

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

Lawrence Brown,

Appellant,

v.

Case No. 2013-REC-10-0369

Department of Transportation,
and

Department of Administrative Services, Human Resources Division,

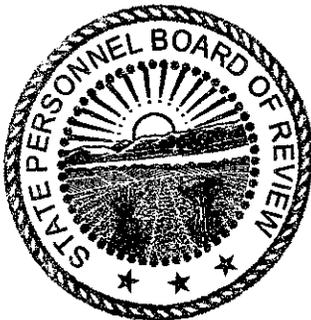
Appellees,

ORDER

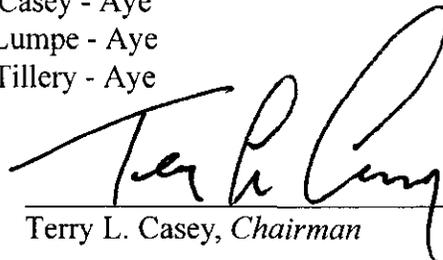
This matter came on for consideration on the October 22, 2014 issuance of a Final Order in the above-captioned appeal and a subsequent call from the Department of Transportation regarding what appeared to have been a clerical error in the year selected for the effective date stated in the Final Order. Subsequently, this Board **STAYED** the matter, pending further consideration of this issue at this Board's next regularly scheduled Board Meeting.

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 **MODIFIES** the Recommendation of the Administrative Law Judge and **MODIFIES** the Final Order.

Wherefore, it is hereby **ORDERED** that the **STAY** is **LIFTED** and the **CLASS PLAN REVIEW DETERMINATION** of the Department of Administrative Services that Appellant's position be re-classified to EEO Contract Coordinator is **MODIFIED** and the Appellant be **RECLASSIFIED** to the position of an EEO Regional/Program Administrator, effective with the payroll period after October 20, 2013.



Casey - Aye
Lumpe - Aye
Tillery - Aye


Terry L. Casey, *Chairman*

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

Lawrence Brown

Case No. 2013-REC-10-0369

Appellant

v.

September 26, 2014

Department of Transportation

and

Department of Administrative Services,
Human Resource Division,

Appellees

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came to be heard following a pre-hearing held on March 12, 2014, and at the record hearing held on July 7, 2014. Present at the hearing was Appellant, Mr. Lawrence Brown, presently classified as an EEO Contract Coordinator (69162), a position within the collective bargaining agreement, who appeared *pro se*, and offered testimony at the record hearing on his own behalf. The Appellee, the Ohio Department of Transportation (ODOT) was present only through Ms. Lauren Purdy, a Project Manager 2/Administrator of the Office of Contract Sales, and the Appellant's immediate supervisor. The Appellee, Department of Administrative Services (DAS) was present through its designee, Ms. Laura Sutherland, a Human Capital Management Manager, offered testimony at the record hearing as the person who was familiar with the surveyed audit result.

This cause came on due to Appellant's October 24, 2014, timely filing of appeal from the reclassification of his position from Management Analyst Supervisor 1 (MAS1) (63215) (Pay Range 12) to an EEO Contract Coordinator (69162), a position within the collective bargaining agreement effective with the payroll period beginning on October 20, 2014. This Class Plan Review Determination was a result of DAS's deletion of Appellant's former classification of Management Analyst

Supervisor 1 from the State Class Plan. Because this downgrade would otherwise result in a diminution of Appellant's pay, Appellant was placed in "Step X", pursuant to R.C. 124.14(A). It should be noted that the aforementioned was stipulated to, as well as, the subject matter jurisdiction of this Board was established pursuant to R.C. 124.03 and R.C.124.14.

Before proceeding onto the record, the Appellant, Mr. Lawrence Brown, stated that although he is presently classified as an EEO Contract Coordinator (69162), he believes that he should have been placed in the classification specification of a EEO Regional/Program Administrator (69133) (Pay Range 12), as a better classification or a better fit for the reclassification from the Management Analyst Supervisor 1's position.

STATEMENT OF THE CASE

The first witness to testify was the Appellant, Mr. Lawrence Brown. Mr. Brown testified that he is currently classified as an EEO Contract Coordinator, and that prior to the reclassification he held the position of Management Analyst Supervisor 1, for approximate 3 1/2 years. Mr. Brown testified that he was reclassified to the EEO Contract Coordinator position, placing his pay grade into "Step X", within the collective bargaining agreement. Further, when questioned, the witness explained that while Ms. Lauren Purdy is his immediate supervisor currently, Ms. Sara Lee was his supervisor for the preceding three years. Further, the witness explained that while most of his previous duties that he performed have not changed since the actual reclassification process, after the realignment in the office structure took place, after the audit, the duties surrounding the Disadvantaged Business Enterprise (DBE) program, were reassigned to other personnel.

