STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

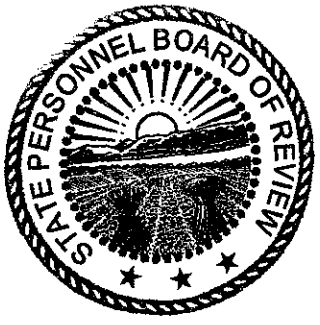
Julie Frazier, Brian M. Custer, Mark C. Smith, Warren Barnes, William Bishop, and Katie Smiddy,	Case Nos. 2013-REC-12-0414 2013-REC-12-0415 2013-REC-12-0417 2013-REC-12-0418 2014-REC-01-0002 2014-REC-01-0004
Appellants,	
v.	
Butler County Board of Commissioners,	
Appellee,	

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 Appellee's motion to dismiss is **GRANTED** and the appeals are **DISMISSED** for lack of subject matter jurisdiction, pursuant to Ohio Revised Code §§ 124.03 and 124.56.



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, June 19, 2014.

Clerk

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

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STATE PERSONNEL BOARD OF REVIEW

Julie Frazier,	Case Nos.:	2013-REC-12-0414
Brian M. Custer,		2013-REC-12-0415
Mark C. Smith,		2013-REC-12-0417
Warren Barnes,		2013-REC-12-0418
William Bishop,		2014-REC-01-0002
Katie Smiddy,		2014-REC-01-0004

Appellants

v. May 9, 2014

Butler County Board of County Commissioners,

Appellee

Elaine K. Stevenson
Hearing Officer

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration upon review of the information contained in the records of the above-referenced appeals, filed with the State Personnel Board of Review ("Board") in December 2013 and early January 2014. The Appellants filed separate appeals alleging that Appellee had reclassified their positions. The Board issued a questionnaire to gather additional information regarding these appeals. In its response to the Board's questionnaire, Appellee states that there has been no change in the job classification of Appellants' positions; rather, the status of their positions has been changed from classified civil service to unclassified civil service, pursuant to Ohio Revised Code ("O.R.C.") § 124.11(A). On March 2, 2014, Appellee filed a motion to dismiss for lack of subject matter jurisdiction and a memorandum in support. Subsequently, Appellants' counsel filed a motion to consolidate the appeals, a motion for extension of time to respond to the motion to dismiss, and a motion to reschedule consolidated hearing. On March 5, 2014, the hearing dates scheduled in this matter were vacated pending resolution of the jurisdictional issue. On March 28, 2014, Appellants' counsel filed a response to Appellee's motion to dismiss.

The information contained in the case files establishes that the change in Appellants' positions from the classified service to the unclassified service occurred as a result of Appellee's December 16, 2013 Resolution adopting a comprehensive Classification Plan for their non-bargaining unit employees. Appellee's Classification Plan provides a method for organizing positions in the county and identifying which

positions belong in the classified civil service of the county and which positions belong in the unclassified civil service. On December 27, 2013, Appellee sent a letter to each Appellant explaining the results of the Classification and Compensation Study and notifying the Appellants that the status of their positions had been changed from classified service to unclassified service. To date, none of the Appellants has suffered an adverse job action, such as a job abolishment, layoff, a reduction in pay or position, or a discharge. Appellants' job duties, job titles, and pay remain unchanged.

Appellants request that this Board hear their appeals as provided by O.R.C. § 124.03 so that they can present testimony that they should remain in the classified service. In the alternative, Appellants argue that the change in the designation of their positions from classified to unclassified constitutes an abuse of Appellee's power of appointment and, therefore, the Board should investigate this matter pursuant to O.R.C. § 124.56.

Unlike a court of general jurisdiction, the State Personnel Board of Review has jurisdiction only when it has been explicitly conferred upon it by the Ohio General Assembly. O.R.C. § 124.03 provides, in relevant part:

> (A) The state personnel board of review shall exercise the following powers and perform the following duties:
>
> (1) Hear appeals, as provided by law, of employees in the **classified** state service from final decisions of appointing authorities *** relative to reduction in pay or position, job abolishments, layoff, suspension, discharge, assignment or reassignment to a new or different position classification, *** [Emphasis added.]

