

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Steven Seitz,

Appellant,

v.

Case No. 2014-REC-01-0003

Butler County Board of Commissioners,

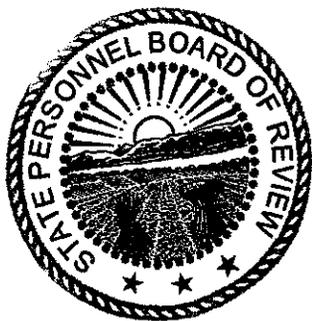
Appellee,

ORDER

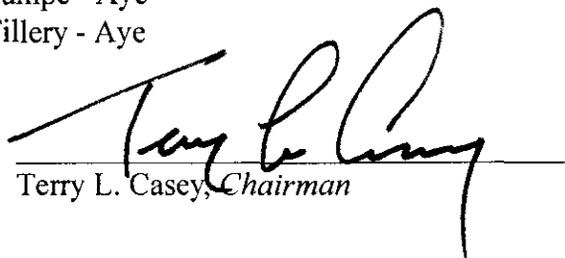
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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



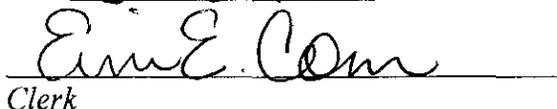
Casey - Aye
Lumpe - Aye
Tillery - Aye


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.

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

Steven T. Seitz,

Case No. 2014-REC-01-0003

Appellant

v.

May 9, 2014

Butler County Board of County Commissioners,

Elaine K. Stevenson

Appellee

Hearing Officer

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This matter came on for consideration upon Appellant's filing of an appeal from an alleged reclassification of his position with Appellee. The State Personnel Board of Review (Board) issued a questionnaire to gather additional information regarding this appeal. In its response to the Board's questionnaire, Appellee states that there has been no change in the job classification of Appellant's position; rather, the status of his position 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. Appellant did not file a response to the motion to dismiss.

The information contained in the record establishes that the change in Appellant's position 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 a number of county employees, including Appellant, explaining the results of the Classification and Compensation Study and advising certain employees that the status of their positions had been changed from the classified service to unclassified service. To date, Appellant has not suffered an adverse job action, such as a job abolishment, layoff, a reduction in pay or position, or a discharge. Appellant's job classification, job duties, and pay remain unchanged.

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.]

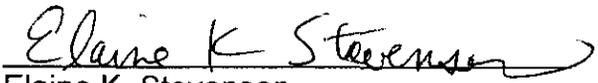
Case law has established that O.R.C. § 124.03 does not confer jurisdiction on this Board to consider an appeal from a change in an employee's status from classified to unclassified, nor does it give the Board the authority to issue a declaratory judgment that an employee's position belongs in the classified 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.

Additionally, it is important to note that case law has also 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. See also *State Personnel Board of Review* SPBR No. 2011-MIS-07-0224, affm'd Full Board, July 22, 2011.

In this case, Appellant has not suffered an adverse job action. Accordingly, the State Personnel Board of Review is without subject matter jurisdiction to consider Appellant's appeal pursuant to O.R.C. § 124.03. However, should Appellee take an

adverse job action against Appellant in the future, he may file an appeal regarding that action 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** this appeal for lack of subject matter jurisdiction, pursuant to O.R.C. § 124.03.


Elaine K. Stevenson
Hearing Officer

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