

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

Brian Dille,

Appellant,

v.

Case No. 2015-REC-07-0099

Department of Rehabilitation & Correction,
and
Department of Administrative Services,

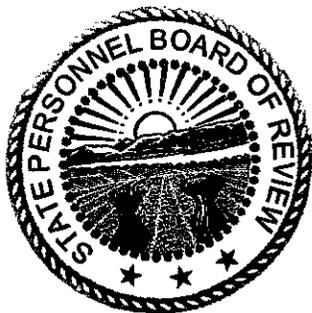
Appellees,

ORDER

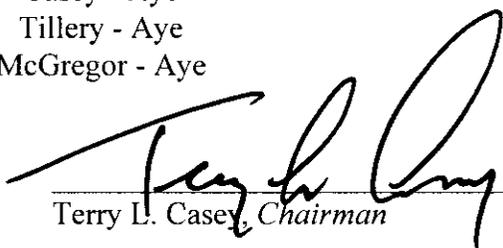
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 **RECLASSIFIED** as Building Construction Superintendent, classification number 53141, pursuant to R.C. 124.03 and 124.14.



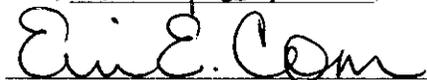
Casey - Aye
Tillery - Aye
McGregor - Aye


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, July 27, 2016.


Erin E. Com
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 August 3, 2016. 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: 2015-REC-07-0099

Transcript Costs: \$90.00 Administrative Costs: \$25.00

Total Deposit Required: * \$115.00

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: August 11, 2016

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

Brian K. Dille,

Case No. 2015-REC-07-0099

Appellant,

v.

June 22, 2016

Department of Rehabilitation and Correction,
Madison Correctional Institution,

and

Department of Administrative Services,

Elaine K. Stevenson
Administrative Law Judge

Appellees

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration due to Appellant, Brian K. Dille's ("Appellant"), timely filing of an appeal from the results of a job audit finding his position with Appellee, Department of Rehabilitation and Correction, Madison Correctional Institution ("DRC" or "Appellee") to be properly classified as Building Maintenance Superintendent 2. The State Personnel Board of Review ("Board") has jurisdiction to hear Appellant's appeal pursuant to Ohio Revised Code ("O.R.C.") §§ 124.03(A) and 124.14(D).

A record hearing was held in this matter on April 6, 2016, during which testimonial and documentary evidence was presented. Appellant was present at record hearing and appeared *pro se*. Appellee, DRC, was present through its designees Amy C. Parmi, Legal Counsel, and Lauren Chalupa, Staff Counsel. Appellee, Ohio Department of Administrative Services ("ODAS"), was present through its designee, Jessica Gerst, Human Capital Management Senior Analyst. Also present was Appellant's immediate supervisor, Tonya Briggs, Business Administrator 3.

FINDINGS OF FACT

Based upon a thorough review of the record evidence as a whole, and where relevant, credibility determination of witness' testimony, I make the following Findings of Fact:

1. Appellant is employed by Appellee, Madison Correctional Institution and has worked for Appellee since approximately January 2004. Appellant's position is

currently classified as Building Maintenance Superintendent 2. On April 24, 2015, Appellant filed a request for a job audit, requesting that his position be reclassified as Building Construction Superintendent.

