

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

LEE P. EILERMAN
ROLLAND KARNIS
MARK A. STANLEY
WILLIAM S. IRONS,

Case Nos.: 05-REC-03-0076
05-REC-03-0082
05-REC-03-0089
05-REC-03-0098

Appellants,

v.

DEPARTMENT OF TRANSPORTATION
AND
DEPARTMENT OF ADMINISTRATIVE SERVICES,

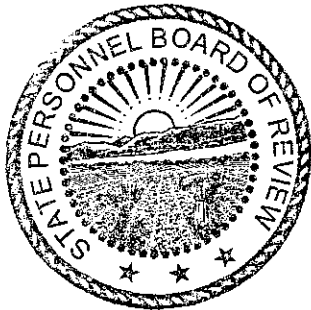
Appellees.

ORDER

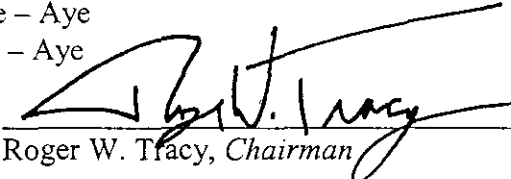
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

After a thorough examination of the record and 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 Department of Administrative Services' determination that Appellants' positions are most properly classified as Transportation Engineer 3, classification number 85643, be **AFFIRMED**, pursuant to O.R.C. §§124.03 and 124.14.



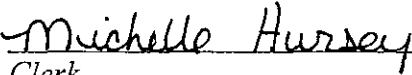
Tracy – Aye
Lumpe – Aye
Booth – Aye


Roger W. Tracy, *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 the foregoing is (~~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, November 30, 2006.


Michelle Hursey
Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.



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

Lee P. Eilerman
Rolland Karns
Mark A. Stanley
William S. Irons

Case Nos. 05-REC-03-0076
05-REC-03-0082
05-REC-03-0089
05-REC-03-0098

Appellants.

v.

September 29, 2006

Department of Transportation,

and

Department of Administrative Services,

Appellees.

James R. Sprague
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes came on for pre-hearing on January 12, 2006 and for record hearing on July 13, 2006. Present at the hearing were the Appellants, Lee P. Eilerman, Rolland Karns, Mark A. Stanley, and William S. Irons, appearing *pro se*. Appellee Ohio Department of Transportation (ODOT) was present through its designee, John Audet, Human Resources Manager. Appellee Ohio Department of Administrative Services (DAS) was present through its designees, Dwight Clark, Human Resources Manager, and Laura K. Kukucka, Human Resources Analyst.

The jurisdiction of this Board over the subject matter of the four instant appeals was established pursuant to R.C. 124.03 and R.C. 124.14. It is noted that Appellee ODOT initially asserted that this Board lacked jurisdiction over the subject matter of the instant appeals. ODOT's position concerning that jurisdictional question has been preserved for the record.

STATEMENT OF THE CASE

This cause comes on due to a job audit requested by Appellants, with the corresponding job audit determinations issued on January 28, 2005. On or about March 14/15, 2005, Appellants timely filed their respective appeals of the determinations with this Board.

Each respective DAS job audit determination herein indicated that the respective position of each Appellant was properly classified as a Transportation Engineer 3, 85643. However, Appellants all believe that their positions are more properly classified as Transportation Engineer 4, 85644.

All four Appellants involved are classified as a Transportation Engineer 3, and each Appellant's pertinent Position Description indicates:

30% -- In District Construction, supervises lower level transportation engineers and/or transportation technicians and/or other support personnel engaged in the construction sequence of the project(s) (e.g., conducts performance evaluations; monitors and approves leave, counsels and recommends discipline); oversees employees training and development; assigns staff and duties to be performed on projects; signs plans and documents as registered professional engineer.

