

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Yvonne Watson,

Appellant,

v.

Case No. 2013-REM-03-0093

Columbus State Community College,

Appellee,

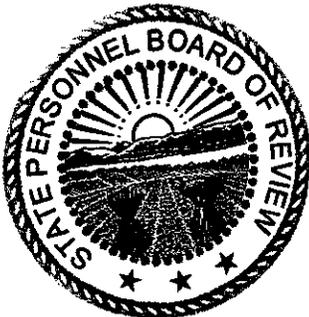
ORDER

This matter came on for consideration upon Appellant's filing of an appeal from her removal from her position with Appellee, Columbus State Community College. The record was thereafter developed.

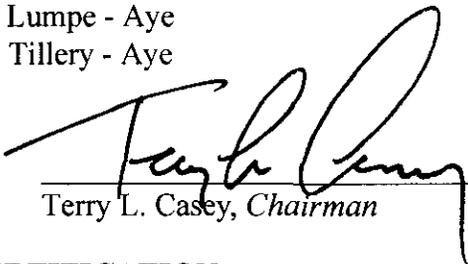
The record reflects that, on October 2, 2013, the parties and their respective counsel met and established terms of a settlement. The parties and counsel then met with the assigned Administrative Law Judge (ALJ) on that same date. At that time, Appellant's counsel read those agreed terms into the digital record. The ALJ then asked Appellant whether she had heard those terms read into the record and knowingly agreed to those terms, to which questions Appellant responded affirmatively, two different times, as documented in the written transcript.

Based on the parties' above-referenced digital memorialization of, and agreement to, the terms of a settlement, this Board finds that this matter has been settled. Therefore, this Board no longer possesses jurisdiction over the instant matter and it should be dismissed.

Wherefore, it is hereby **ORDERED** that the instant appeal is **DISMISSED** for lack of jurisdiction, pursuant to a settlement voluntarily reached and read into the record on October 2, 2013.



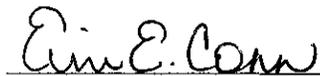
Casey - Aye
Lumpe - Aye
Tillery - Aye


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, March 12, 2015.


Erin E. Conn
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 March 19, 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-REM-03-0093

Transcript Costs: \$837.00 Administrative Costs: \$25.00

Total Deposit Required: * \$862.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: March 27, 2015

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

Yvonne Watson

Case No. 2013-REM-03-0093

Appellant

v.

August 29, 2014

Columbus State Community College

Christopher R. Young
Administrative Law Judge

Appellee

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came on for record hearing on March 7, 2014 and concluded that same day. The Appellant, Ms. Yvonne Watson, appeared at the hearing, and was represented by Mr. James J. Leo, Attorney at Law. The Appellee, Columbus State Community College (CSCC), was present through its designee, Ms. Susan Norris-Berry, Administrator of Regional Learning Centers and Appellant's supervisor and was represented by Mr. Timothy M. Miller, an Assistant Attorney General.

The Appellant was removed from her position as a Program Coordinator on February 26, 2013, and timely filed her appeal to this Board on March 27, 2013. The aforementioned was stipulated to ensure the timely filing of the Appellant's appeal.

Further, it was agreed at the outset of the Appellant's removal hearing that the Appellant's removal was not done in compliance with any of the procedural statutory safeguards provided under Ohio Revised Code Section 124.34 afforded to someone serving in the classified service. It was noted by the undersigned Administrative Law Judge that due to correspondence in the file it has been alleged that the Appellant was removed as an unclassified employee under Ohio Revised Code Section 124.11(A)(9). Thus, it was discussed prior to going onto the record that the testimonial and documentary evidence to be taken into consideration at the record hearing was to cover the scope and nature of the Appellant's job duties as Program Coordinator. The Appellee has asserted that the Appellant was serving at the time of her removal as an unclassified employee pursuant to the above noted Ohio Revised Code Section and was therefore, subject to removal without

compliance of any of the procedural statutory safeguards provided under the Ohio Revised Code afforded to someone serving in the classified service. The Appellant has challenged this allegation and alleges she was improperly classified as an unclassified employee and thus, should have been afforded the statutory provisions of the Ohio Revised Code entitled to employees within the classified service of the state.