2. Appellant is assigned to the Business Administration Section of the Madison Correctional Institution. In 2008, Appellant's immediate supervisor, who held the position of Building Construction Superintendent, retired. That position remains vacant. Appellant is now directly supervised by Tonya Briggs, Business Administrator 3. Ms. Briggs fully agreed with Appellant's description of his job responsibilities.
3. Madison Correctional Institution is a dual compound facility (Zone A and B) built in 1986. As an aging facility, construction and maintenance projects are an on-going component of maintenance.
4. Appellant spends approximately sixty-five to seventy percent of his work time supervising and managing routine aspects of the maintenance program at Madison Correctional Institution. Since approximately August 2009, Appellant has supervised fourteen employees in the maintenance division. These employees include: one Air Quality Technician, two Electricians, six Maintenance Repair Workers, one Plumber, two Stationary Engineers, one Automotive Technician, and one Telecommunications Technician. As Supervisor, Appellant approves leave requests, assigns and reviews work, completes performance evaluations, and initiates discipline, scheduling. On average, Appellant assigns twenty work orders a day and roughly five-thousand per year.
5. Appellant acts as the on-site manager for all maintenance or repair issues arising at Madison Correctional Institution and he is the only on-site manager supervising construction work.
6. Appellant spends approximately twenty-five to thirty percent of his work time supervising and inspecting construction, alteration, maintenance and repair projects for Madison Correctional Institution. Appellant makes daily rounds of the Institution to identify any immediate or future projects. Once identified, Appellant develops the scope of the project and obtains cost estimates from contractors. For small projects (under \$50,000.00), Appellant is not required to acquire permission from the central office. For larger projects (over \$50,000.00), Appellant gathers all necessary information and completes a Capital Improvement Form, which is submitted to a representative from the DRC's Bureau of Construction, Activation and Maintenance ("CAM"). CAM then presents the project to the Controlling Board, which authorizes the funding and notifies Appellant that the project may proceed.

7. Appellant has supervised and overseen a number of construction projects within Madison Correctional Institution. Projects in progress or completed during the year preceding April 2015 included replacing underground fuel tanks with above ground fuel tanks (\$150,000.00), building a day fence throughout Zone A (\$70,000.00), constructing and updating Zone A and B's sally ports (\$355,000.00+), and demolishing and rebuilding dorm facilities by constructing four, sixty feet long concrete walls with electrical outlets (\$240,842.20).
8. When a project begins, Appellant acquires information on each individual contractor, sits on an interview board to select the architectural firm, and sets up initial meetings. Appellant trains the contractors on proper entry, exit, and tool control procedures while working at Madison Correctional Institution. Once the project is underway, Appellant organizes progress meetings weekly or biweekly, while also monitoring the projects daily to ensure completion in a timely manner.
9. After project completion, Appellant is responsible for performing a final walkthrough and signing off on the project if satisfied with the work. A CAM representative is also required to sign off on the project.
10. Appellant holds a Building Operator Certification, which is a continuing education course maintained through a combination of his work as a maintenance superintendent, online courses, and seminars.
11. Appellant monitors all expenditures in the Maintenance Department's budget throughout the year and is directly responsible for placing orders, acquiring purchasing orders, and tracking these documents from start to finish.
12. Appellant spends approximately five percent of his work time managing all documentation for the Maintenance Department. This includes creating Capital Improvement Plans, which are three two-year plans of potential upcoming projects. These projects are typically over \$100,000.00. These plans are sent to CAM. Appellant manages the audit for the American Correctional Association, which accredits all DRC facilities including Madison Correctional Institution based on structural integrity. Additionally, Appellant maintains all documents in relation to purchases, work orders, preventive maintenance programs, and American Correctional Association audit files.

CONCLUSIONS OF LAW

Pursuant to O.R.C. § 124.03(A), the Board is empowered to hear appeals of employees in the classified state service from final decisions of their respective appointing authorities or the director of administrative services relative to, *inter alia*, the reclassification of an employee's position, with or without a job audit under O.R.C. § 124.14(D). O.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 primary criteria for the Board to consider when determining the most proper classification for a position are the relevant classification specifications, including the class concepts, the job duties outlined, and the percentages of time devoted to each job duty. The Board's decision must be consistent with the applicable classification specifications. *Klug v. Dept. of Admin. Services*, No. 87Ap-306, slip op. (Ohio Ct. App. 10th Dist., May 19, 1988). See also, *Ohio Dept. of Mental Retardation & Dev. Disability v. Ohio Dept. of Adm. Serv.* (1988), 44 Ohio App.3d 144.

As a general rule, an employee seeking a reclassification to a higher position must demonstrate that his or her job duties substantially satisfy those of the higher classification. *Mounts v. Ohio Department of Administrative Services* (1984), 17 Ohio App. 3d 125; *Deist v. Kent State University* (May 23, 1987), Franklin Co. 87AP-23, unreported.

Ohio Administrative Code Rule 123:1-7-15 provides the class concept shall set forth the mandatory duties which must be satisfied at least twenty percent of the time, unless otherwise stated in the class concept.

