

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

Krista Kinchen,

*Appellant,*

v.

Case No. 2015-REC-08-0138

Department of Job & Family Services,  
and  
Department of Administrative Services,

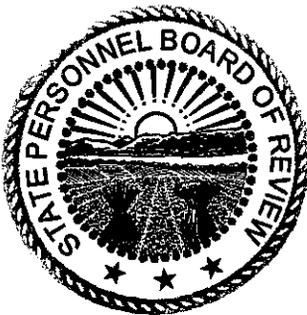
*Appellees,*

**ORDER**

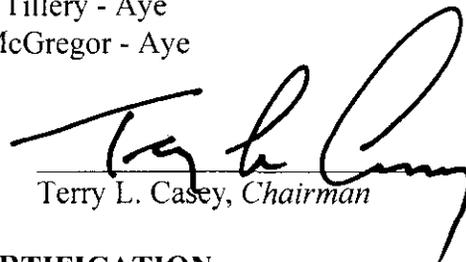
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 Financial Program Manager 66585, pursuant to R.C. 124.03 and R.C. 124.14.



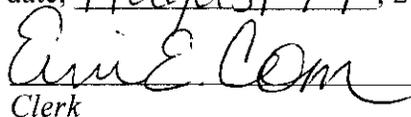
Casey - Aye  
Tillery - Aye  
McGregor - Aye

  
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, August 19, 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 26, 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-08-0138

Transcript Costs: \$208.50 Administrative Costs: \$25.00

Total Deposit Required: \* \$233.50

Notice of Appeal and Deposit Must  
Be Received by SPBR on or Before: September 6, 2016

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

Krista Kinchen and Sue Mikle

Case Nos. 2015-REC-08-0138  
2015-REC-07-0131

*Appellants*

v.

July 1, 2016

Ohio Dept. of Job and Family Services

and

Ohio Dept. of Administrative Services

*Appellees*

Raymond M. Geis  
*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

The above captioned matters came on for consideration pursuant to Appellants' timely appeals of their reclassifications from Management Analyst Supervisor 2, Pay Range 14, Exempt (from collective bargaining) to Grants Coordinator 2, Pay Range 30, in the OCSEA bargaining unit. The consolidated record hearing occurred on June 22, 2016.

Appellants Krista Kinchen ("Kinchen") and Sue Mikle ("Mikle") were represented by Attorney Marc E. Myers. Appellee, Ohio Department of Job and Family Services ("ODJFS") was represented by Staff Counsel Nicole S. Moss. ODJFS' designee was Nancy Janso-Kocarck, HCM Manager. Amber Shedd, HCM Sr. Analyst, appeared for Ohio Department of Administrative Services ("DAS").

Both Appellants seek restoration to a Pay Range 14 exempt classification, either to Financial Program Manager or Human Services Program Administrator 3.

Appellants testified jointly, followed by their supervisor, Matthew Cunningham, ODJFS Program Manager 1, and DAS representative Amber Shedd.

**CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT**

I take administrative notice that the Management Analyst series was a designated "holding" class that is no longer in existence. As part of amendments to the statewide classification system, employees in this abolished holding class were reallocated to current classifications.

There is little disagreement in the testimony of Appellants and their supervisor regarding their actual duties performed. Appellants work within the Office of Family Assistance, Bureau of Technical Support and Assistance, Agreement and Monitoring Section. Within the Agreement and Monitoring section, Appellants are responsible for distribution and monitoring of earmark and non-earmark funds to grantees. They do not supervise employees. However, Appellants have considerable latitude to conduct their work subject to provisions of law.

Earmark funds are designated for a specific purpose. As far as Appellants' work, these funds come from three federal agencies to the state of Ohio through the federal Temporary Assistance for Needy Families ("TANF") and Supplemental Nutritional Assistance Program ("SNAP").

Each of the three federal agencies publishes a common rule regarding funding use located in the Code of Federal Regulation ("CFR"). Usage is premised on fund "purpose" and grantee "eligibility" which can change depending on the entity giving and using funds. Appellants also deal in other non-earmarked funds related to state funded programs.

In general, before a grantee can receive approval for funds, they must enter into a contract or grant agreement. There are many precursors to this.

Sometimes potential grantees submit applications according to specifications developed by Appellants. An example is a Boy's and Girl's club seeking federal funds to supply child care in a poverty stricken area. Another example is a grantee applying to Appellants for federal monies to provide work participation activities to the unemployed through "Ohio Works First." Appellants develop specifications for grant applications.

