAS as its own classification plan and that is the plan which has been used by the Appellee since that time. Therefore, while Appellee did not promulgate a totally new classification plan of its own creation, it did negotiate to accept the then-new DAS classification plan as its own and it is that classification plan and corresponding specifications that have been in use by Appellee and by this Board in reclassification appeals. It is not even possible for this Board to use the classification specifications that were in effect at the time Mr. Maldonado was still employed by Appellee, as those specifications have been rescinded by DAS and no longer are legally valid. The adoption by Appellee of the new classification plan and specifications promulgated by DAS, coupled with the rescission of the former versions, has rendered the previous versions of the plan and specifications null and void.

Appellant also argues that if this Board cannot utilize the rescinded specification, then it should use the position description on file for Mr. Maldonado's position or just substitute words in the current specification to make it applicable to Appellee. This Board can do neither of those things. Pursuant to section 124.14 of the Ohio Revised Code, only the director of DAS, a college or university, or the commissioners of a county can establish a classification plan and must do so by filing the appropriate administrative rules, which have the force and effect of law. Therefore, this Board can only apply the specifications which have been legally promulgated. The Board has no authority to change anything on the face of the specification nor does it have the authority to substitute a position description in the place of a duly promulgated specification. (see *Klug v. Dept. of Admin. Services*, No. 87AP-306, slip op. (Ohio Ct. App. 10<sup>th</sup> Dist., May 19, 1988).

Unlike a court of general jurisdiction, this Board has only the authority granted to it by statute. Section 124.03(A)(2) of the Ohio Revised Code grants the following authority to this Board:

(2) Hear appeals, as provided by law, of appointing authorities from final decisions of the director relative to the classification or reclassification of any position in the classified state service under the jurisdiction of that appointing authority. The state personnel board of review may affirm, disaffirm, or modify the decisions of the director, and its decision is final. **The decisions of the state personnel board of review shall be consistent with the applicable classification specifications.** (Emphasis added).

Pursuant to the above statute, this Board is bound to follow the classification specifications which are applicable to a specific appeal. In the instant case, the classification specifications as adopted by and utilized by the Appellee are the applicable specifications and this Board cannot change the wording on a specification or use another document in its place. Therefore, as was stated in the

briefs of both parties, if this Board is bound by the classification and the wording on the classification specifications currently in place for a Custodial Work Supervisor, number 42115, and that of a Housekeeping Manager 2, number 42118, then "Appellant would not be entitled to reclassification to the Housekeeping Manager 2 classification specification." This is the case. Thus, Appellant Buck is properly classified as a Custodial Work Supervisor, as she cannot meet the class concept as written on the classification specification for a Housekeeping Manager 2, class number 42118.

That being said, Appellee has the authority, under section 124.14(F) of the Ohio Revised Code to promulgate its own classification plan. It can do so by adopting the specifications as written by DAS, but Appellee should have changed the wording of the specifications to correspond with the parameters of the duties performed by the employees of the Appellee. It makes no sense to have a specification which has terms on it such as "medium residential facility &/or community (i.e., 101-250 beds in Department Of Mental Health, 200 beds or less in Ohio Department Of Developmental Disabilities & Ohio Veterans Home) or multiple residential complexes in Department Of Youth Services or in Ohio Peace Officer Training Academy" when clearly, the Appellee would not have any of those facilities on its campus. By not changing the wording of the specification to fit Appellee's job descriptions, it is confusing to try to apply the specification as written and leaves open the question of if the specification could be applied to an employee of Appellee. Appellee is encouraged to review their adopted specifications and take the time to modify them to correspond with the facilities and duties performed by its employees.

In looking at the instant case, however, it is clear that the current Housekeeping Manager 2 specification does not describe the duties of Appellant Buck, as the description of her job duties is found in the Custodial Work Supervisor specification. Therefore, I respectfully **RECOMMEND** that Appellant Buck is properly classified as a Custodial Work Supervisor and that the decision of the Appellee be **AFFIRMED**.

  
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Marcie M. Scholl  
Administrative Law Judge