In this case, ODAS conducted an audit on Appellant's position and determined that the Building Maintenance Superintendent 2 classification is the most appropriate classification for Appellant's position. DRC agrees with ODAS' job audit determination. Appellant asserts that his position should be classified as Building Construction Superintendent. Upon review of the classification specifications contained in ODAS Classification Plan, it was determined that the Building Maintenance Superintendent 2 and Building Construction Superintendent classification specifications were the only classifications relevant in this case.

The series purpose of the Building Maintenance occupation is to supervise and manage all building maintenance operations. At the lower level, incumbents supervise workers engaged in general maintenance, building maintenance, alterations, or repairs. At the second level (the first managerial level), incumbents supervise skilled trades employees in maintenance and repair of state owned buildings, assign work schedules and track progress of specific trades projects. The highest managerial level in the Building Maintenance classification series contains a number of class concept options. For purposes of the analysis in this case, the relevant class concept option requires the incumbent employee to plan, coordinate and oversee all maintenance and repair programs for all shops and buildings under jurisdiction of one assigned adult correctional institution and supervise all lower-level grounds maintenance, building trades, building maintenance, automotive maintenance, mechanical trades and electronic technology personnel. Incumbent employees may perform illustrative duties such as assist in budget preparation, exercise budgetary control for department,

develop long range plans for entire maintenance operation, maintain files and records, and approve the purchase of equipment and supplies.

The series purpose of the Building Construction Superintendent occupation is to supervise and inspect construction, alteration, and maintenance of public buildings. The class concept for the Building Construction Superintendent specifies that the advanced level class works under general direction and requires thorough knowledge of building construction in order to supervise and inspect construction, alteration, and maintenance of public buildings. Incumbent employees may perform some or all of the illustrative duties listed in the classification specification, such as plan projects, budget funds, provide technical guidance during construction, monitor project progress, perform final project checks, ensure proper installation and compliance with state codes, contractual documents, or specifications. Incumbent employees may also prepare and maintain various work related documents, such as files regarding projects, cost justifications correspondence, and supply orders. Incumbent employees may participate in meetings with vendors, architects, and agency heads to discuss repairs, demolitions, or replacements. Incumbent employees may perform various work-related duties that involve supervisory tasks, such as interviewing applicants for hire and making recommendations for hire, and overseeing employees involved in maintenance and landscaping activities.

The term *construction* is not defined by the classification specifications under consideration and no distinction is provided within the classification specifications to differentiate between a construction project, alteration project, and a maintenance project. *Merriam Webster Online* indicates that "construction" may be defined as "the act or process of building something." ("Construction" Def. 1 *Merriam Webster Online*, Merriam Webster, n.d. Web. 3 June 2016.). At the hearing, both Appellant and his immediate supervisor testified that the difference between construction and maintenance for DRC involves cost disparities. Appellant testified that a *maintenance* project is any project less than \$50,000.00; whereas a *construction* project is any project over \$50,000.00. The standardized Capital Improvement Plan C-1 Form indicates a broad definition of "construction" that may include new construction, renovation, site development, or a combination thereof. Upon review of the evidence and the distinctions provided by the testimony and documentary evidence, I find that the term "construction" includes any project over \$50,000.00 that involves the process of building something at Madison Correctional Institution or on its grounds, including new construction, renovation, site development, or a combination thereof.

At the outset, it is noted that the two classification specifications under review, Building Maintenance Superintendent 2 and Building Construction Superintendent, contain some overlap of duties and responsibilities. It is further noted that testimony and documentary evidence demonstrate that Appellant performs the duties of a Building Maintenance Superintendent 2. Appellant, however, seeks reclassification to a higher position based upon his job responsibilities involving supervision and inspection of construction projects at Madison Correctional Institution. Since Appellant is seeking

reclassification to a higher position he must demonstrate that his job duties substantially satisfy those of the higher classification and that he performs the mandatory duties set forth in the class concept. See *Mounts, supra*. See also, Ohio Administrative Code Rule 123:1-7-15.

