

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

Edward McGowan,

Appellant,

v.

Case No. 2013-REC-11-0386

Ohio State University,

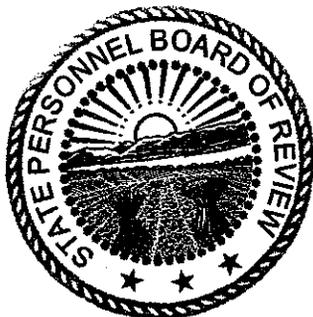
Appellee,

ORDER

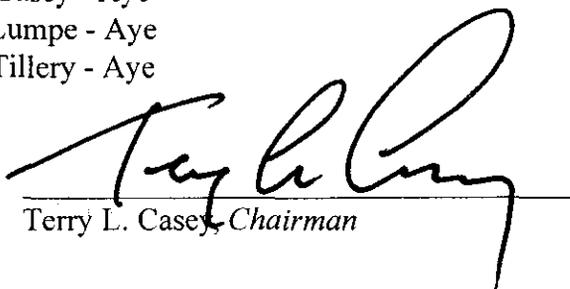
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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.

Wherefore, it is hereby **ORDERED** that Appellant's position be **RETAINED** in the Groundskeeper 2 classification.



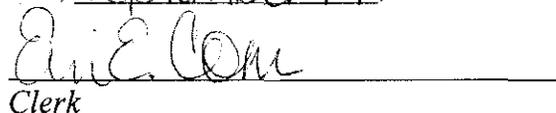
Casey - Aye
Lumpe - Aye
Tillery - Aye


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 14, 2015.


Clerk

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

NOTICE

Where applicable, this Order may be appealed under the provisions of Chapters 124 and 119 of Ohio Revised Code. An original written Notice of Appeal or a copy of your Notice of Appeal setting forth the Order appealed from and the grounds of appeal must be filed with this Board fifteen (15) days after the mailing of this Notice. Additionally, an original written Notice of Appeal or a copy of your Notice of Appeal must be filed with the appropriate court within fifteen (15) days after the mailing of this Notice. At the time of filing the Notice of Appeal or copy of your Notice of Appeal with this Board, the party appealing must provide a security deposit to the Board. In accordance with administrative rule 124-15-08 of the Ohio Administrative Code, the amount of deposit is based on the length of the digital recording of your hearing and the costs incurred by the Board in certifying your case to court. The length of the digital recording, the costs incurred, the corresponding amount of deposit required, and the final date that the Notice of Appeal or copy of your Notice of Appeal and the Deposit will be accepted by this Board are listed at the bottom of this Notice. If a full or partial transcript of the digital recording has been prepared prior to the filing of an appeal, the costs of a copy of that certified transcript will be accepted by this Board; transcript costs will be listed at the bottom of this Notice.

IF YOU ELECT TO APPEAL THIS BOARD'S FINAL ORDER, THEN YOU MUST PROVIDE THE DEPOSIT LISTED BELOW AT THE TIME YOU FILE YOUR NOTICE OF APPEAL OR COPY OF YOUR NOTICE OF APPEAL WITH THIS BOARD. Please note that the law provides that you have fifteen (15) calendar days from the mailing of the final Board Order to file your Notice of Appeal or copy of your Notice of Appeal both with this Board and with the Court of Common Pleas. The fifteenth day is the date that appears at the bottom of this Notice.

METHOD OF PAYMENT: for all entities other than State agencies, payment of the deposit must be by money order, certified check, or cashier's check. State agencies are required to use the Intra-State Transfer Voucher (ISTV) system (OBM Form 7205), which must be processed prior to the filing of an appeal. To initiate an ISTV, State agencies may call the State Personnel Board of Review Fiscal Office at 614/466-7046.