Case law has established that O.R.C. § 124.03 does not confer jurisdiction on this Board to consider an appeal from a change in an employee's status from classified to unclassified, nor does it give the Board the authority to issue a declaratory judgment that an employee's position belongs in the classified service. The Board's authority to determine the civil service status of an employee's position pursuant to O.R.C. § 124.11 arises only within the context of an appeal from an adverse job action under O.R.C. Chapter 124. Thus, in order for the Board to determine whether an appointing authority's designation of a position as unclassified is correct, an adverse job action must have occurred and the employee must have filed an appeal regarding that job action, as provided in O.R.C. Chapter 124. See *Yarosh v. Becane*, 63 Ohio St.2d at 14, 17 O.O.3d at 9, 406 N.E.2d 1355; *State ex rel. Weiss v. Indus. Comm.* (1992), 65 Ohio St.3d 470, 476, 605 N.E.2d 37. See also *Crowley v. Board of Tax Appeals* (Oct. 23,

1991), *State Personnel Board of Review*, SPBR No. 11-MIS-08-0541, (Nov. 25, 1991), affm'd Full Board (Feb. 3, 1992), Franklin Co., No. 91CVF12-9937, unreported. In the matter before the Board, Appellants have not suffered any adverse job actions. Accordingly, the State Personnel Board of Review is without subject matter jurisdiction to consider Appellants' appeals pursuant to O.R.C. § 124.03.

O.R.C. § 124.56 provides that the Board shall conduct an investigation when it has reason to believe that:

> *** any officer, board, commission, head of a department, or person having the power of appointment, layoff, suspension or removal, has abused such power by making an appointment, layoff, reduction, suspension, or removal of an employee under his or their jurisdiction in violation of this chapter of the Revised Code, *** and if it finds that a violation of this chapter, or the intent and spirit of this chapter has occurred, it shall make a report to the governor ***

As noted above, Appellants contend that the change of their positions from classified to unclassified constitutes an abuse of Appellee's power of appointment. Case law has established that the designation of a position as classified or unclassified is in itself a lawful action on the part of an appointing authority. "There is no language to be found in R.C. 124.11 which would support the contention that appellants had a vested right to a perpetual status as classified civil service employees." See *Lawrence v. Edwin Shaw Hospital* (1986), 34 Ohio App. 3d 137; *Shearer v. Cuyahoga Cty. Hospital, Sunny Acres* (1986), 34 Ohio App. 3d 59; *Spindler v. Medina Cty. Board of Mental Retardation and Developmental Disabilities* (July 19, 1991), State Personnel Board of Review 91-INV-03-0164, affm'd Full Board, August 26, 1992; *State Personnel Board of Review* SPBR No. 2011-MIS-07-0224, affm'd Full Board, July 22, 2011. Accordingly, Appellee did not abuse its power of appointment when it conducted a review of the job positions under its jurisdiction and designated certain positions as unclassified pursuant to O.R.C. § 124.11(A).

In summary, while an appointing authority may or may not be correct in its designation of a position as unclassified under the provisions of O.R.C. § 124.11(A), the Board cannot determine the appropriate civil service status of a position absent an adverse job action that accompanied or followed the designation of an appellant's position as unclassified civil service. In these cases, no such action has occurred. However, should Appellee take an adverse job action against an Appellant in the future, that Appellant may file an appeal with this Board. At that time, the Board will determine whether it possesses jurisdiction over the subject matter of that appeal.

Based on the foregoing, I respectfully **RECOMMEND** that the State Personnel Board of Review grant Appellee's motion to dismiss, and **DISMISS** these appeals for lack of subject matter jurisdiction, pursuant to O.R.C. §§ 124.03 and 124.56.

Elaine K. Stevenson
Hearing Officer

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