

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

Tim Pollock,

Appellant,

v.

Case No. 2015-REC-07-0124

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

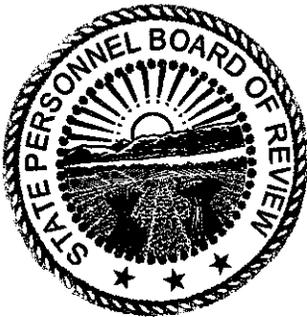
Appellees,

ORDER

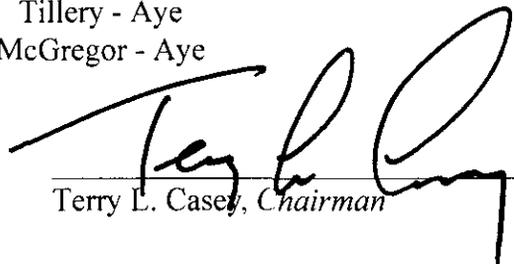
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the review determination of the Department of Administrative Services be **MODIFIED** and Appellant's position be **RECLASSIFIED** to Business Administrator 1, (63315), pursuant to R.C. 124.03 (A) (1) and R.C. 124.14 (D) (2).



Casey - Aye
Tillery - Aye
McGregor - Aye

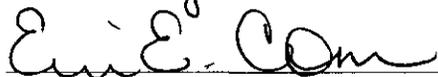


Terry L. Casey, *Chairman*

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.



Eric 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-07-0124

Transcript Costs: \$195.00 Administrative Costs: \$25.00

Total Deposit Required: * \$220.00

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

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

Tim Pollock

Case No. 2015-REC-07-0124

Appellant

v.

June 20, 2016

Department of Rehabilitation and Correction

and

Department of Administrative Services,

Appellees

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant, Tim Pollock's, timely filing of an appeal from his reclassification from Account Clerk Supervisor 2, Pay Range 10 to Financial Associate (FA) Supervisor (66565), also Pay Range 10.

The record hearing occurred on June 15, 2016. Appellant appeared *pro se*. Appellant's supervisor, Jane McAfee, Business Administrator (BA) 3, appeared on behalf of the Department of Rehabilitation and Correction (DRC) and was represented by Ami Parmi, DRC Staff Counsel. Human Capital Management Senior Analyst Renee' Norris appeared on behalf of the Department of Administrative Services (DAS).

Jurisdiction was established pursuant to R.C. 124.03 and R.C. 124.14.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

Appellant Pollock seeks reclassification to Business Administrator 1 (63315), Pay Range 12. Appellant was reclassified as a result of the "Fiscal Reclassification Project" which was part of a class plan review conducted by DAS in 2014-2015. Appellant's effective date of reclassification was July 26, 2015.

At hearing, Pollock, McAfee, and Norris testified. Each was also recalled to the stand; in order to answer some additional questions that had been raised during their respective initial testimony.

Tim Pollock, Appellant

Appellant Pollock testified that he works in the Business Office of Chillicothe Correctional Institution (CCI) in Ross County. Pollock is supervised by Jane McAfee, Business Administrator 3, who is the highest ranking official in the Business Office.

Pollock mentioned a long list of his various purchasing, financing, budget administration, and accounting duties. Appellant has purchase approval authority for P Card purchases consistent with state purchasing mandates.

Appellant's duties also include stepping in for BA 3 McAfee each and every Monday when McAfee is not at work. Moreover, Appellant steps in for Ms. McAfee when she is otherwise off work or is offsite to attend a meeting.

Appellant and McAfee each work a 40-hour work week, which consists of four 10-hour work days. Appellant works Monday through Thursday and McAfee works Tuesday through Friday.

They cover each other's duties during their non-overlap days in the week. In other words, every Monday, Appellant runs the Business Office and performs McAfee's duties.

Appellant noted that Mondays in the Business Office are particularly busy for two reasons. First, he noted, unresolved issues that have accumulated from Friday evening through the weekend often must be addressed on Monday. Secondly, he noted, Monday Business Office actions often dictate the processes and certain staffing that will be in place for the entire upcoming week.

The Business Office also oversees and effectuates the business functions for all of the following: special projects (mostly Appellant); asset management (exclusively Appellant); farm closure and farming business activities over both the Ross County and Lucasville Farms; the Commissary; the waste treatment plant; the water treatment plant; the automotive technician functions; the Terry Collins Reintegration Center (formerly the Ross Correctional Institution Camp); and the State Housing Reservation (the maintenance, financials, and rent and audit records for 35 houses on or near property). They also include exercising considerable oversight of the food service contract in place between Aramark and DR and C to provide food service for the inmates at CCI.

The cumulative percentage of time that Appellant spends acting as McAfee's assistant (which includes performing the Business Office duties noted, above) and

functioning as CCI's Acting Business Administrator on Mondays may encompass greater than 80 percent of Appellant's average working day.

Testimony reflects that Appellant is authorized to carry out three of the four functions of effective supervision listed in O.A.C. 123: 1-7-15 regarding Ms. McAfee's exempt subordinates in support services (obviously excluding Appellant, himself). A question remains regarding whether Appellant could conduct a Performance Evaluation on these other positions, prompted by the (perhaps extended) absence of Ms. McAfee. It appears that Appellant might be able to do so. I note there is nothing in the BA1 classification specification that would require an incumbent to do so, in order to have the incumbent's position qualify for BA 1.