Next, when questioned, the witness testified that he is located in ODOT's central office located that 1980 W. Broad Street, Columbus, Ohio and that his usual working title is "Prevailing Wage Manager". When questioned, witness testified that while he does not provide direct supervision for any one particular employee, he does provide functional supervision over the 12 District EEO Contract Coordinators with respect to all their prevailing wage work. The witness explained that while the EEO Contract Coordinators report to the District Construction Administrator for things like requesting leave time off, he reviews there work to ensure compliance with the code. When questioned as to the mission, with respect to his job, the witness testified that he is to serve as ODOT's Prevailing Wage Manager wherein

he is there to formulate and is responsible for directing the implementation of the policies for ODOT's statewide prevailing wage program. After identifying Appellant's Exhibit 1, page 3 thereon, the witness explained that his position description, while being approximate three years old, he is no longer performing and assisting with the DBE certification process and program, which accounted for approximate 25% of his time. The witness testified that respect to the 50% and 25% of the time to the job duties in order of importance, noted on the position description are probably more like 70% and 30%, currently. Additionally, when questioned, the witness testified that he works on first shift Monday through Friday 6:30 AM to 3 PM, on a regular basis.

The witness then identified a document located behind tab 1 on Appellee's Exhibits, as the information that he filled out with respect to the job duties that he performed in his job. It should be noted that under the list of essential duties assigned and performed, the duties listed on bullet point 7, 8 and 9, were all duties that were associated with the DBE program, which he had been performing at the time of the audit, but after the release of the audit those duties had been reassigned to other personnel, and that he is no longer currently performing those duties. Again, as explained with respect to the position description noted above, the witness testified that the other seven major duties listed, all at 10% of his time, should be adjusted accordingly so they add up to 100%. When questioned, the witness testified with respect to the list of essential duties assigned to perform, he was responsible for the following:

- Responsible for updating and keeping ODOT's Prevailing Wage Policy and Procedures, including ODOT's manual of procedures.
- Prevailing (ODOT monthly activity report, FHWA quarterly enforcement report, State Auditor (gathering requested information and fielding assorted questions from auditors, etc.)")
- Prevailing Wage District Support liaison between districts and US Department of Labor (USDOL), (Department of Commerce, etc.)
- Prevailing Wage Investigations (lead ODOT District investigations, assist with USDOL investigations, assist with the Ohio Department of Commerce, etc.)

- Prevailing Wage Technical Process Reviews of Districts to ensure compliance (12 ODOT Districts)
- Review of District Monthly Prevailing Wage Reports received from District Prevailing Wage Coordinators.
- Application/enforcement Prevailing Wage Federal Regulations.

Moreover, when questioned, the witness testified that he is also involved in providing training to the EEO Contract Coordinators, on a semiannual basis, and noted that under Appellant's Exhibit 7, is an example of his power point presentation that he put together and lectures on. Furthermore, the witness testified that he specifically provides functional supervision to the EEO Contract Coordinators, and not EEO Contract Officers.

The witness then identified Appellant's Exhibit 2, as an EEO Contract Coordinator's classification specification, and noted that under the duties listed in order of importance providing, training is not his main duty to District personnel concerning EEO laws, nor does he coordinate contract compliance schedules, as he is not a hands-on person, as he simply manages the 12 District EEO Contract Coordinators. Further, the witness explained that the other part of the duties listed the above noted classification specification, he is in the central office and not any district office. Next, the witness identified Appellant's Exhibit 3, as an EEO Regional/Program Administrator's classification specification, which he believed more accurately described his position. When questioned with respect to the job duties in order of importance, the witness testified that he does plan and implement an EEO subset program, "Prevailing Wage Program", for assigned agency and monitors all district offices, along with preparing reports of findings and recommendations to include corrective action and resolution of non-compliance, such as the Technical Process Reviews. Additionally, as noted on the classification specification of an EEO Regional/Program Administrator, he does in fact develop and conduct training workshops, as well.

The witness then identified Appellant's Exhibit 4, as an example of an audit and report that he puts together as part of his duties. Additionally, the witness identified Appellant's Exhibit 5, as the legal regulations and laws to be observed that he updates on an annual basis, and on an as needed basis. The witness reviewed

Appellant's Exhibit 6, as the example of a Technical Review Process document that he performs on his job, as well.