Where ODJFS seeks entities outside of the agency to provide services, Appellants create requests for proposals ("RFPs") and invite applications. They develop evaluation criteria for grantee selection. In some instances, they serve on the selection team and score applicants' suitability according to the weighted criteria developed by Appellants.

Once a grantee is selected, Appellants draft an agreement in collaboration with the Office of Contracts and Acquisition. The grantee signs the final agreement and then Appellants are designated to manage the agreement or contract.

Appellants give technical advice to grantees regarding funds use. They reimburse grantees for eligible expenditures as part of the grant funding and adjust line items in the grant as necessary.

Appellants evaluate whether grant goals and objectives are met. Evaluation may take the form of site visits, soliciting and reviewing reports from the grantee, and/or issuing an operational plan to the grantee to provide guidance for demonstration of proper use of funds.

Appellants do not make day to day operational decisions. These are left to the grantee. However, Appellants do ensure that grant money is reconciled by financially accounting for funds, authorizing expenditures, and ensuring funds are used for authorized purposes.

Appellee ODJFS concedes that the former Management Analyst Supervisor 2 classification best fit the Appellants' positions, but is no longer in existence. In fact, the position description remains unchanged post reallocation. This is one indicator that the work has not changed. The sole issue now presented is what "current" classification best fits Appellants.

### CONCLUSIONS OF LAW

At issue is what current classification best fits Appellants' duties. To examine, I take administrative notice of the Grants Coordinator series No. 6316, the Financial Manager series No. 6658, and the Human Services Program series No. 6941. Appellants suggest that the Financial Program Manager, Job Code 66585 is most appropriate followed by the Human Services Program Administrator 3, Job Code 69417.

In order for Appellants 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 (emphasis added)

The state personnel board of review **may place an exempt employee**, as defined in section 124.152 of the Revised Code, **into a bargaining unit**

**classification, if the state personnel board of review determines that the bargaining unit classification is the proper classification** for that employee. Notwithstanding Chapter 4117. of the Revised Code or instruments and contracts negotiated under it, such placements are at the discretion of the state personnel board of review. R.C. 124.03 (emphasis added)

Here, this Board reviews determinations placing exempt employees into a bargaining unit classification.

The class concept for Human Services Program Administrator ("HSPA") 1 and 2 require supervision duties. Appellants do not supervise, and these classifications are not appropriate as a result.

The HSPA 3 class concept also heavily contemplates supervision duties, but may also be satisfied where the duties only consist to, "...**formulate** & direct implementation of *human services program* policies, procedures, goals & objectives having statewide impact,..." (emphasis added)

One key distinguishing feature is whether Appellants formulate *human services program policies*. The Appellants' supervisor testified that TANF and SNAP are federal programs largely governed under the CFR and that the bulk of Appellants' work flows from these programs.

Appellants do not formulate these programs' policies (by authoring CFR), and generally do not formulate state programs such as Ohio Works First (by authoring O.A.C.). Thus, the HSPA 3 is less than an ideal fit and is therefore not appropriate.

The HSPA 4 must formulate, direct and evaluate policy for an entire division of the Agency. No one contends that Appellants manage separate divisions or share management of an entire division. HSPA 4 is therefore not appropriate.

The Human Services Program Consultant ("HSPC") is the first classification within the HSP series. The class concept states in pertinent part that the incumbent "act as program consultant for assigned number of...providers...by performing three or all of the following duties: provide technical assistance, monitor & evaluate through onsite visits, telephone contact &/or printed surveys for compliance with state plan, standards, grant funding &/or for quality assurance."

Appellants perform all of the preceding and would seem to meet the threshold 20% requirement. However, the HSPC class concept does not include

Appellants' work on creating criteria for grant applications or selection of grantees. This is an essential part of Appellants' work, and, as will be discussed, this work is better encompassed in other classifications. On the whole, the HSP series is not a very good fit and is not appropriate.

The next classification series considered was Grants Coordinator, series No. 6316. On its face, this series would seem to best fit the Appellants. Appellants are currently classified as Grants Coordinator 2.

The class concept for Grants Coordinator 2 states in pertinent part:

The advanced level class works under direction & requires thorough knowledge of contract & grant preparation & accounting in order to monitor agency participation in grant programs or monitor endowment of funds to qualified participants for adherence to contract/program rules & regulations.

