

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

Judy Saltsman,

Appellant,

v.

Case Nos. 2013-REC-11-0329
2013-RED-11-0330

Department of Job & Family Services, and
Department of Administrative Services, Human Resources Division,

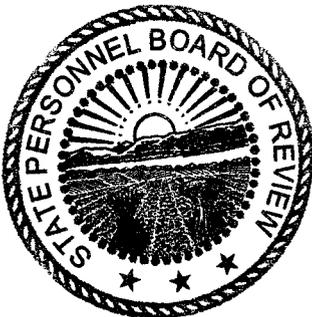
Appellees,

ORDER

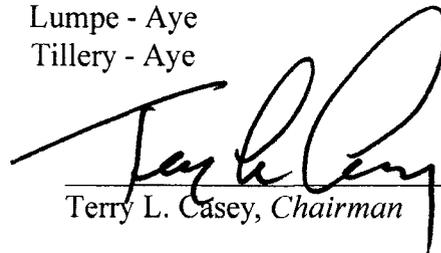
These matters came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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 Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the Class Plan Review Determination of the Department of Administrative Services that Appellant's position be reclassified to Administrative Professional 4, 16874, is **AFFIRMED**, pursuant to R.C. 124.03 and R.C. 124.14.



Casey - Aye
Lumpe - Aye
Tillery - Aye



Terry L. Casey, *Chairman*

4-8-14

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 07, 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**

Judy Saltsman

Case Nos. 2013-REC-11-0329
2013-RED-11-0330

Appellant,

v.

February 25, 2014

Department of Job & Family Services and
Department of Administrative Services,

Appellees

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes came to be heard on February 21, 2014. Present at the hearing was Appellant, who appeared *pro se*. Appellee Department of Job and Family Services (DJFS) was present through its counsel, Nicole S. Moss, Senior Staff Attorney. Appellee Department of Administrative Services (DAS) was present through its designee, Joe Ann Lucas, Senior Human Capital Management (HCM) Analyst.

These causes come on due to Appellant's November 1, 2013 timely filing of appeals from DAS' October 11, 2013 notice to Appellant that, effective October 11, 2013, her position would be reclassified to Administrative Professional (AP) 4, 16874 (Pay Range 10) and that she would be placed in "Step X". Appellant's former Classification of Management Analyst Supervisor 1, 63125 was deleted from the State of Ohio's Class Plan. Accordingly, DAS conducted a large Class Plan Review and reassigned all state employees whose positions fell into the Management Analyst Class Series. Appellant believes that her position would be better classified as Program Administrator (PA) 2, 63123 (Pay Range 12).

Jurisdiction over the subject matter of these appeals was established pursuant to R.C. 124.03 and R.C. 124.14.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

At hearing, three witnesses testified.

First to testify was **Appellant, Judy Saltsman**, whose current Classification is Administrative Professional 4, with a working title of Business Operations Manager. Next to testify was Appellant's immediate supervisor, **Dan Shook**, whose Classification is ODJFS Program Administrator 2 and who serves as the Bureau

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Chief of the Bureau of Fiscal Accountability (BFA) within DJFS' Office of Families and Children (OFC). Last to testify was **Joe Ann Lucas**, DAS Senior HCM Analyst, who testified regarding DAS' Class Plan Review determination.

Appellant's position falls under the Bureau of Fiscal Accountability; yet most of her job duties are directed to the Office of Families and Children, the administrative arm which encompasses the BFA. Appellant's other duties not specifically directed to the OFC are directed to the Office of Family Assistance (OFA). Appellant's duties directed solely to the BFA include updating the office calendar.

For approximately 55 percent of Appellant's average working day, Appellant oversees and coordinates the office fleet for both the OFC and the OFA. This fleet is comprised of 29 assigned state vehicles and one pool car. Appellant generally oversees the maintenance, risk management, security, and compliance with all pertinent DAS Fleet policies regarding these vehicles. Appellant also ensures the qualifications of DJFS drivers of same and follows up on any speeding or accident issues or allegations of improper use that arise from their use.