Consequently, the sole issue presented at the record hearing was to determine whether the Appellant, Ms. Yvonne Watson, was indeed a classified or unclassified employee at the time of her removal. If the Appellant is to be determined by this Board to be an unclassified employee at the time of her removal, then her appeal must be dismissed as a matter of law since this Board lacks jurisdiction over appeals from unclassified employees. However, should the Appellant be found to have been serving in the classified service, her removal must be disaffirmed and she must be reinstated, as a matter of law since no order as required by Ohio Revised Code Section 124.34 or notice was given to her with respect to any job abolishment and resultant layoff pursuant to the Ohio Revised Code.

STATEMENT OF THE CASE

Appellant's first witness was the Appellant, Ms. Yvonne Watson, called as if on cross-examination. Appellant testified that she was employed with Columbus State Community College (CSCC) from June 16, 1997 to February 26, 2013. Appellant explained that she was first hired as an Accountant in the Grants, Contracts and Loans office, and worked in this position for approximately one and a half years. Appellant testified that she then served as a Financial Aid Officer for approximately one year. Appellant explained that after one year, she was promoted to the position of Coordinator in the Off Campus Programs Department. Ms. Watson explained that the Off Campus Programs Department had one central office, directed by Joan Friedman and that her chief responsibility within the office was to work in the off campus sites. Appellant testified that the off-campus sites are small academic centers within the five county jurisdiction of CSCC, commonly referred to as Regional Learning Centers.

Upon questioning, Ms. Watson testified that after a review of her job duties and description, she became classified as a Supervisor 1. Appellant testified that she held the position of Supervisor 1 for approximately 6 years. Appellant explained

that her chief responsibility that she spent the majority of her time on as a Supervisor 1 was to work on the prison program run by the college. Appellant explained that CSCC had programs in six prisons that allowed eligible inmates to obtain one year certificates. Appellant testified that her work with the prison program included holding recruitment sessions for incarcerated students, working with her supervisor (Ms. Susan Norris-Berry) to hire faculty to teach in the prison program, and attending meetings about the prison program. Appellant testified that due to funding issues, the prison program was eventually eliminated.

Appellant testified that in addition to her responsibilities as a Supervisor 1 with the prison program, she was also responsible for the initial academic course scheduling at the regional learning centers, prior to her demotion to the most recent position of Program Coordinator in October 2012. Appellant explained that this involved taking the future Regional Learning Center course schedule and comparing it to the courses that were "rolled over" from the previous year. Appellant testified that she would check for course duplications, and ensure that there were not competing courses between the Regional Learning Centers. Appellant explained that she would then pass this information on to Shelia Butler, a Scheduler in the Office of Central Scheduling, who would complete data entry functions. Appellant testified that her duties also involved maintaining communication with department chair persons and participating in campus committees. Appellant testified that she also performed supervisory duties as a Supervisor 1 and explained that she supervised the Coordinators at each of the Regional Learning Centers, along with working with those coordinators to ensure that the site operations were running properly, and approving leave requests.

Upon further questioning, Ms. Watson testified that in October 2012, she was demoted from Supervisor 1 to Program Coordinator. Appellant explained that after her demotion, she no longer performed any supervisory duties and instead began operating as a Customer Service Representative at the Gahanna Regional Learning Center. Appellant testified that her duties as a Customer Service Representative included answering the phone, entering calls into a call log, transferring phone calls to the proper department or person, assisting students who came to pick up textbooks, addressing issues in the computer lab, retrieving supplies for faculty from the office supply cabinet, and taking questions from visitors and directing students to the proper departments, duties not necessarily associated with the position of Program Coordinator.

Appellant then identified Appellee's Exhibit 1 as the position description of her Supervisor 1's position, the position he held before she was demoted in October 2012. Appellant testified that this position description was accurate to a certain degree, but was not totally accurate. Appellant explained that even though the position description required her to resolve workplace problems, she noted that many of the staff members brought issues directly to Ms. Norris-Berry, instead of her.