IF YOU MAINTAIN YOU CANNOT AFFORD TO PAY THE DEPOSIT LISTED BELOW, THEN YOU MUST COMPLETE THE BOARD'S "AFFIDAVIT OF INDIGENCE" FORM. YOU CAN OBTAIN THAT FORM BY CALLING 614/466-7046. THE COMPLETED AFFIDAVIT MUST BE RECEIVED BY THIS BOARD ON OR BEFORE September 21, 2015. You will be notified in writing of the Board's determination. If the Board determines you are indigent, you will be relieved of the responsibility to pay the deposit to the Board. However, if the Board determines you are NOT indigent, then **YOU MUST FILE YOUR NOTICE OF APPEAL OR A COPY OF YOUR NOTICE OF APPEAL AND PAY THE DEPOSIT BY THE DATE LISTED BELOW.**

If you have any questions regarding this notice, please contact the Board at 614/466-7046.

Case Number: 2013-REC-11-0386

Transcript Costs: \$189.00 Administrative Costs: \$25.00

Total Deposit Required: * \$214.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: September 29, 2015

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

Edward McGowan

Case No. 13-REC-11-0386

Appellant

v.

July 30, 2015

Ohio State University

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on to be heard pursuant to Appellant's timely appeal of the results of an audit conducted on his position. The audit was conducted by the Ohio State University's (OSU) Human Resource staff, and resulted in a finding that Appellant's position was properly classified as a Groundskeeper 2, classification number 4918. A record hearing was held in the matter on September 10, 2014. Appellant was present at the record hearing and appeared with his counsel, Michael Moses. Appellee OSU was present through its attorneys, Joseph Rosenthal and Erin Butcher-Lyden. Appellee OSU was also present at record hearing through its designee, Human Resources Generalist Ladonia Coatney. Appellant's immediate supervisor, Michael Koeritzer, was also present and gave testimony on the record.

Jurisdiction of the Board was established pursuant to R.C. 124.03 and 124.14.

CONSOLIDATED STATEMENT OF CASE AND FINDINGS OF FACT

Appellant has been employed by OSU in its Facilities Support Division for more than three years. His position is presently classified as Groundskeeper 2 and his immediate supervisor is Michael Koeritzer, whose position is classified as Building Maintenance Superintendent 1. The parties agree that, at minimum, Mr. McGowan's duties are sufficient to place him in the Groundskeeper 2 classification.

Appellant spends approximately 35% of his average work time performing duties related to maintain the irrigation systems and related components in his designated area on Appellee's main campus. He determines the irrigation schedule, repairs the system as needed and is the contact person for any problems with the system.

Appellant devotes approximately 30% of his work time to assisting with the development of turf maintenance programs, along with performing turf maintenance, including fertilizing, weeding, etc. He serves as lead worker in this area and trains other staff on proper application practices. Appellant holds a current Ohio pesticide operator's license and all other minimum class requirements for the Groundskeeper 2 position. He coordinates groundskeeping maintenance activities in landscape services and oversees the groundskeepers and student employees working on the North Oval.

Approximately 25% of Appellant's work time is spent performing routine maintenance work, such as mowing and planting; he serves as lead worker in this area as well, and trains other employees on maintenance procedures and equipment operation. The remaining 10% of Appellant's work time is devoted to ice and snow removal, obtaining and submitting quotes for projects and equipment, generating lists of needed supplies and tools, and performing special projects.

Appellant assigns work and provides quality control for other employees but does not interview or recommend employees for hiring. He does not approve leave for other employees, assign their work schedules, or complete performance evaluations.

CONCLUSIONS OF LAW

Pursuant to R.C. 124.03(A), this Board is empowered to hear appeals of employees in the classified state service from final decisions of appointing authorities or the director of administrative services relative to, *inter alia*, refusal of the director of administrative services, or anybody authorized to perform the director's functions, to reclassify an employee's position, with or without a job audit under R.C. 124.14(D). R.C. 124.14(D)(2) provides that the Board is to consider anew reclassifications and may order the reclassification of an employee's position

to such appropriate classification as the facts and evidence warrant. The Board's decision must be consistent with the applicable classification specifications.

The primary criteria for this Board to consider when determining the most proper classification for a position are classification specifications, including the class concept or function statement, the job duties outlined, and the percentages of time devoted to each job duty. *Klug v. Dept. of Admin. Services*, No. 87AP-306, slip op. (Ohio Ct. App. 10th Dist., May 19, 1988). Unless there is a dispute as to what constitutes the classification specification, no factual issues arise with respect to the classification. Rather, as in all cases of construction, the question becomes one of law as to how the relevant facts relate to the classification specification. *Klug, supra*.

