

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

Chris Horsley,

Appellant,

v.

Case No. 2015-REM-05-0063

Clinton County Board of Commissioners,

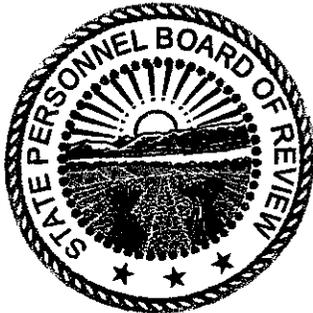
Appellee,

ORDER

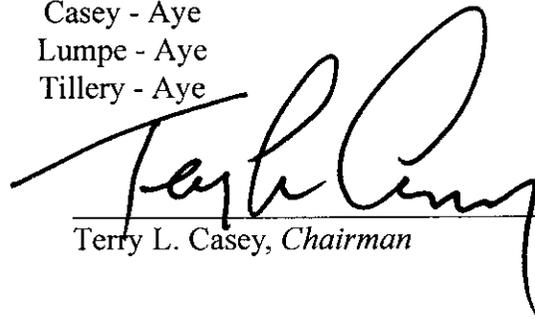
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

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 the instant appeal is **DISMISSED** for lack of jurisdiction pursuant to R.C. 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, May 23, 2016.



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 May 31, 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-REM-05-0063

Transcript Costs: \$418.50 Administrative Costs: \$25.00

Total Deposit Required: * \$443.50

Notice of Appeal and Deposit Must
Be Received by SPBR on or Before: June 7, 2016

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

Chris Horsley,

Case No. 15-REM-05-0063

Appellant

v.

April 27, 2016

Clinton County Board of Commissioners,

Jeannette E. Gunn

Appellee

Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on due to Appellant's timely appeal of his removal from employment with Appellee. A record hearing was held in the instant matter on October 28, 2015. Appellant was present at record hearing and was represented by Jeffrey M. Silverstein, Attorney at Law. Appellee was present at record hearing through its designee, Clinton County Administrator Mary Ann Foland, and was represented by Jeffrey A. Stankunas, Attorney at Law.

Appellant was removed from employment with Appellee effective May 5, 2015. Appellee asserted that Appellant's position was unclassified pursuant to R.C. 124.11(A)(3)(b) or, in the alternative, R.C. 124.11(A)(9).

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

Appellant was employed by Appellee from February 2000 until his termination May 5, 2015. He was removed as an unclassified employee and no R.C. 124.34 Order of Removal was provided to him.

Appellant began his employment with Appellee in the position of Working Maintenance Supervisor and held the position of Maintenance Supervisor at the time of his removal from employment. Appellant reported directly to County Administrator Mary Ann Foland, who reported to Appellee. Ms. Foland became the

County Administrator in September 2013; immediately prior to that time, Appellant reported directly to Mark Brooker, the previous County Administrator.

The heads of the Clinton County Solid Waste District, Department of Job and Family Services and the Building and Zoning Department report directly to Appellee, while the Clinton County Dog Warden, and the heads of the Maintenance and Custodial Departments report directly to Ms. Foland. Appellee designated Appellant's Maintenance Supervisor position, along with the County Administrator, Custodial Supervisor, Waste Coordinator, Dog Warden, Chief Building & Zoning Inspector, Director of Job and Family Services, and Risk Manager positions as unclassified, pursuant to R.C. 124.11(A)(9), by resolution in February 2001.

Appellant's primary job responsibility was to oversee the maintenance of county buildings and facilities, and to ensure the completion of maintenance work in a timely and appropriate manner. He coordinated all maintenance requests for county buildings and grounds, and prioritized maintenance and repair work. Appellant had the authority to draft and propose departmental policies, and could authorize expenditures not exceeding \$500. He worked independently and set his own work hours and schedule.

Appellant was the highest ranking employee in the Maintenance Department and supervised the other four employees working in the Department. He assigned, prioritized and checked their work, and established their work schedules. Appellant approved employees' leave requests and timesheets; he had the authority to implement discipline up to the level of a written reprimand and could recommend discipline exceeding that level, if needed. He interviewed and recommended employees for hire in the Maintenance Department, along with recommending the commensurate rate of pay within established ranges.

Appellant advised Ms. Foland regarding ongoing maintenance projects and made recommendations for capital improvements. He worked with other county offices as needed to develop specifications for bid proposals, reviewed bid packages, evaluated suppliers and products and made recommendations for selecting vendors and contractors. Although his overall level of involvement varied, based on the nature of the contract or project, Appellant generally worked with contractors after selection to ensure that any infrastructure projects were completed in a satisfactory manner.

Appellant participated in the budget process by estimating Maintenance Department expenditures for the coming year; he also provided Ms. Foland with projections for maintenance projects anticipated to occur in the next three to five years. Appellant identified obsolete county items and vehicles and coordinated their sale after receiving Appellee's approval to do so.

CONCLUSIONS OF LAW

Civil service employment in the State of Ohio is divided into the classified and unclassified services; the division between these two types of public employment is outlined in R.C. 124.11(A), which describes a variety of positions in the public sector which are placed in the unclassified service. This Board does not possess subject matter jurisdiction over the removal of an unclassified employee, since Ohio Revised Code Section 124.03 limits this Board's jurisdiction to actions concerning classified employees.