Ms. Watson then identified Appellee's Exhibit 2, as the transition plan she was given after her demotion. Appellant testified that this was the document given to her by Ms. Norris-Berry, and that she was told it explained what her job duties would include after the demotion. Appellant testified that despite being told that she would be performing all of the duties in the transition plan, she actually had a much smaller role with respect to creating the academic schedule. Appellant explained that the academic schedule was primarily done by the Office of Central Scheduling, and that she simply passed along information from department chairs to that office. Appellant testified that she was only a "conduit" of information, and had no responsibilities involving the initial creation of the schedule after she was demoted. Appellant explained that the Office of Central Scheduling was created in 2011, and that office had the chief responsibility of owning the academic scheduling process. Appellant testified that after her demotion, when she would receive information from department chairs, she would forward it to the Office of Central Scheduling for their use and review. Appellant then identified Appellee's Exhibit 3 as the position description of Program Coordinator given to her after her demotion. Appellant testified that after receiving this position description, she did occasionally work over 40 hours a week with permission from Ms. Norris-Berry, but does not remember receiving overtime pay. Moreover, the witness testified that under the essential duties listed on the position description the Program Coordinator, she did not monitor enrollment reports with the Regional Learning Centers

Appellant then identified Appellee's Exhibit 4A as a Course Section Availability Report (CSAR) from Autumn 2007. Appellant explained that this type of report details course titles, the dates and times that a course is offered, and which courses are offered at which campus locations. Appellant testified that before her demotion, she would use this report to create the initial academic schedule, but since her demotion she has not created any schedules and therefore has not used a CSAR report after her demotion.

Ms. Watson then identified Appellant's Exhibit E, pages 32 through 34 and explained that these are daily log notes that she created because she felt like CSCC's goal after her demotion was the eventual termination of her position. Appellant explained that she made a daily log of her activities in order to show her supervisors what she was doing on a daily basis at the Gahanna location. Appellant testified that the references to "building" the schedule referred to looking for conflicts and passing along information to the Office of Central Scheduling. Appellant testified that after her demotion she did not build the schedule, but rather that responsibility fell to the Office of Central Scheduling. Further, the witness when questioned testified that when looking at Appellee's Exhibit 3, page 2 under the essential job duties in question if she created initial academic course schedules explained that after her demotion she did not. Further, the witness noted on page 34 of Appellant's Exhibit E, the entries just finished entering Westerville schedule and preparing to build Gahanna AU 13, running CSAR reports, were mere entering of data, not creating any schedule.

Appellant then testified that there are several components and moving parts to the building of a schedule. Appellant explained that the first step was the initial creation of the schedule, which involved taking information from different sources, putting it on the schedule, and making a decision as to what would be offered. Appellant testified that the second aspect of creating the schedule was the data entry portion. Appellant testified that after data entry was completed, there would be feedback and interaction with department chairs and college administration. Appellant explained that one of the final aspects of working on the schedule was cancellations, which would typically be handled by Ms. Laurie Johns and Ms. Kara Spangler. Appellant testified that there could be a number of reasons for cancelling a course, which included enrollment numbers, time conflicts and funding issues. Appellant testified that before her demotion she would talk with Ms. Norris-Berry about reasons for course cancellations, but after her demotion she had no conversations about funding, faculty evaluations, or reasoning for course cancellations. When questioned about the creation of the two-year schedule, the witness testified that that was created by central office and that she was not involved with that activity.

Appellant testified that she was only involved in the initial creation of the schedule, and claimed it to be a small part of the overall schedule creation process. Appellant testified that after her demotion, she was too busy functioning as a Customer Service Representative at the Gahanna location to contribute to the

schedule the way she did before her demotion.

Ms. Watson then identified Appellee's Exhibit 4 as a PowerPoint presentation she created for a high school presentation when she held the position of Supervisor 1. Appellant explained that it was used while Ms. Norris-Berry was out of the office.

Appellant testified that Ms. Sheila Butler, a Scheduler in the Office of Central Scheduling, retired in December 2012. Ms. Watson explained that she had very little responsibility regarding the academic schedule leading up to Ms. Butler's retirement, and that she emailed Ms. Butler to see if they should have a meeting about her involvement with the schedule. Appellant testified that she never had a meeting with Ms. Butler prior to Ms. Butler's retirement, and after Appellant's demotion in October 2012, she was unsure about what her role was regarding the academic schedule.

Ms. Watson when questioned, identified Appellee's Exhibit 5 as an email she sent to department Chairpersons at CSCC, which stated that the summer schedule was prepared and ready to be reviewed. Appellant testified that she sent this email because she thought her role was to communicate information from the Office of Central Scheduling to the department Chairpersons at the Regional Learning Centers. Appellant explained that even though she sent this email about the academic schedule being prepared, she was not involved in the preparation or creation of the schedule. Appellant testified that her role with the academic schedule was minimal and that she would only receive reports and emails and forward those to the Office of Central Scheduling.