It is uncontested that Appellant effectively supervises four Financial Associates. Two of these FAs work directly and exclusively in the Cashier's Office and two work in the Business Office. This supervisory function can encompass about 25 to 30 percent of Appellant's average working day. From a time-moment perspective, this would not seem to include most Mondays, where Appellant is focused on acting in Ms. McAfee's stead.

Jane McAfee, Supervisor

Ms. McAfee was present during Appellant's testimony at hearing and commented on the same. She affirmed Appellant's testimony as accurate. She also noted that Appellant performs counter-signature/counter-approval controls with her consistent with generally accepted fiscal controls.

Ms. McAfee also stated that Appellant performs as CCI's administrative duty officer and that he conducts Fact Finding Investigations for potential disciplinary cases. He serves as the recycling coordinator and serves as lead in gathering materials for the various and frequent audits in which a large state correctional institution would be involved.

Ms. McAfee declared that she sees Appellant functioning as McAfee's Assistant Business Administrator. Many situations require an immediate response to avoid a detriment to CCI, she offered.

Renee' Norris, DAS Representative

Ms. Norris testified that she based her recommendation to affirm Appellant Pollock's reclassification to Financial Associate Supervisor upon the finding that Appellant Pollock indisputably supervises four Financial Associates. She stated that she looked at the Business Administrator class series, among several others, and

found that a BA 1 must be a full assistant to the BA 3 supervising the business office or support service employees, which, she offered, Appellant does not do.

Ms. Norris acknowledged that Appellant generally performs Ms. McAfee's duties at least one day per week. Yet, Ms. Norris emphasized that Appellant did not appear to have actually conducted a Performance Evaluation for any of Ms. McAfee's subordinates during the review period.

Moreover, Ms. Norris questioned whether Appellant would be the appropriate person to do so; given that only one of McAfee's five support service supervisors appears to be in a Pay Range lower than Appellant's, two appear to be in the same Pay Range as Appellant, and two appear to be in a higher Pay Range than Appellant. *Ms. McAfee* then offered for the record that there is no one but Appellant (other than the Warden) who could perform the Performance Evaluations on these positions, if Ms. McAfee were not available to do so.

Based on the testimony presented and evidence admitted at hearing, I make the following Findings:

I incorporate any Finding set forth, above, whether express or implied.

CONCLUSIONS OF LAW

I take administrative notice of the classification specifications for the BA class series.

The class concept for BA 1 states in pertinent part:

The first managerial level class works under general direction & requires considerable knowledge of accounting & business in order to **act as assistant** to business administrator 2 or 3 or institution deputy superintendent (i.e., only one assistant per agency/institution &/or in community) **in overall management of business office** or plan direct & coordinate all fiscal & support functions for clubhouse & in either case, supervise business office &/or support services employees. (emphasis added)

The record establishes that Appellant Pollock is the *de facto* Assistant Business Administrator at CCI. Undisputed testimony offered at hearing shows that Pollock functions as the acting Business Administrator approximately one day per

week when Ms. McAfee is off work. Given Appellant's and McAfee's 10-hour per day/four-day per week work weeks, and given that their weeks only overlap on Tuesday through Thursday, Appellant generally serves this function for at least a quarter of his entire work week.

In order to be properly classified:

The duties being performed must satisfy the class concept or function statement at least twenty percent of the time unless another percentage has been stated in the class concept or function statement. Other factors, including the table of organization of an agency, may be used to determine the classification of a position and to distinguish among classifications. OAC 123:1-3-01 (D)
See also O.A.C. 123:1-7-15

Additionally, Pollock's and McAfee's testimony is in concert that Appellant functionally assists in the overall management of the Business Office. McAfee testified that Appellant, and only Appellant, assists her in more than one program area. Her other department heads do not appear to have the requisite knowledge to perform the functions of the Business Office.

In this case, Ms. Norris' assessment understandably appears to turn on the question of whether Appellant could or even should conduct Performance Evaluations on McAfee's other support service subordinates. Ms. Norris can correctly state that Appellant did not actually conduct a Performance Evaluation on any of McAfee's subordinates during the review period. Therefore, Norris can state that Appellant does not perform at least one of the four elements of supervision in regard to these subordinates of Ms. McAfee.

Yet, it appears that Appellant could do so, if necessary. Additionally, it appears that, other than the Warden, Appellant is the only staffer at CCI who could conduct these evaluations, if Ms. McAfee were unavailable.

The record reflects that Appellant has qualified for the other three elements of supervision regarding these positions. Given the above, I cannot find that the absence of one element (which is, after all, not required to qualify as an Assistant BA), eliminates BA 1 from consideration in this case.

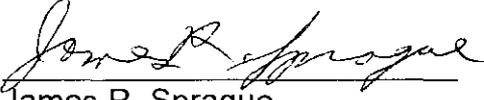
To summarize, Appellant performs the requisite duties of BA 1 for a sufficient percentage of time to qualify for same. Thus, in accordance with R.C. 124.03 (A) (1) and R.C. 124.14 (D) (2), Appellant's position should be reclassified to BA1, for Appellant Pollock performs as an assistant to the overall management of the

Tim Pollock
Case No. 2015-REC-07-0124
Page 6

Business Office at CCI. However, if this Board finds that Appellant does not serve as the Assistant Business Administrator at CCI, then Appellant may remain in the Financial Associate Supervisor class, since he unquestionably supervises CCI's four Financial Associates.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **MODIFY** the review determination of the Department of Administrative Services and **RECLASSIFY** Appellant's position to Business Administrator 1, (63315), pursuant to R.C. 124.03 (A) (1) and R.C. 124.14 (D) (2).


James R. Sprague
Administrative Law Judge