The testimony and documentary evidence presented demonstrate that Appellant spends, at a minimum, twenty percent of his workday supervising or inspecting construction, alteration, and maintenance projects. The evidence presented establishes Appellant is the only construction and maintenance manager for Madison Correctional Institution, which is a dual-compound prison in declining condition due to age. Appellant supervises and inspects alterations and maintenance projects at Madison Correctional Institution. Appellant has also supervised and overseen a number of construction projects within Madison Correctional Institution. Projects in progress or completed during the year preceding April 2015 included replacing underground fuel tanks with above ground fuel tanks (\$150,000.00), building a day fence throughout Zone A (\$70,000.00), constructing and updating Zone A and B's sally ports (\$355,000.00+), and demolishing and rebuilding dorm facilities by constructing four, sixty feet long concrete walls with electrical outlets (\$240,842.20). The evidence further indicates that due to the age of Madison Correctional Institution, construction and maintenance projects have been a regular part of the overall maintenance of the institution.

The evidence established that Appellant is directly responsible for fourteen employees who perform routine building alterations and maintenance throughout Madison Correctional Institution. On average, Appellant assigns, supervises, and inspects twenty projects a day and around five thousand a year. It is noted that the Building Construction Superintendent classification indicates that incumbent employees may perform various work-related duties that involve supervisory tasks such as interviewing applicants for hire and making recommendations for hire, and overseeing employees involved in maintenance and landscaping activities. Therefore, given that Appellant is responsible for the combination of supervision over all maintenance and alteration projects throughout both compounds of Madison Correctional Institution and serves as the sole on-site supervisor for all construction projects, I find that the Appellant meets the required twenty percent class concept threshold of the Building Construction Superintendent classification.

The evidence further established that Appellant performs a significant number of the illustrative job duties set forth in the Building Construction Superintendent classification specification. For example, Appellant has planned energy conservation projects as evidenced through his inspection and decision to replace all the windows throughout inmate housing units on the Zone A compound. Appellant also planned the replacement of exhaust fans to improve air flow. Appellant and his supervisor testified that Appellant provides technical guidance during construction and monitors project progress because he is the sole onsite building maintenance superintendent. All contractor training and project monitoring is conducted by Appellant. Appellant oversees building construction, including plumbing and carpentry, and he performs the final

project check, as evidenced by the dorm project and the plumbing chase ways in the Zone B compound described during the hearing. Appellant is directly responsible for performing the final walkthrough of any construction, alteration, or maintenance project and signs off upon completion.

The testimony and documentary evidence presented established that Appellant examines, prepares, and maintains various work-related documents. Appellant also creates, submits, and stores Capital Improvement Plans for future projects. Appellant handles the audit process for the American Correctional Association, which his supervisor indicated involves a significant amount of document management and upkeep. More specifically, Appellant and his supervisor indicated that he sends cost justifications for planned projects, orders supplies, estimates project costs by contacting contractors, sits on the interviewing board to choose architects and engineers, and schedules meetings with department heads to discuss his recommendations for future projects.

It is noted that DRC submitted management comments as part of Appellant's job audit questionnaire. DRC considers Appellant's role with regard to construction to be limited and does not involve financing new construction. DRC states that the overall project and agreements are conducted by the Operations Support Centers Project Managers in CAM and Appellant's role is to assist CAM in order for CAM to understand the needs of the institution.

The record evidence demonstrates that Appellant performs tasks related to the financial component of the construction process, such as cost justification estimates. As noted above, Appellant identifies potential projects, acquires cost estimates, justifies the costs to CAM, follows standard procedure to acquire funding, sits on the architectural interviewing boards and chooses the contractors, monitors the projects daily, and eventually conducts the final walkthrough and signs off if satisfied with the work. The fact that CAM manages the contracts and ultimately presents the projects to the Controlling Board and eventually signs off to release payment after Appellant has conducted a walkthrough and signed off on the project does not diminish Appellant's responsibilities with regard to onsite construction supervision and inspection.

Based on the foregoing, I respectfully recommend that Appellant's position be **RECLASSIFIED** as Building Construction Superintendent, classification number 53141, pursuant to O.R.C. §§ 124.03 and 124.14.


Elaine K. Stevenson
Administrative Law Judge