40% -- Interprets complex plans to provide for effective implementation and minimize change of accident, conflict and delay; conduct field review of project implementation and/or review site of proposed projects to ensure project adaptability; prepares design changes to final plans and has authority to approve use of contingencies (i.e. plans let for Construction) to solve plan implementation problems (i.e. changes to structural design including camber of beam, pavement design, geometric design and hydraulics); responsible for the administration and satisfactory completion of the project; has the authority to reject defective material and to suspend work that is being improperly performed; recommends and/or assists in policy changes. Operates state vehicle to travel to project sites to review and discuss progress with project personnel and contractors.

25% -- Acts as public relations liaison for project (e.g., oversees construction sequence to ensure that conflicts do not arise among concerned parties such as contractors, utilities, officials, property owners and local government agencies); attends pre-construction meetings; advises Construction Engineer on project status; collects and analyzes data and performs calculations for minor design

changes; retrieves and review information (e.g., cost estimates, pay book documentation, daily inspector reports, materials test results). Appellant investigates project related complaints; testifies and acts as engineering expert witness in court cases. He also documents all the daily work into the companies computer system, Construction Management System.

5% -- Performs miscellaneous duties as assigned to facilitate operational efficiency (e.g., participates in Construction seminars, attends management training programs, answers correspondence in writing, maintains project files).

First to testify was Appellant Lee Eilerman, who acted as general testifying spokesperson for all four Appellants. He has been employed by ODOT for approximately fourteen years. Appellant Eilerman's immediate supervisor who oversees the Construction duties is Steven Kremer. However, David Fisher is the supervisor who fills out the employee performance evaluation, approves Appellant's leave, assigns Appellant the equipment, oversees payroll and timesheets, and authorizes overtime.

Appellant Eilerman testified on his request for a job audit and at hearing that his main job duties are as follows:

50 percent of the time Appellant Eilerman is administering contracts for construction jobs, and supervising all the construction projects in multiple counties. He: supervises variations of contract administration team/squad personnel; consults directly with the District Construction Engineer and the Central Office Construction Staff Specialists concerning changing any and all orders, claims, specification clarification, EEO compliance, environmental compliance, etc.; signs internal and external correspondence; and conducts field inspections and provides technical direction for change orders and extra work. Finally, he monitors and maintains Highway Technician training schedules to ensure adequate and appropriate staffing.

20 percent of the time he functions with the associates. He: creates annual work plans for construction projects; represents the District Construction Engineer at project progress meetings and other various meetings and/or hearings; implements partnering on construction projects; and acts as liaison to local governments, the public and the private sector. He also communicates through letters and meetings with all sorts of agencies and organizations, as well as monitors and modifies operations to improve construction OPI measures, etc.

10 percent of the time he reviews, develops, and makes recommendations for project scopes. He performs plan reviews and attends design review meetings during the design phase. He provides technical expertise to the Central Office Highway Technician course development and implementation. He is involved in development of new policies and makes recommendations on changes to standard drawings when appropriate.

10 percent of the time he coordinates with other departments that are involved in this construction work such as Permits, Production, Planning and Traffic. He participates in the interview committees for various departments beside Construction.

10 percent of the time he provides technical direction to the County Manager concerning the Maintenance Projects and ensures compliance with ODOT standards relative to contract administration. He provides technical support and supervision for all Maintenance operations, supervisors and staff. He represents the pertinent County Manager at special issues meetings and during their absence when needed and provides recommendations to the County Manager concerning the budget for equipment, vehicles and personnel, etc.

Appellant Eilerman's supervisor, Steven Kremer, states in the job audit materials that Appellant's job break down is more the following:

30 percent of Appellant Eilerman's time is spent on multiple and complex construction projects in two counties. He supervises lower level transportation engineers, transportation managers, project inspectors, and other support personnel that are involved in the same construction projects. He assists the supervisor in planning and coordinating engineering policies and in scheduling inspector forces.

Since Appellant is a registered professional engineer, 40 percent of his time is spent interpreting plans on multiple complex construction projects in two counties. He reviews the design adequacy and makes recommendations on required changes to the planned work. Appellant performs frequent site visits to ensure the contractors' compliance with the Departmental specifications. He certifies the acceptance of all materials incorporated into the project work. He also documents all the daily work into the Construction Management System.

