STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Esther Adkins,

Appellant,

v. Case Nos. 2014-REM-07-0190
2014-MIS-07-0191

Franklin County Department of Job & Family Services,

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 the instant removal of Appellant from her position with the Franklin County Department of Job and Family Services is **DISAFFIRMED**, pursuant to R.C. 124.03 and R.C. 124.34.

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, April 17, 2015.

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
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Esther Adkins

Appellant

v.

Franklin County Department
of Job and Family Services

Appellee

Case Nos. 2014-REM-07-0190
2014-MIS-07-0191

March 5, 2015

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes come on due to Appellant's July 30, 2014 filing of appeals regarding her removal from the position of Deputy Director of Operations with Appellee, Franklin County Department of Job and Family Services. The instant records were thereafter developed. That development included this Board's August 14, 2014 issuance of a Questionnaire; Appellee's August 27, 2014 filing of its Response to same; and a pre-hearing held on November 20, 2014.

On January 30, 2015, Appellant timely filed Appellant's Jurisdictional Memorandum. Appellee did not file Appellee's Jurisdictional Memorandum, in spite of this Board's January 12, 2015 issued Procedural Order ordering each party to do so. Therefore, it is presumed that Appellee waived its opportunity to do so.

In its Response to this Board's Questionnaire issued on August 14, 2014, Appellee asserted that that Appellant's position fell within the unclassified service pursuant to R.C. 124.11 (A) (32) and R.C. 329.02. Accordingly, Appellee contested Appellant's assertion that this Board possesses jurisdiction over the two instant appeals.

Because Appellee did not issue an R.C. 124.34 Order of Removal to Appellant, if Appellee cannot meet its burden to demonstrate that Appellant's position fell within the unclassified service, Appellant's removal must be disaffirmed. However, if Appellee does meet that burden, the two instant appeals must be dismissed for lack of jurisdiction over their subject matter, pursuant to R.C. 124.03.

In Appellee's Response to this Board's August 14, 2014 issued Questionnaire, Appellee asserts that two Revised Code provisions (*i.e.* R.C. 124.11 (A) (32) and R.C. 329.02) operate to place Appellant's position in the unclassified service. Appellee attached two exhibits to this Response.

Appellee's Response **Exhibit A** is a copy of Resolution No. 0166-13, titled "Resolution Designating Positions As Unclassified And Exempt From The Classified Service (Commissioners)", dated February 26, 2013. Appended thereto is a lengthy list of "Unclassified Positions" which includes a position titled "Deputy Director, Operations", Classification Number 90002. The "ORC Statutory Authority" for this position listed as 121.11 [sic] (A)(32).

Appellee's Response **Exhibit B** is a copy of Personnel Action (PA) No. 4300413 for an unclassified separation regarding the position of Deputy Director, Operations, (Class Number 90002, Range N19, Rate of $49.03, and "U" – unclassified status). The PA contains an effective date of "7/23/2014", the date of Appellant's removal. The remarks section of the PA also indicates: "Unclassified Removal Effective: July 23, 2014".

The PA bears the signature appearing to be "Marilyn Brown" on the signature line for the "Approval of Appointing Authority". No date is placed on the PA for Commissioner Brown's signature. The "Signature-Director of Admin. Serv" bears what appears to be the signature or stamp for R.J. Young. That signature bears the date of "7/25/14". That date, self-evidently, is two days *subsequent to* the July 23, 2014 effective date of Appellant's removal. Thus, on its face, this PA appears to be void *ab initio*.

Copied onto the back of Exhibit B is a letter from Robert Young, Human Resources Director for the Franklin County Board of Commissioners, addressed to Appellant, dated July 23, 2014. The letter essentially indicates that it is notice that Appellant's " ... unclassified appointment as Deputy Director of Operations with Job & Family Services is being revoked." At the top of the letter is a hand-written confirmation of delivery at "JFS" on July 23, 2014 at 3:52 p.m., witnessed by "A. Trotman" and "M. Lindeboom".

In her January 30, 2015 filed Jurisdictional Memorandum, Appellant does not appear to contest that Appellant's position was carried in the unclassified service beginning with her July 29, 2003 apparent date of hire as an Assistant Director. Further, Appellant appears to acknowledge that status in July 2003 and on March 10, 2005.