Appellant authored a "policy" (in Appellant's estimation) or a "procedure", in DAS' estimation) concerning the use of the afore-mentioned pool car. (Please see Appellant's Exhibit 4. A.). Mr. Shook testified that Appellant's efforts concerning the pool car policy/procedure are about to be substantially adopted by a third Office within DJFS.

Appellant spends about five percent of her time ordering supplies for the OFC and others. She also served as the principal point person in her Office regarding the Office's complete relocation from the Lazarus Center to the AIR Center. Additionally, she managed the move/consolidation of the Cincinnati Field office to DJFS space in Dayton.

Appellant also administers asset management, salvage, some records retention for the Office, and deals with Verizon Payment cards.

Appellant spends about two percent of her time gathering information concerning the \$157,000 OFA vehicle budget and the \$17,000 OFC vehicle budget.

Appellant indicated that at least five percent of her day involves ensuring that training sheets are signed, that users' Drivers Licenses are current to qualify for DAS' Voyager cards, and that the pool car is used most efficiently.

Appellant stated that, in her estimation, the most complex 20 percent of her duties to qualify position her for the Program Administrator 2 Classification are

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gained by viewing her various duties regarding: communications; facilities; security; DAS' Print Shop; vendors; knowledge and compliance assurance with various policies; and ensuring that a cost effective and safe environment is achieved.

Testimony reflects that Appellant has minimal contact with her direct supervisor, Dan Shook, perhaps once per day to converse and update. Testimony also indicates that that Mr. Shook trusts Appellant to carry out her job and utilize her discretion within permissible bounds. Appellant is described as the Office's "go to" person and is well-known as a problem-solver. Mr. Shook also indicated that Appellant attends meetings on Mr. Shook's behalf from time to time.

As noted previously, Mr. Shook is the Bureau Chief for the Office of Fiscal Accountability. Mr. Shook answers directly to OFC Deputy Director Jennifer Justice.

Senior HCM Analyst Joe Ann Lucas indicated at hearing that a procedure may be distinguished from a policy in the following manner. A policy, she noted, involves an overarching view. Conversely, she noted, a procedure is taken from the policy and is arrayed in a particular order based on the pertinent policy.

Ms. Lucas referenced the AP Class Series, 1687 and offered that the AP works under direction and is considered to be knowledgeable regarding a number of processes, pertinent policies, and procedures; so as to perform and complete non-routine assignments. She also indicated the AP independently reviews situations and formulates judgments, provides non-legal interpretations to policies and procedures, resolves problems, and prepares correspondence.

The instant records clearly support a finding that Appellant performs the duties for the AP 4 that were delineated by Ms. Lucas at hearing.

Ms. Lucas stated that, since Appellant is supervised by a Bureau Chief, Appellant's position would qualify as coming within the rubric of the top three levels of the agency and, so, Appellant can qualify as an AP 4.

Ms. Lucas also indicated that the documents provided by the agency, the supervisor, and Appellant do not indicate that Appellant conducts training and also indicate that it is Mr. Shook who is responsible for the budget.

She further averred that the Program Administrator Series calls for the incumbent to formulate and implement program policy. Further, Ms. Lucas indicated that the volume of Appellant's work (*i.e.* the quantitative component) is not relevant when determining whether the PA Series applies to Appellant's position.

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Finally, Ms. Lucas offered that, if Appellant wrote program policy for 20 percent of Appellant's time, it definitely would make a difference regarding the most appropriate Classification for Appellant's position.

Based on the testimony presented and evidence admitted at hearing, I make the following Findings:

First, I note that I incorporate, herein, any finding set forth, above, whether express or implied.

Next, I adopt the job duties percentages offered by Appellant at hearing and as set forth in the Joint Exhibits and in Appellant's admitted Exhibits.