Appellant then identified Appellee's Exhibit 6 as an email and documents pertaining to the "Maymester" initiative. Appellant testified that she could not recall what the "Maymester" initiative was, but that she did remember being present at meetings where it was discussed. Ms. Watson testified that this initiative involved Ms. Pat Fabrisi, Assistant Director at the Delaware Campus, and that the information she sent to Ms. Fabrisi was not information she created, but rather information she received from somewhere else that she simply passed along.

Ms. Watson, when questioned, testified that she could not identify Appellee's Exhibit 7, because it did not look familiar to her. Appellant then identified Appellee's Exhibit 8, as an email and documents from Ms. Candice Spangler, a Program Coordinator in the Office of Curriculum Management, regarding cancellations to the

Summer 2013 course schedule. Appellant identified Appellee's Exhibits 9, 10, 11 and 12 to be the same types of emails from Ms. Candice Spangler regarding course cancellations. Appellant testified that despite these multiple emails, she did not believe she was routinely getting emails about course cancellations.

Appellant then identified Appellee's Exhibit 13 as emails between her and Ms. Peggy Mayo, Coordinator in Multi-Competency Health Technology, regarding offering MULT classes at Regional Learning Centers and at the Delaware campus. Appellant says that this email was not a recommendation about adding a course, but rather asking why this was changing in the schedule. Regarding the email from Ms. Celeste Bland, Department Chair for Developmental Education, Appellant testified that Ms. Bland emailed her requests and Appellant forwarded them to the Office of Central Scheduling, acting only as a conduit of information.

Appellant testified that if she received any requests for changes about the schedule, she would forward them to the Office of Central Scheduling, and does not remember if she actually responded to every email she received from department Chairpersons. Appellant explained that she usually responded once she already had a response or answer from the Office of Central Scheduling. Appellant testified that she was out of the office for most of February of 2013 due to an illness, and many emails and requests were handled by Ms. Norris-Berry while Appellant was out of the office.

Ms. Watson testified that she could not identify Appellee's Exhibit 14 because she was not familiar with the document. Appellant identified Appellee's Exhibit 15, as an adjunct analysis, but testified that she did not work with it after her demotion. Appellant then identified Appellee's Exhibit 16, as the adjunct faculty calculation for Winter 2011, but testified that like the previous adjunct analysis, she did not work with it after her demotion.

Appellant identified Appellee's Exhibit 17 and 18, as a fiscal year budget sheet and an enrollment comparison, respectively, but again testified that she did not work with these documents after her demotion. Appellant testified that she never used budget worksheets, adjunct analyses, or CSAR reports after her demotion.

The Appellant then called Ms. Julie VanWynsberghe, a Business Partner in the Human Resources office at CSCC, to the witness stand, out of order, as her first witness. Ms. VanWynsberghe, testified that she has worked in the human resources

office for approximately the last 15 years. Ms. VanWynsberghe explained that she works in a generalist role within the human resources office, supporting faculty, staff and administration at CSCC. Ms. VanWynsberghe testified that she knows and understands the distinction between classified and unclassified employees, as well as the difference between staff and administration. Ms. VanWynsberghe testified that her position is classified as exempt staff. Ms. VanWynsberghe identified Appellee's exhibit EE as an excerpt from the CSCC policy and procedures manual regarding, "Work Category Definitions" that became effective April 22, 2013, after Ms. Watson's separation from service, for staff, faculty and administrators. Ms. VanWynsberghe also testified that CSCC does not use classifications such as classified or unclassified, but rather exempt and non-exempt employees. Further, Ms. VanWynsberghe identified Appellant's Exhibit A, as Ms. Watson's position description which noted that she held the position of Program Coordinator, which also noted that her employment type was, "staff".

Appellee's next witness to the stand was Ms. Susan Norris-Berry, Appellant's immediate supervisor before Appellant was terminated. Ms. Norris-Berry testified that she has worked for CSCC since 2002, and was originally hired as a Program Coordinator in Human Capacity Development within the Human Resources Department. Ms. Norris-Berry testified that she held that position for two years before becoming an Administrator for the Regional Learning Centers, which is the position she currently holds.