Appellant does, however, dispute **the events and status of Appellant's position or positions subsequent to November 24, 2010.** On that date. Appellant's classification title and class number were changed, pursuant to a "Demotion" from "Asst. County HS Admin. 4/Assistant Director", 61814CHS to "Soc. Program Admin. 4/Program Oper. Director", 69418CHS. Appellant's position number changed from 100120 to 108000, pursuant to PA No. 4292733. As

Appellant further notes, that same PA also effectuated a change in Appellant's status from "U" (unclassified) to "C" (classified).

In Appellant's Jurisdictional Memorandum, Appellant presents several additional PAs that appear to have been effectuated between November 24, 2010 and the effective date of her removal. None of those PAs indicates that Appellant's position was carried in the unclassified service. It is not until **after** Appellant was removed that Appellee appears to have effectuated another PA listing Appellant's position as unclassified.

As noted, Appellee claims that, at the time of her removal, Appellant's position was exempted from the classified service by R.C. 124.11 (A) (32), which reads:

> **124.11 Unclassified service - classified service.**
>
> The civil service of the state and the several counties, cities, civil service townships, city health districts, general health districts, and city school districts of the state shall be divided into the unclassified service and the classified service.
>
> (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:
>
> (32) Employees placed in the unclassified service by another section of the Revised Code.

R.C. 124.11 (A) (32) must work in tandem with another section of the Revised Code. The list of asserted unclassified positions that Appellee attached to Resolution 0166-13 referenced R.C. 121.11 (A) (32) (and not R.C. 124.11 (A) (32)) as the operative provision placing Appellant's position in the unclassified service. R.C. 121.11 deals with bonds and oaths of office, not exemptions from the classified civil service. Therefore, we may state that this claimed exemption for Appellant's position is inoperative.

It is noted that whoever drafted this list was aware of and was able to reference R.C. 124.11, since R.C. 124.11 (A) (1) is placed at the top of the list, referring to the positions of the three County Commissioners. Nonetheless, let us assume, for the sake of argument, that the drafter should not be held responsible for this drafting error, if error it was.

Even if we give the drafter of this list the benefit of the doubt and substitute R.C. 124.11 (A) (32) for R.C. 121.11 (A) (32) on the list, R.C. 124.11 (A) (32) still needs another Revised Code provision to make it operational. R.C. 329.02 is the

only other section of the Revised Code that Appellee claims exempts Appellant's position from the unclassified service.

R.C. 329.02 provides for several avenues into the unclassified service.

A position can be placed into the unclassified service through designation as one of five designated administrative positions by the Director of a County Department of Job and Family Services with the approval of the Board of Commissioners; there is nothing in the record to indicate that Appellant was so appointed. In addition, a position can be placed into the unclassified service if it is one of approximately 10 positions listed in R.C. 329.021 (D); there is nothing in the record to suggest that Appellant's position matched any of these 10 positions.

To summarize, in its list of unclassified positions, Appellee failed (at a minimum) to properly list the statutory scheme by which Appellant's position was placed into the unclassified service, listing R.C. 121.11 (A) (32) as the basis for that claim.

Further, there is nothing in the record to demonstrate that the position Appellant held at the time of her removal, and for some years previously, was one of the positions that R.C. 329.02 designates as falling within the unclassified service.

Finally, the very PA that Appellee utilized to remove or "separate" Appellant appears to be void *ab initio*, since there is nothing on the PA to indicate that it was signed until two days after Appellant's removal.

Accordingly, Appellee has failed to meet its burden of proof to demonstrate that the position that Appellant held at the time of her removal fell within the unclassified service. Moreover, since Appellee did not issue an R.C. 124.34 Order of Removal to Appellant, Appellee has failed to comply with the requirements for the removal of a classified employee set forth in R.C. 124.34. For these reasons, Appellant's instant removal should be disaffirmed.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISAFFIRM** the instant **REMOVAL** of Appellant from her position with the Franklin County Department of Job and Family Services, pursuant to R.C. 124.03 and R.C. 124.34.

James R. Sprague
Administrative Law Judge