I also find that Appellant's Exhibit A. 4. is described as an "Office of Families & Children Procedure Letter No. 13"(emphasis added), issued September 12, 2013, from Jennifer Justice (OFC's Deputy Director and Mr. Shook's supervisor). Further, the "Purpose" language set forth in Paragraph 1. of the document reads: "This procedure will establish a uniform policy and guidance for all Central Office Staff within the Office of Families & Children (OFC) to follow governing the OFC leased pool vehicle while performing authorized state business." (emphasis added)

It is true that DD Justice writes in the document: "This procedure will establish a uniform policy and guidance ... ". Yet, please note that DD Justice twice refers to this issuance as a "procedure".

There seems to be little dispute that Appellant substantially authored this document. Yet, the pertinent individual under whose name the document is issued has twice chosen to denominate the document as a "procedure". Thus, it seems problematic and descriptively incorrect for this Board to describe it otherwise.

This is the also the only "policy" to which Appellant points when positing that her position should be reclassified to PA 2.

Finally, the instant records do not indicate that Appellant supervises any employees or that she consistently acts or serves as a lead worker.

CONCLUSIONS OF LAW

These cases present this Board with the question of whether Appellant's position is more properly classified as Administrative Professional 4 or Program Administrator 2? Based on the findings set forth, above, and for the reasons set forth, below, this Board should find that Appellant's position was properly reclassified to AP 4, and, so, should affirm DAS' Class Plan Review determination.

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The Series Purpose language for the AP 4,16874 Class states, in pertinent part:

At the fourth level incumbents perform non-routine administrative tasks & provide secretarial support for the office, and also act as person-in-charge over lower-level secretarial &/or clerical employees in the office. NOTE: This classification is restricted to the agency executive staff defined as the top three layers ...

It is noted that the AP 4 Series Purpose "person-in-charge" language is not replicated in the lower three levels in the AP Series. Indeed, even the AP 3 language merely requires the incumbent to perform as a lead worker.

Interestingly, this "person-in-charge" requirement is neither found in the AP 4 Class Concept nor in the AP 4 Job Duties section. We may presume, then, that DAS considers the person-in-charge language set forth in the Series Purpose for AP 4 to be illustrative rather than mandatory. Further, neither DAS, in O.A.C. 123:1-3-01 (D), nor this Board, in R.C. 124.03, must hold the Series Purpose language to be paramount.

Clearly, since this component appears to be illustrative only, and since Appellant so clearly meets the remaining components of the AP 4 Series Purpose language, as well as the requisite requirements set forth in the AP 4 Class Concept and Job Duties section, Appellant's position clearly qualifies under the AP 4 Specification, as DAS has found.

However, Appellant believes the Program Administrator 2 Specification better describes her duties.

The Series Purpose language for the PA 2, 63123 Class states, in pertinent part:

At the second level, incumbents relieve superior of variety of difficult administrative duties & formulates & implements program policy or does all of the [preceding] & supervises assigned staff. ...

This classification series may not be used to cover any functions currently described by another existing classification specifically designed for the function. (emphasis added)

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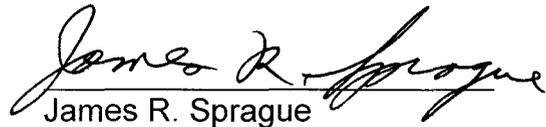
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The Class Concept language for the PA 2 continues to carry the requirement that the incumbent formulate and implement program policy. The Job Duties section language also contains this requirement in Rank 1.

As I have found, above, Appellant has not formulated any program policy during the review period at issue in these appeals. Therefore, she cannot satisfy this requirement which is contained in the Series Purpose, Class Concept, and Job Duties language in the PA 2 Specification. Accordingly, her position cannot qualify for the PA 2 Classification.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the Class Plan Review Determination of the Department of Administrative Services that Appellant's position should be reclassified to Administrative Professional 4, 16874, pursuant to R.C. 124.03 and R.C. 124.14.


James R. Sprague
Administrative Law Judge