Upon questioning by Ms. Sutherland, the witness testified that he is the only person in the central office performing prevailing wage work, and that he is no longer performing any work regarding the Disadvantaged Business Enterprise program.

The next person to testify was Ms. Lauren Purdy, a Project Manager 2/Administrator of the Office of Contract Sales, a position she's held since July 2013, and has been the immediate supervisor of the Appellant herein since that time. Upon questioning, the witness testified that she held the position of Manager of Purchasing and Construction Contract Sales prior to her holding her current position. Specifically, when questioned, if the Appellant's testimony regarding his job duties and/or responsibilities were accurate, Ms. Purdy answered in the affirmative, as she was in the hearing room and heard the same. Further, when questioned, the witness testified that the Construction Administration division has undergone a lot of changes lately, and among other things, the Disadvantage Business Enterprise (DBE) program, and the duties associated with the program were realigned with another Department, and the Appellant no longer performs those duties, as he explained in his testimony.

The last person to testify was Ms. Laura Sutherland, a Human Capital Management Senior Analyst within the Classification and Compensation Unit a position she's held with the Department of Administrative Services, since March 2012. When questioned, the witness explained that pursuant to Ohio Revised Code Section 124.14 the Department of Administrative Services sent out a survey in a class plan review determination regarding the deletion of the classification specifications of both the Management Analyst Supervisor 1 and Management Analyst Supervisor 2 positions in the second phase thereof, and is familiar with the results of the instant reclassification appeal. The witness identified Appellee's Exhibit 1, as a document which she authored which explained the rationale that she found in placing Mr. Brown into the classification of EEO Contract Coordinator. The witness testified that after a thorough review of Mr. Lawrence Brown job duties and/or responsibilities she found that Mr. Lawrence Brown was properly classified as an EEO Contract Coordinator, classification specification number 69162, based mainly upon the fact that he had been performing work regarding the Disadvantaged Business Enterprise (DBE) program. However, when questioned,

Ms. Sutherland agreed that after knowing that Mr. Brown's duties regarding the work on the (DBE) program had been taken away, coupled with the fact that he was managing the 12 district EEO Contract Coordinators, the position the Appellant has suggested to be reclassified into as an EEO Regional/Program Administrator might be a more appropriate classification.

FINDINGS OF FACT

There were no real discrepancies between the Appellants' is characterization of the duties that he performed and those of the testimony of his direct supervisor, Ms. Lauren Purdy, a Project Manager 2/Administrator of the Office of Contract Sales, for the Ohio Department of Transportation. Therefore, I find as a matter of fact, the Appellant perform the duties about which he testified.

CONCLUSIONS OF LAW

This Board is required to perform several functions when determining the most appropriate classification for an Appellant coming before it. The Board must always review relevant classification specifications to determine which classification best describes the Appellant's actual job duties for the pertinent period of time. *Ford v. Ohio Department of Natural Resources* (1990), 67 Ohio App. 3d 755. In making this determination, the Board considers the classification specification and the job duties outlined therein, as well as the percentages of time the Appellant devotes to each group of job duties. *Klug v. Ohio Department of Administrative Services* (May 19, 1988), Franklin Co. 87AP-306, unreported, 1988 WL54277.

As a general rule, the Appellant seeking a reclassification to a higher position must demonstrate that his or her respective job duties substantially satisfy those of the higher classification. *Mounts v. Ohio Department of Administrative Services* (1984), 17 Ohio App. 3d 125; *Deist v. Kent State University* (May 23, 1987), Franklin Co. 87AP-28, unreported.

This Board must also consider the relation between the classification specifications at hand and the testimony presented and evidence admitted. This Board's consideration, however, is not limited solely to the duties contained in the classification specifications, but may also embrace other relevant facts submitted by

the effected parties. *Gordon v. Ohio Department of Administrative Services* (March 31, 1988), Franklin Co. 88AP-0122, unreported, 1988 WL37094.

As previously mentioned, the Appellant, Mr. Lawrence Brown, stated that although he is presently classified as an EEO Contract Coordinator (69162), he believes that he should have been placed in the classification specification of a EEO Regional/Program Administrator (69133) (Pay Range 12), as a better classification or a better fit for the reclassification from the Management Analyst Supervisor 1's position, and those two classification specifications will be the specifications that will be considered in making a recommendation.