The testimony establishes that Appellants do perform accounting work as part of ODJFS' participation in TANF and SNAP. It can also be said that they monitor the endowments of those same funds when functioning as the contract administrator. However, this classification seems to omit one essential job duty of Appellants which is to create the conditions under which applicants may receive grants.

At first glance, the next higher classification of Grants Administrator seems to be a perfect fit. It takes most of the verbiage of the Grants Coordinator 2 class concept and adds, "in order to administer departmental grants programs." However, this classification requires supervision, which Appellants do not do.

The fact that the Grants Coordinator 2 can "monitor" endowments to participants for adherence to contract does not approximate Appellants' role in writing the requirements to receive a grant. On the whole, the Grants Coordinator series is not appropriate because there is no classification within it that adequately characterizes the authorship role along with the compliance role.

Finally, Appellants request this Board to consider the Financial Program Manager ("FPM") classification, Job Code 66585. On its face, the class concept seems out of place. The class concept states:

The administrative level class works under direction and requires considerable knowledge of business administration & accounting in order to **manage &**

**coordinate a budget, financial &/or sourcing program & have significant autonomy to formulate, develop, enforce &/or implement program policy.**  
(emphasis added)

In the common sense of these terms, Appellants do not seem to manage or coordinate a budget, financial, or sourcing program. Yet, Appellants urge this Board to rely upon the major job duties of FPM to inform the class concept.

Notably, the first rank of *Job Duties in Order of Importance* specifically cites "Grant Financial Management" and "Contract Management" as illustrative of the duty to "manage & coordinate a budget, financial &/or sourcing program."

These terms come after the "e.g." statement. DAS uses what it characterizes as a parenthetical "(e.g. ...)" statement to set forth examples of work that is performed. Anything listed within the parenthesis can be used to satisfy the listed job duty appearing outside the parenthesis.

As previously cited, this Board may look to "other factors" to determine the most appropriate classification in addition to the class concept. Here, the *Job Duties* statement definitively shows that Appellants do satisfy the class concept through illustrative duties.

Additionally, the illustrative job duties contemplate writing plans, developing performance measures, evaluating program performance and analyzing rule changes to programs. All of this apparently matches Appellants' work.

It is important to note that the word *program* as used in the Financial Manager series does not have the same connotation as *human services "program"* in the HSP series. In the HSP series, the authority to formulate *program* policy is expressed in terms of geographic area such as "statewide" and presupposes responsibility over one or more welfare programs. In contrast, the Financial Program series uses *program* in a much more general sense not strictly limited by geography or category.

Appellants perform additional duties set forth in the illustrative job duties section of the FPM classification, including: representing the ODJFS at meetings with community agencies; maintaining contact with stakeholders (grantees) regarding project requirements (grant conditions); and monitoring and reimbursing authorized expenditures to grantees and reconciling those expenditures.

The fact that Grants Financial Management and Contract Management is listed in the "e.g." phrase of the FPM *Job Duties In Order of Importance* is compelling textual evidence that the FPM was designed for use within these areas.

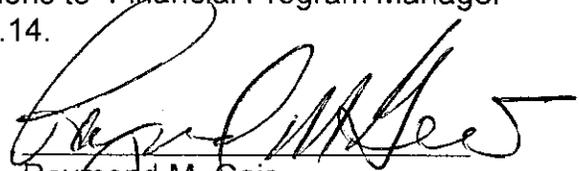
Alongside this, the Grants Coordinator series is not to be used for this same work unless the incumbent also supervises others. Importantly, there is no supervision mandate within the FPM.

The Financial Manager Series is also much newer and was specifically created as part of the modernization of the fiscal series which would expectedly draw from the ranks of the former Management Analyst series. No changes to the Grants series were cited to me since its adoption. If it was a poor fit then, it is still a poor fit now.

It follows, then, that the new Financial Manager series, designed in part as a replacement for the MAS series, would be a better fit overall and that the Financial Program Manager is most appropriate for Appellants.

#### RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **MODIFY** the review determination of the Department of Administrative Services and **RECLASSIFY** Appellants' positions to Financial Program Manager 66585, pursuant to R.C. 124.03 and R.C. 124.14.



Raymond M. Geis  
Administrative Law Judge