STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

John Paulson,

Appellant,

v. Case No. 2016-REC-04-0055

Department of Taxation,
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 determination to reclassify Appellant's position to Tax Examiner Manager (66816) is **AFFIRMED**, 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, September 22, 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 September 29, 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: 2016-REC-04-0055

Transcript Costs: $247.50 Administrative Costs: $25.00

Total Deposit Required: * $272.50

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

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

John Paulson	Case Nos. 2016-REC-04-0055 2016-REC-05-0097
and	
Scott Bucy	
Appellants	
v.	August 18, 2016
Ohio Dept. of Taxation	
and	
Ohio Dept. of Administrative Services,	
Appellees	Raymond M. Geis *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These cases arise from Appellants' appeals of their April 17, 2016 reclassification of their positions from Tax Commissioner Agent Supervisor 2 (66817) to Tax Examiner Manager (66816).

The Record Hearing occurred August 12, 2016. Appellants John Paulson ("Paulson") and Scott Bucy ("Bucy") testified on their own behalf. Steven Gray ("Gray"), designee and Mark Walker, Chief Information Officer ("CIO") testified on behalf of the Ohio Department of Taxation ("Tax"). Bobbi Lind ("Lind") testified on behalf the Ohio Department of Administrative Services ("DAS").

Appellant Paulson argues that he should not have been reclassified without an audit. Moreover, he argues that Tax implemented the class plan changes in a biased manner due to their apparent lack of consultation beforehand with Appellants to discuss role re-purposing to avoid reduction. Appellant Bucy argues

that his involuntary assignment set him up for a reduction without his knowledge, and that this is fundamentally unfair. Also, Bucy alleges that others were allowed to retain the higher pay range in spite of lacking requisite middle manager duties.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

Pursuant to the authority granted by R.C.124.14(A)(1), the Director of DAS modified classifications used by Tax only in February 2015.

As part of the modification, the Tax Commissioner Agent Supervisor 2 classification and sixteen other classifications were abolished. The Tax Examiner Manager classification was created about the same time. The positions occupied by employees were reallocated to seven newly created Tax classifications which included Appellants. There were no position audits.

Appellants work on the State of Ohio Taxation, Revenue and Accounting System ("STARS") for Tax. STARS integrates all of the electronic tax data systems and software used by Tax into a single web based platform with a user interface to support tax payments and form filing online.

The STARS system is live but new releases are constantly being developed, and each *iteration* incorporates current business requirements for all the different types of taxes and forms which support filing and payment.

Appellants work on a team to write the business requirements for each STARS *iteration* which become part of new software releases. Each member of the team writes "stories" which are the smallest increment of software development. Stories are sent to the technical team for code writing.

Then HP, a vendor, attaches the web based graphical user interface ("UI"). This is what the user sees when visiting the Tax web site. The code and UI are tested to ensure they are fully functional and conform to the business logic.

Appellants review the technical work to make sure it operates smoothly in all respects. Appellants' identify failures and classify them as coding problems or problems with requirements and then revisit to resolve any problems.

Before stories can even be written, Appellants may be called upon to research data to formulate the requirements. Appellants functionally report to two project managers ("PMs"). The STARS project sponsors are the CIO Mark Walker, and the Deputy Tax Commissioner.

Appellant Paulson takes on an additional leadership role. If problems occur or work gets behind on their team's portion, Paulson convenes a meeting with members of his team including Bucy to collaboratively create a solution, or escalate the problem through established pathways. Appellants may give input to technical workers regarding the "points" assigned to a story.

Points help estimate the time and cost of a story. Adjustments are made at weekly "refactoring" meetings during each "sprint". Refactoring meetings are attended by the CIO, the PMs, Appellants and others from all levels of the STARS project. This method of software development is known as the "Agile". "Agile" is an "*iterative*" as opposed to a "linear" or "sequential" process.[1] In other words, during various "sprints" lots of small pieces are continuously being produced and built upon or alongside other components. This is distinct from the traditional "waterfall" approach which is step by step development in sequence to the complete product.

Appellant Paulson has also taken a very active role in streamlining postal service address communication so that Tax always has the updated addresses for taxpayers. Prior to coming to STARS, Appellant Bucy was the analyst responsible for tax correspondence. This encompasses all of the letters and written communications between the taxpayer and Tax. These processes are automated and require monitoring and adjustment. In addition, Appellant Bucy wrote training manuals and conducted training with new team members.

CONCLUSIONS OF LAW

R.C. 124.03(A)(2) provides this Board with the authority to review DAS' determination of the most appropriate classification for Appellants' positions. That

[1] Wood, *How Ohio Used Agile Development to Overhaul its Tax System,* Government Technology, (April 4, 2016) available at http://www.govtech.com/budget-finance/How-Ohio-Used-Agile-Development-to-Overhaul-its-Tax-System.html (Accessed August 15, 2016); See Also Appellant Paulson's Exhibit A.

statute does not, however, give the Board the power to review or modify DAS' assignment of pay ranges to classifications.