After a thorough review of the above mentioned classification specifications, it is my recommendation that the Appellant was not properly classified as an EEO Contract Coordinator (69162). Based on the findings set forth, above, and for the reasons set forth, below, the Appellant's position appears not to have been properly re-classified to an EEO Contract Coordinator (69162), and should have been reclassified to the classification specification of a EEO Regional/Program Administrator (69133) (Pay Range 12). Accordingly, this Board should not affirm DAS's instant Class Plan Review Determination and should reclassify the Appellant to the position of EEO Regional/Program Administrator (69133).

The Series Purpose language for the EEO Contract Coordinator position reads "the purpose of the EEO contract officer occupation is to ensure EEO and affirmative action compliance contractors employed by given state agency, or for all state agencies, colleges/universities and municipalities working on state-funded or state-assisted construction projects throughout Ohio. Further, the job duties in order of importance of an EEO Contract Coordinator states that one is in a central office location of the Ohio Department of Transportation to provide training and/or technical assistance to assignment central office and/or district personnel concerning EEO laws, affirmative action requirements and implementation and monitoring of state and federal policies to ensure contractors' compliance. Further, the classification specification also calls for one to provide guidance and monitoring for all district purchasing staff on developing and maintaining minority business enterprise vendors participation in ODOT's purchase orders for goods and services participates in review of requisitions to ensure efforts to utilize minority business enterprise vendors for ODOT's bureau of purchasing or coordinates all functions of federal Disadvantaged Business Enterprises.

The evidence revealed that the Appellant did not provide training as his main duty to District personnel concerning EEO laws, nor does he coordinate contract compliance schedules, as he is not a hands-on person, as he simply manages the 12 District EEO Contract Coordinators. Further, the evidence revealed that the Appellant spent his time in the central office and not any district office. Additionally, the evidence revealed that the Appellant after the realignment that took place, no longer performed any task and/or responsibilities related to Disadvantaged Business Enterprise activities. Thus, the undersigned Administrative Law Judge, rejected the above noted classification specification of an EEO Contract Coordinator as being the most appropriate classification for the Appellant.

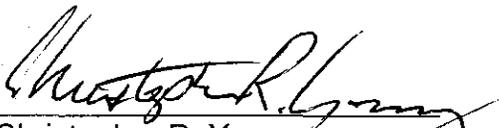
When reading the Series Purpose language for the EEO Regional/Program Administrator for position which reads "the purpose of the equal employment opportunity officer occupation is to develop and implement activities to assure compliance with equal employment opportunity and affirmative action government regulations for assigned state agency institution." Further, the job duties in order of importance of an EEO Regional Program Administrator states that one is to plan and implement EEO and affirmative action programs, plans and policies for assigned agency and/or monitors all district offices or institutions, county agencies or community boards and service agencies/providers affiliated with or contracted by assigned state agency for compliance with EEO and affirmative action regulations and established plans statewide for assigned region. Additionally, one is also to prepare reports of findings and recommendations to include corrective actions and resolutions of noncompliance, as well as developing and conducting training workshops for entities monitored for compliance.

After reviewing Mr. Brown's testimony with regard to his job tasks/and/or responsibilities it became apparent when reviewing the classification specification of an EEO Regional/Program Administrator's classification specification was the most appropriate fit, or "best fit" for the Appellant. Mr. Brown, when questioned with respect to the job duties in order of importance, testified that he does plan and implement an EEO subset program, "Prevailing Wage Program", for assigned agency and monitors all district offices, along with preparing reports of findings and recommendations to include corrective action and resolution of non-compliance, such as the Technical Process Reviews. Additionally, as noted on the classification specification of an EEO Regional/Program Administrator, he does in fact develop and conduct training workshops, as well. Thus, based upon the testimonial and

documentary evidence submitted at the record hearing, as well as the duties that the Appellant actually performs, he should have not been reclassified to the position reclassified of an EEO Contract Coordinator, but to the classification specification of an EEO Regional/Program Administrator

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **OVERTURN** the **CLASS PLAN REVIEW DETERMINATION** of the Department of Administrative Services that Appellant's position be re-classified to EEO Contract Coordinator and **RECLASSIFY** the Appellant to be position of an EEO Regional/Program Administrator , effective with the payroll period after October 20, 2014.


Christopher R. Young
Administrative Law Judge

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, November 06, 2014.



Clerk

NOTE: Please see the reverse side of this Order **or** the attachment to this Order for information regarding your appeal rights.