In this instance, Appellee asserts that Appellant's position fell within the unclassified service pursuant to R.C. 124.11(A)(3)(b), which exempts from the classified service, "The heads of all departments appointed by a board of county commissioners". Appellant was appointed by Appellee, the Clinton County Board of Commissioners, pursuant to R.C. 305.16. This Board must consider the testimony presented and evidence admitted at record hearing to determine whether or not Appellant was the head of a department, as referenced by R.C. 124.11(A)(3)(b).

County commissioners serve as the general administrative body for county government. See, R.C. Chapter 305, 307. Ms. Foland testified that the Maintenance Department is one of several existing under Appellee's organizational structure, with funds allocated separately within Appellee's overall budget; Appellant presented no contradictory testimony. I find, therefore, that Appellee presented sufficient credible testimony at record hearing to establish by a preponderance of the evidence that the Maintenance Department was an existing organizational entity under Appellee's general administrative responsibility.

While Appellant may have been referred to as the Maintenance Supervisor, rather than the head of the Maintenance Department, case law has determined that an employee's actual job duties rather than his or her job title are the determinative factor of whether an employee is classified or unclassified. Baker v. Columbiana

County Auditor, 10th Dist. No. 03AP-552, 2004-Ohio-839. Testimony and evidence established that Appellant was the highest ranking employee in the Maintenance Department and supervised the four other employees of the department. He had the authority to prioritize, assign, and check their work; establish their work schedules; and approve their timesheets and leave requests. Appellant was responsible for the overall maintenance of county buildings and facilities, and for ensuring the completion of maintenance work in a timely and appropriate manner. He worked independently, set his own work hours and schedule, and reported directly to the County Administrator. I find that the scope and the nature of the job duties performed by Appellant are sufficient to support a conclusion that he was the head of the Maintenance Department, as referenced by R.C. 124.11(A)(3)(b).

Appellee also asserted that Appellant's position was unclassified pursuant to R.C. 124.11(A)(9). That section of the Revised Code exempts from the classified service:

(9) The deputies and assistants of state agencies authorized to act for and on behalf of the agency, or holding a fiduciary or administrative relation to that agency **and those persons employed by and directly responsible to elected county officials or a county administrator and holding a fiduciary or administrative relationship to such elected county officials or county administrator**, and the employees of such county officials whose fitness would be impracticable to determine by competitive examination ... (emphasis added)

In this instance, the record indicates that Appellant was directly responsible to the County Administrator; therefore, only a fiduciary or administrative relationship between Appellant and Ms. Foland would be sufficient to exempt Appellant from the classified service under R.C. 124.11(A)(9).

The terms "fiduciary relationship" and "administrative relationship" are not defined by the Revised Code, but are defined within the Administrative Code. O.A.C. 124-1-02 defines "fiduciary relationship" in subsection (I) as:

... a relationship where the appointing authority reposes a special confidence and trust in the integrity and fidelity of an employee to perform duties which could not be delegated to the average employee

with knowledge of the proper procedures. These qualifications are over and above the technical competency requirements to perform the duties of the position. Whether one position occupies a fiduciary relationship to another is a question of fact to be determined by the board.

An "administrative relationship" is defined in subsection (C) as:

... a relationship where an employee has substantial authority to initiate discretionary action and/or in which the appointing authority must rely on the employee's personal judgment and leadership abilities. The average employee would not possess such qualities or be delegated such discretionary authority. Whether one position occupies an administrative relationship to another is a question of fact to be determined by the board.

Although Ms. Foland testified that she relied on Appellant's recommendations and the information she solicited from him, insufficient testimony or evidence was presented to demonstrate that her reliance was based on Appellant's personal integrity and fidelity rather than on his technical competence to perform the duties of his position. I find, therefore, that Appellant's relationship with Ms. Foland was not fiduciary in nature.

Testimony at record hearing established that Appellant possessed the discretionary authority to prioritize maintenance requests, set his own work schedule, and authorize expenditures not exceeding \$500. In this instance, that discretionary authority appears to arise from the duties of the position itself; a department head is typically permitted some decision making authority in the performance of his or her job duties. The level of discretionary authority described in the testimony and evidence admitted at record hearing appears to be the minimal amount required to manage the Maintenance Department, with the majority of Appellant's decisions subject to prior approval.

Performance of these duties required Appellant to use his personal judgment to some extent, however, upon a review of the record, I find that they are not sufficient to demonstrate either that Appellant had substantial authority to initiate discretionary action, as referenced in R.C. 124.11(A)(9), or that Appellee placed any reliance on Appellant's personal judgment and leadership abilities over and above

that which it would place on the average employee's judgment and leadership abilities. Accordingly, I find that Appellee did not establish by a preponderance of the evidence that Appellant held an administrative relationship with the County Administrator.

In summary, therefore, I find that Appellee has established by a preponderance of the evidence that Appellant's position was exempted from the classified civil service by operation of R.C. 124.11(A)(3)(b). Because Appellant was an unclassified employee, this Board lacks jurisdiction to consider an appeal of his removal from employment.

Therefore, I respectfully **RECOMMEND** that the instant appeal be **DISMISSED** for lack of jurisdiction pursuant to R.C. 124.03.



Jeannette E. Gunn
Administrative Law Judge