25 percent of Appellant Eilerman's time is spent working with the contractors, utilities, and other parties to make sure the interests of all parties are

satisfied. He conducts monthly progress meetings, advises the supervisor on project status, performs calculations on minor design changes, and investigates and resolves project related complaints.

The other 5 percent of the time, Appellant Eilerman performs miscellaneous duties as assigned, including answering correspondence in writing, and maintains project files.

The next Appellant to testify was Rolland Karns. Appellant Karns' immediate supervisors are John Glover, Administrative Officer 3, and Greg Siefring, Transportation Engineer 4.

Appellant Karns testified on his request for a job audit and at the record hearing that his main job duties are as follows:

50 percent of the time he administers multiple, major, complex, multi-year multi-million dollar projects. He supervises the contract administration personnel including Transportation Engineer 1s and 2s, Transportation Manager 3s, Engineers-in-Training, College Interns, Engineering Co-ops, etc. He provides policy and technical direction to Project Engineers and Transportation Managers concerning changed conditions, extra work, and plan errors to ensure compliance with proposals, plans and specifications. He prepares and signs the correspondences for internal and external customers and conducts field inspections for the purpose of providing technical direction for change orders and extra work.

25 percent of the time he creates annual work plans for the District Construction Engineer for project staffing and scheduling. The multi-year, multi-million dollar projects work plan is used to determine the appropriate resource allocation for the projects including staffing, testing equipment and vehicle needs, the determination of personnel assignments, and the need for supplemental staffing from 1000 Hour Transfers, Highway Technicians, Consultants, and seasonal employees. He represents the District Construction Engineer at Pre-Construction Meetings, Progress Meetings, and Special Issue Meetings with internal and external customers. He represents the Department in meetings and communications and monitors the activities to improve the OPI for the Department.

20 percent of the time he performs plan and design reviews. He attends the meetings during the design phase to provide the designer technical input of a

project and to recommend alternate methods. He provides technical expertise regarding the Highway Technician training course development and implementation. Also he is involved in making recommendations for changes to standard drawings and the Construction and Materials Specifications.

5 percent of the time he coordinates with other departments, provides technical support, and is available to provide supervision for snow and ice operations for maintenance supervisors and support staff.

However, *Appellant Karns' supervisor, states in the job audit materials* that Appellant's job break down is more the following:

30 percent of the time, Appellant Karns is involved with two multi-year, major new construction projects. He supervises lower level transportation engineers, transportation managers, project inspectors, and other support personnel who are involved with construction projects. He assists with supervision concerning planning and coordinating engineering policies and concerning scheduling of inspector forces.

Appellant is a registered professional engineer, and, accordingly, for about 40 percent of the time, he interprets plans on two complex construction projects. He reviews the design adequacy and makes recommendations on required changes to the planned work. He makes frequent site visits to ensure contractor compliance with Department Specifications and he certifies the acceptance of all materials incorporated into the project work. Appellant documents conversations and work items and records this information into the computer Construction Manager System and Lotus Notes.

25 percent of the time he works with the contractors and other officials to ensure the interests of all parties are satisfied. He conducts monthly progress meetings, advises the supervisor on project status, performs calculations on minor design changes, and investigates and resolves project related complaints.

5 percent of the time he performs miscellaneous duties including answering correspondence in writing and maintaining project files as assigned.

Also present was Appellant Mark Stanley. Appellant Stanley's immediate supervisor who oversees all the Construction Administration is Dave Ley, Transportation Engineer 5. Appellant reports to approximately three different counties. In Montgomery County, he reports to John Glover, Transportation

Administrator. In Clark County, he reports to John Henry Balzer, Transportation Administrator. In Champaign County, he reports to Mark Lewis, Transportation Administrator.