Ms. Norris-Berry testified that her duties as administrator for the Regional Learning Centers include being responsible for the operations and management of the centers. Additionally, Ms. Norris-Berry testified that this included the oversight of the daily and long term operations, expansion plans, managing 25 staff members and holding the responsibility for the academic course schedule. Ms. Norris-Berry testified that she was also responsible for completing Appellant's evaluations, approving leave and disciplinary actions for the Appellant. Ms. Norris-Berry testified that in her position she was responsible to explain to the Appellant her duties after she had been demoted. Ms. Norris-Berry testified that she provided and explained the transition plan, Appellee's Exhibit 2, to Appellant after she was demoted, as well.

Ms. Norris-Berry testified that Appellant was told and provided with a transition plan that said she would be the author of the regional learning center's initial academic course schedule. Ms. Norris-Berry testified that this required

decision making, analysis, thoughtfulness and careful data examination. Ms. Norris-Berry testified that this process would involve looking at the schedule from the last semester and ensuring that the most successful courses were rolled over to the new schedule. Ms. Norris-Berry also testified that Appellant was responsible for analyzing data from the Office of Institutional Effectiveness to determine what the best courses would be to run for the new semester. Ms. Norris-Berry testified that these expectations were communicated to Appellant and that building the initial schedule and analyzing data to do so was an important part of Appellant's position description.

Ms. Norris-Berry also testified that after Appellant's demotion, Appellant had the responsibility of closing the prison program when CSCC decided to eliminate that program. Ms. Norris-Berry testified that this involved providing direction and communication to prison administration and staff on how to transition the program out of the prisons. Ms. Norris-Berry testified that this included the coordinating the removal of thousands of books, supplies and furniture from the prison locations.

Ms. Norris-Berry testified that Appellee's Exhibit 13 was an example of the Appellant performing the job duties as described in Appellant's Program Coordinator position description. Ms. Norris-Berry testified that when Appellant asked about the MULT course, Appellant was analyzing report information and making a recommendation about a course to be added. Ms. Norris-Berry testified that she also had conversations with Appellant about using enrollment data in Appellant's scheduling duties.

Ms. Norris-Berry then testified that Appellee's Exhibit 4 was a presentation prepared by Appellant when she was a Supervisor 1. Ms. Norris-Berry testified that this presentation was for an enrollment committee made up of CSCC Deans and Department Chairs to help them understand the schedule building process. Ms. Norris-Berry explained that this presentation included a two year degree matrix made by the higher learning commission that details what courses have to be included in the schedule each semester in order for the college to keep their accreditation. Ms. Norris-Berry testified that Appellant would use this type of information, before and after the demotion, to build the academic schedule. Ms. Norris-Berry testified that after Appellant was terminated, she found these types of reports on Appellants desk.

Ms. Norris-Berry then identified Appellee's Exhibit 4B as an electronic classroom grid created by Appellant. Ms. Norris-Berry also identified Appellee's Exhibit 4E as documents pertaining to "course combinations", which are courses that should be scheduled in the same semester so that students are able to take them at the same time. Ms. Norris-Berry testified that the information in these reports would have been used by Appellant to build to schedule. Ms. Norris-Berry also testified that Appellant sent an email, Appellee's Exhibit 5, saying that the schedule was done because it was Appellant's responsibility to prepare the schedule.

When questioned about Appellant's testimony that Appellant was told only to forward Department Chair requests to the Office of Central Schedule instead of addressing them directly, Ms. Norris-Berry testified that she never told Appellant to not respond to these emails and simply forward them to the Office of Central Scheduling. Ms. Norris-Berry also testified that Appellant was responsible for the successful authoring of the schedule.

On cross examination, Ms. Norris-Berry went on to testify that the Office of Central Scheduling was created in 2011 to act as a check and balance system to ensure if the Regional Learning Center schedules were in line, to do a better job of scheduling and flattening the schedule out. When questioned about the role of a Program Coordinator in the scheduling process, the witness testified that they are to analyze the data, what classes should be added, what classes should be dropped off, along with reaching out to the Chair of that Department, in essence being the author of the schedule. However, Ms. Norris-Berry also testified that final decision making power with regards to the schedule was not in the hands of Ms. Katie Kuhn or the Appellant, but rather with Dr. Karen Muir.

The witness when questioned about what reports Ms. Watson analyzed in building the schedule, simply responded by stating this Watson would look at course closures. Additionally, Ms. Norris-Berry identified Appellee's Exhibit 7, as an enrollment data summary sheet produced by the Office of Institutional Effectiveness, and explained that this is a type of report that Appellant would help to build the schedule after she was demoted, but had no firsthand knowledge that she actually used this report.