State-supported universities may either devise and utilize their own classification plan, upon proper compliance with the requirements of the Ohio Revised Code and Administrative Code, or may utilize the classification plan established by the Department of Administrative Services for university use. This Board has no authority to revise a classification plan and/or specifications so created. Appellee has promulgated its own classification plan, therefore, the classification specifications considered in this appeal are those promulgated by Appellee.

This Board must consider the relation between the classification specifications at hand and 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 any of the affected parties. *Gordon v. Dept. of Admin. Services*, No. 86AP-1022, slip op. (Ohio Ct. App. 10th Dist., March 31, 1988). The Board will consider evidence related to the job duties performed by Appellant from the date the job audit was requested through the date of record hearing.

As a general rule, a party seeking reclassification to a higher position must demonstrate that he or she substantially meets all of the qualifications of the higher position. *Harris v. Dept. of Admin. Services*, No. 80AP-248, slip op. (Ohio Ct. App. 10th Dist., September 25, 1980); *Deist v. Kent State Univ.*, No. 78AP-28, slip op. (Ohio Ct. App. 10th Dist., May 23, 1978.) The incumbent need not perform every duty enumerated within the body of the specification for his or her position to fall within a particular classification specification; it is sufficient if all of the job duties

actually performed fall within those specified for the classification. See *Klug, supra*. O.A.C. 123:1-7-15, however, notes that the class concept or corresponding section of each classification title sets forth the mandatory duties that must be performed by an incumbent for at least twenty percent of his or her work time. In the classification specifications examined in this appeal, the function statement section corresponds to the class concept.

* * * * *

In conducting this review of Appellant's job duties, the Groundskeeper 2 classification number 4918 was considered, along with Groundskeeper 3 classification number 4919 and Groundskeeper Supervisor classification number 4916.

The function statement for the Groundskeeper 2 classification specification, which is the classification currently assigned to Appellant's position, provides that an incumbent works:

... under general supervision from higher level groundskeeper or supervisor and performs routine to semi-skilled grounds maintenance tasks ...

The parties agree that Appellant performs, at a minimum, the duties of the Groundskeeper 2 classification. Appellee's audit recommended that his position be retained in this classification.

The function statement for the Groundskeeper 3 classification specification provides that an incumbent works:

... under general supervision from groundskeeper supervisor or other administrative superior, leads and participates in maintenance and renovation of grounds ...

The illustrative job duties section of the Groundskeeper 3 classification specification referenced duties which require an incumbent to provide functional supervision for other employees and student employees. The specification identified functional supervision within the context of the classification series as assigning, scheduling, training and evaluating the work of employees in lower

classifications and students in all groundskeeping activities and related safety practices. The illustrative job duties section also referenced duties such as planning and designing horticultural and/or general preventative maintenance programs for a designated campus area crew, as well as initiating records and reports.

Although testimony established that Appellant performs tasks that are similar in nature to those described in the illustrative job duties section of the Groundskeeper 3 classification specification, I find that he does not perform such tasks on the scope contemplated by the specification. Appellant provides lead worker supervision and training to employees assigned to his area, but he does not assign or schedule those employees himself, nor does he formally evaluate their work. Testimony demonstrated that Appellant plans and designs assigned projects, but not overall programs. Therefore, I find that Appellant's position may not be properly classified as a Groundskeeper 3.

The function statement for the Groundskeeper Supervisor classification specification provides that an incumbent works:

... under general direction from building maintenance superintendent or other administrative superior, plans and implements groundskeeping maintenance and renovation projects and supervises staff.

Testimony at record hearing established that Appellant does not supervise other staff. Accordingly, his position may not be properly classified as a Groundskeeper Supervisor.

Therefore, based upon the above analysis, I find that the classification specification which most accurately describes the job duties performed by Appellant is Groundskeeper 2, classification number 4918. I respectfully **RECOMMEND** that his position be **RETAINED** in the Groundskeeper 2 classification.


Jeannette E. Gunn
Administrative Law Judge