The classifications considered in my analysis were: Information Technology Supervisor 1 (64117), Pay Range 14; Project Manager 1(63381)/ IT Project Manager (63384), Pay Range 15; Senior Business Transformation Analyst (63332), Pay Range 14; Business Analyst (62711); Pay Range 13, Tax Program Assistant Administrator (66816) Pay Range 15; and Tax Examiner Manager (66815), Pay Range 13.[2]

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**...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)

In other words, an employee must perform all of the duties contained in the class concept a minimum of 8 hours per week on average in order for the position to be properly placed in that classification.

The Class Concept of IT Supervisor 1 requires the incumbent to "**supervise information technology staff** whose primary duties involve writing, analyzing & designing computer programs &/or systems integration for personal computers..." (emphasis added)

Though Appellants give guidance to code writers as to business requirements and help evaluate code functionality, they do not "supervise" IT staff that write programs. Therefore, the IT Supervisor 1 classification is not appropriate.

The joint Class Concept for Project Manager 1 and IT Project Manager 1 requires that the incumbent,

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[2] Current DAS classifications are found at:
http://www.das.ohio.gov/Divisions/HumanResources/HRDClassSpec.aspx

> ...manage project(s), with or without sub-projects, that **covers all phases of project management**, with activities & responsibilities resting primarily **within one given office/program of assigned agency** & whose primary stakeholders are management, staff &/or end users, **direct delivery** (i.e. does not require direct involvement of, but may be overseen by, higher-level authority of agency executives &/or political group) **to end user/client** (e.g., agency employees, outside agency, public customer) for operation/use, focus on testing, monitoring & modification of delivery to end user & direct, implement & monitor policy & ensure compliance. (emphasis added)

At hearing, the uncontroverted testimony of CIO Mark Walker established that he is the project sponsor for STARS and that he employs two PMs to carry out overall responsibility for the STARS project to the end user. Though Appellant Bucy's testimony established that Appellants give input to the PMs with regard to timeline and various changing requirements, this does not equate to overall project management of STARS.

Here, Tax's table of organization distinguishes Appellants from the PMs due to the fact that they are organized under the PMs and are responsible for subsets of the overall STARS project, rather than the overall STARS project. *See* OAC 123:1-3-01. Appellants guide very important sub-projects through story writing. Stories are smaller sub-projects or *iterations* within STARS. This is not the same as managing the entire STARS project. Therefore, I find that neither the Project Manager 1 classification nor the IT Project Manager 1 classification is appropriate.

The Class Concept for the Senior Business Transformation Analyst pertains to accounting, supply chain, and human resources only. Its application is limited to DAS and OBM. Accordingly, this classification is not appropriate.

The Class Concept for Business Analyst requires the incumbent to "...carry out provisions of given human services program, public/human relations, interviewing/facilitation, & technical writing." Its application is limited to the Ohio Job & Family Services. Accordingly, this classification is not appropriate.

The Class Concept for Tax Program Assistant Administrator requires that the incumbent "...serve as operational manager for **multiple supervisory subordinates**." (emphasis added) The record establishes that Appellants are not the supervisors of record for other supervisors. Even if Appellants could prove beyond a bare allegation that others hold this classification without meeting the class concept, O.A.C. 124-7-03(E) bars me from admitting evidence of disparity in the classification of co-workers. Therefore, this classification is not appropriate.

The Class Concept for Tax Examiner Manager requires that the incumbent:

> ...supervise tax examiners (e.g., Tax Examiner Associates, Tax Examiners, &/or Tax Examiner Specialists) &/or other employees **or manage & oversee development & implementation of special agency-wide tax related program(s) to include formulation & implementation of program policy.** (emphasis added)

Here, the relevant language comes after the disjunctive "or". This means that this classification allows the incumbent to manage and oversee a special agency wide tax related program without supervision duties. This is specialized content based work.

Formulation and implementation of "tax" program policy is necessary to satisfy the managerial or oversight functions for this classification. With regard to formulation, Appellants write tax specific requirements which will be translated into software. Then Appellants evaluate the software functionality against the requirements and send it back to the coders if it is non-conforming. This is an enforcement role.

The above role is different than that contemplated for the PM/IT-PM series which "covers all phases of project management" from beginning to end. PM is not limited to any one industry or business. The PM/IT-PM series cites the Project Management Institute ("PMI") as the source of its definitions.[3]

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[3] PMI is a private organization which credentials project managers. PMI advertises its Project Manager Professional as an internationally recognized credential for any domain http://www.pmi.org/certification/project-management-professional-pmp.aspx (accessed August 15, 2016)

In conclusion, I find that the classification which most appropriately reflects the job duties performed by Appellants is Tax Examiner Manager.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the determination to reclassify Appellants' positions to Tax Examiner Manager (66816), pursuant to R.C. 124.03 and R.C. 124.14.

Raymond M. Geis
Administrative Law Judge