Ms. Norris-Berry identified Appellant's Exhibit BB, as an e-mail chain dated November 1, 2012, wherein Ms. Watson was questioning Dr. Muir about her role

regarding the RCL schedules, and schedules had already been put together by Central Scheduling Office for the next two years. The witness explained that Ms. Butler was the main driver to put the schedule together, and that she was going to be retiring in the next couple months, and Ms. Watson was to take over this functionality.

Ms. Norris Berry then identified Appellee's Exhibit 19 as an email from Dr. Muir to Ms. Norris-Berry regarding Appellant's concerns over having enough time to work on building the academic schedule. Ms. Norris-Berry testified that Appellant was concerned about her workload and requested additional time to work on the schedule or staff to cover her front desk responsibilities. Ms. Norris-Berry testified that Appellant was not given additional overtime or help at the front desk to work on the schedule, due to budget issues.

When questioned about Appellant's new job duties after Appellant's demotion, Ms. Norris-Berry testified that while the supervisory responsibility was taken away from Appellant, Appellant was still responsible for the initial building of the schedule. Additionally, the witness identified Appellant's Exhibits U, V, S, X, Y and T, as various e-mails which evidence Ms. Watson's role with creating the initial course schedule. Ms. Norris-Berry also testified that after the demotion, Appellant's additional duties included coordinating the exit of CSCC from the prison system after the prison program was eliminated, as well as serving in a customer service role at the Gahanna Regional Learning Center.

The Appellant, Ms. Watson was then called to the witness stand as if on direct examination. After identifying Appellant's Exhibit A, Ms. Watson's explained that she did not create the schedule, nor did she use enrollment reports or budgets to create the academic schedule after her demotion, as that was mainly the Office of Central Scheduling responsibility.

Appellant was then questioned about the Office of Central Scheduling. Appellant testified that she believed the Office of Central Scheduling was created to "own" the academic schedule for the campus. Appellant testified that Ms. Norris-Berry was the primary person who oversaw and was in charge of the academic schedule for the Regional Learning Centers.

Additionally, Ms. Watson testified that after her demotion, she was told by Ms. Norris-Berry and Dr. Muir that that the Office of Central Scheduling would

create the schedule. Appellant testified that after her demotion, she attended two meetings where information about the creation of the academic schedule was shared, but that she did not have any input on the schedule. The witness explained that if a Department Chair wanted to cancel/add a class, she could not do this, as those types of requests had to be forwarded to Office of Central Scheduling. Furthermore, the witness testified she never independently ever made a recommendation to add or cancel any class to the course schedule, at any time when she was employed as a Program Coordinator.

Appellant also testified that after her demotion she was essentially a receptionist, wherein her primary duties included, but were not limited to, providing excellent customer service to all of the students, faculty, staff and visitors at the Gahanna regional learning center. Appellant testified that she answered phone calls, greeted visitors, and served as a "one stop" shop to provide students the best customer service and to answer their questions. The witness testified that she spent approximately 90% of her time handling clerical duties and approximately 10% of her time greeting visitors, and answering their questions, whether they would be faculty, students or the public. Additionally, the witness testified that she had very little time to actually work on anything schedule related, as time just did not allow that to occur. Appellant testified that Ms. Butler was the scheduler, and because of Appellant's front desk duties, she was hardly able to be seated before individuals would come in, and therefore did not have time to work on the schedule. Appellant testified that when she asked for more time to work on the schedule, she suggested that someone could cover her customer service duties for a period of time so that she could work on the schedule uninterrupted. Appellant testified that she was told that was not possible due to budget constraints.

Upon being asked what her duties with the schedule were, Appellant testified that her role with the schedule was based on what she was told to do by the Office of Central Scheduling. Appellant also testified that she was "confused" with respect to what her actual role was with the schedule.

FINDINGS OF FACT

1. The Appellant, Ms. Yvonne Watson, began her employment with Columbus State Community College (CSCC) on June 16, 1997 and was removed from her position of Program Coordinator on or about February 26, 2013.

2. The testimony and/or documentary evidence revealed, by preponderance thereof, that Ms. Watson had previously worked as a Supervisor 1 prior to her demotion, and subsequently was demoted to the position of Program Coordinator in October 2012, approximately year and a half before her termination. Ms. Watson was given a "transition plan" after her demotion, which described for the most part her job duties and/or responsibilities to perform after her promotion. (See Appellee's Exhibit 2)
3. Further, the evidence was devoid of any waiver acknowledging that Ms. Watson's position as Program Coordinator was in fact in the unclassified service, or that she was to serve at the pleasure of the appointing authority after her demotion, nor was she ever served with an Ohio Revised Code Section 124.34 Order of Removal.
4. Moreover, the testimonial and documentary evidence revealed by a preponderance of the evidence, that as part of Ms. Watson's duties she was to schedule classes as directed by the Office of Central Scheduling Department, and that the "creating" of the schedule was a collaborative process involving many individuals and that Ms. Watson did not have the authority to approve the final schedule, as that was done by the Office of Central Scheduling. The testimony and documentary evidence revealed that Ms. Watson spent approximately 10 to 15% of her time on such scheduling tasks. Additionally, the evidence revealed that the remaining 85% to 90% of Ms. Watson's time was spent on clerical tasks while working out of the Gahanna Regional Learning Center. As such, the evidence revealed that Ms. Watson's duties were as one acting as a Customer Service Representative, that included, but were not limited to, answering the phone, entering calls into a call log, transferring phone calls to the proper department or person, assisting students who came to pick up textbooks, addressing issues in the computer lab, retrieving supplies for faculty from the office supply cabinet, and taking questions from visitors and directing students to the proper departments, for the most part.
5. The testimonial and documentary evidence also revealed that Ms. Watson had no authority to discipline employees, or had any supervisory authority, had no policymaking authority, had no independent purchasing authority without prior approval and did not have the authority to act for or on behalf of CSCC.

CONCLUSIONS OF LAW

The determination of the Appellant's status as a classified or unclassified employee while employed by the Columbus State Community College will mandate the outcome of this appeal. As was previously stated, the Appellant was removed as an unclassified employee pursuant to Ohio Revised Code Section 124.11(A)(9). The burden is on the Appellee to prove, by a preponderance of the evidence that the Appellant was serving in the unclassified service at the time of her termination. If the Appellee meets this burden, then the case will be dismissed, as this Board has no subject matter jurisdiction over unclassified employees. If, however, the Appellee fails to meet its burden, then the Appellant must be reinstated as she was not removed in accordance with the procedures governing the removal of classified employees. After review of all of the testimony and evidence in the instant case, it is my recommendation that the Appellee failed to meet their burden that the Appellant, Ms. Yvonne Watson, was serving in an unclassified position or as an unclassified employee at the time of her removal, and her removal must be disaffirmed.

Employment with the state of Ohio is divided into the classified and unclassified service. The division between these two groups of public employment is delineated in Ohio Revised Code Section 124.11(A) which describes a variety of positions within the public sector which are located within unclassified service. The Appellee in this matter claims that the Appellant, Ms. Yvonne Watson, was employed in the unclassified service under the provisions of Ohio Revised Code Section 124.11(A)(9). Consequently, the issue presented in the instant appeal is whether or not the Appellant herein was serving as an unclassified employee as contemplated by the above noted statute.

Ohio Revised Code Section 124.11(A) (9) reads as follows:

* * *

(A) The unclassified service shall comprise the following positions, which shall not be included in the classified service, and which shall be exempt from all examinations required by this chapter:

* * *

(9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency.

As can be seen from the above statute, in order for one to be considered an unclassified employee, such employee must either have the authority to act for and on behalf of the agency or must be holding a fiduciary or administrative relationship to that agency. It is clear that the statute is basically divided into three prongs with the first prong designating an employee unclassified if they act for and on behalf of the agency. The second prong is if an employee holds a fiduciary relationship to the agency. Lastly, the third prong is that the employee holds administrative relationship to the agency. It is also noted that since each of these clauses are separated by the word "or", thus an employee only has to satisfy one prong of the statute in order to be considered an unclassified employee.

An administrative relationship is defined by Ohio Administrative Code Section 124-1-02(C) "administrative relationship" generally means a relationship where an employee has substantial authority to initiate substantial authority to initiate discretionary action and/or in which the appointing authority must rely on the employee's personal judgment leadership abilities. The average employee would not possess such qualities or be delegated such discretionary authority. Whether one occupies an administrative relationship to another is a question of fact to determine by the Board.

Further, "fiduciary relationship" is defined within Ohio Administrative Code Section 124-1-02(I) generally means a relationship where the appointing authority reposes as special confidence and trust and the integrity and fidelity of an employee to perform duties which could not be delegated to the average employee with knowledge of the proper procedures. These qualifications are over and above the technical competency requirements to perform the duties of this position. Whether one occupies a fiduciary relationship to another is a question of fact to determine by the Board.

In the case at hand, the Appellant, Ms. Yvonne Watson does not meet the first criteria in that she had the authority to act for and on the behalf of the agency.

The testimonial and documentary evidence was void of any evidence revealing that the Appellant had any such authority. In fact, the testimonial and documentary evidence revealed that Ms. Watson had no authority to discipline employees, or had any supervisory authority, had no policymaking authority, had no independent purchasing authority without prior approval and did not have the authority to act for or on behalf of CSCC. However, since the Appellee failed to show that the Appellant met the first criteria that she acts for and on behalf of the agency, the Appellee could also satisfy the other two criteria that the Appellant held a fiduciary or administrative relationship to the agency to be considered an unclassified employee.

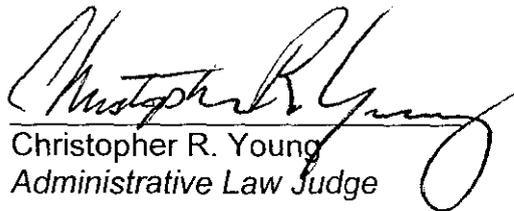
With respect to whether Appellant, Ms. Yvonne Watson, held a fiduciary relationship to the agency, the testimonial and documentary evidence revealed she did not. Ms. Watson's duties were that she was to schedule classes as directed by the Office of Central Scheduling Department, and that the "creating" of the schedule was a collaborative process involving many individuals and that Ms. Watson did not have the authority to approve the final schedule, as that was done by the Office of Central Scheduling. Further, the testimony and documentary evidence revealed that Ms. Watson spent approximately 10 to 15% of her time on such scheduling tasks. Additionally, the evidence revealed that the remaining 85% to 90% of Ms. Watson's time was spent on clerical tasks while working out of the Gahanna Regional Learning Center. As such, the evidence revealed that Ms. Watson's duties were as one acting as a Customer Service Representative, that included, but were not limited to, answering the phone, entering calls into a call log, transferring phone calls to the proper department or person, assisting students who came to pick up textbooks, addressing issues in the computer lab, retrieving supplies for faculty from the office supply cabinet, and taking questions from visitors and directing students to the proper departments. Likewise, when analyzing whether the duties Ms. Watson performed at the agency were ones that reposed a special confidence and trust in her which could not just be delegated to an average employee with knowledge of the proper procedures, was not proven, as a duties noted above were ones that could be performed by a Customer Service Representative. Thus, the second prong of the above noted test, that an employee who holds a fiduciary relationship to the agency was not proven, as well.

With respect to whether Appellant, Ms. Yvonne Watson, was in an administrative relationship to the agency, the testimonial and documentary evidence revealed she did not. Again, as revealed by the evidence, whether the testimonial

and documentary, Ms. Watson's duties were of a perfunctory fashion. Ms. Watson had no authority to discipline employees, or had any supervisory authority, had no policymaking authority, had no independent purchasing authority without prior approval and did not have the authority to act for or on behalf of CSCC. For the appointing authority to state that it relied on Ms. Watson's personal judgment and leadership abilities, simply defies logic that she was simply performing the duties of a Customer Service Representative, with no supervisory authority. Thus, the appointing authority did not prove by a preponderance of the evidence that Ms. Watson was holding an administrative relationship to the agency. Therefore, it is conclusion of the undersigned Administrative Law Judge that CSCC failed to meet its burden of proving that Ms. Watson was serving as an unclassified employee at the time of her removal.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISAFFIRM** Appellee's unclassified removal of the Appellant, Ms. Yvonne Watson, from her position of Program Coordinator, pursuant to R.C. 124.03 and R.C. 124.34. I further **RECOMMEND** that the State Personnel Board of Review **REINSTATE** the Appellant to a position with Appellee classified as a Customer Service Representative, commensurate with the duties that she performed at and prior to the time of her removal on about February 26, 2013, (except for the time covering October 2, 2013, through January 24, 2014, with the reasons set forth in the extant record), pursuant to R.C. 124.03, R.C. 124.14 and R.C. 124.34.


Christopher R. Young
Administrative Law Judge