Appellant Stanley chose not to provide supplemental testimony at hearing. *Accordingly, the following information was presented in Appellant Stanley's Job Audit materials.*

50 percent of the time, Appellant Stanley administers multiple, major, complex projects, and provides supervision for all construction projects in multiple counties. He supervises variations of the following contract administration team/squad personnel and provides technical direction to Project Engineers and Project Managers concerning plan errors, changed conditions, extra work, etc., and also ensures compliance with specifications. He consults directly with the District Construction Engineer and Central Office Construction Staff Specialists concerning change orders, claims, specification clarification, EEO compliance, environmental compliance, etc. He signs internal and external correspondence, conducts field inspections, and provides technical direction for change orders and extra work. He also monitors and maintains Highway Technician training schedules to ensure adequate/appropriate staffing.

20 percent of the time he provides Gantt Charts to the District Construction Engineer for projects scheduling and staffing. He creates annual work plans for the Construction Projects. He also represents the District Construction Engineer at project progress meetings, pre-construction meetings, special issues meetings, public hearings etc. He implements partnering on construction projects and administers pre-construction meetings. He acts as liaison to local governments, the public, and the private sector. He communicates through letters and meetings and acts as the District Hazardous Waste Engineer on construction projects throughout entire district. He acts as Construction Advisor to the District Change Order Review Team and other quality teams.

10 percent of the time he reviews, develops, and makes recommendations for project scopes. He performs plan reviews and attends design review meetings during the design phase. He provides technical input to the designer and provides technical expertise concerning Central Office Highway Technician course development and implementation. He is involved in development of new policies and making recommendations on changes to standard drawings.

10 percent of the time he coordinates with other departments and participates in the interview committees for various departments beside Construction.

10 percent of the time he provides technical direction to the County Manager concerning Maintenance Projects and ensures compliance with ODOT standards relative to contract administration. He provides technical support and supervision for several departments and may provide supervision for snow and ice operations to maintenance supervisors and support staff. He volunteers to plow snow and ice control for multiple counties. He represents the County Manager at special issues meetings and during their absence when needed. He provides recommendations to the County Manager concerning the budget for equipment, vehicles, and personnel and assists with future project planning.

Appellant Stanley's supervisor states in the Job Audit Report that the following constitutes Appellant Stanley's job duties.

30 percent of the time Appellant Stanley he is on multiple complex construction projects in two counties. He supervises the lower level employees and assists in supervising the planning and coordinating of the engineering polices and scheduling of inspector forces.

Appellant Stanley is a registered professional engineer and, accordingly, 40 percent of the time he interprets plans on multiple complex construction projects in two counties. He reviews design adequacy and makes recommendations on required changes to the planned work. He frequently visits the construction sites to ensure contractor compliance with Departmental specifications. He certifies the acceptance of all materials incorporated into the project work and documents daily the work into the computer system.

25 percent of the time he works with contractors and other officials to ensure the interests of all parties are satisfied. He conducts monthly progress meetings, advises supervisors on project status and performs calculations on minor design changes. He also investigates and resolves project related complaints.

5 percent of the time he performs miscellaneous duties including answering correspondence in writing and maintaining project files.

The fourth instant Appellant is William Irons. His immediate supervisor that oversees all the Construction Administration is Steven Kremer, Transportation Engineer 4, Assistant District Construction Engineer Cost Center 530. Appellant reports to one other county, which is Mercer County and the supervisor there is Steve Zehringer, Transportation Administrator.

Appellant Irons was present at the record hearing, however he did not testify. *The following information was presented in Appellant Stanley's Job Audit materials.*

50 percent of the time Appellant administers multiple, major and complex projects and provides supervision for all construction projects. He provides technical direction concerning plan errors, changed conditions, extra work, etc., and ensures compliance with specifications. He consults directly with the District Construction Engineer and the Central Office Construction Staff Specialist concerning changed orders, claims, specification clarification, EEO compliance, environmental compliance, etc. Appellant signs internal and external correspondence and conducts field inspections. He provides technical directly for all the change orders and extra work. Appellant monitors and maintains the Highway Technician training schedules and certifies all material used on assigned construction projects.

20 percent of the time he creates annual work plans for the construction projects in the multiple counties by determining whether or not they have the appropriate project resources such as the staff, personnel assignments, etc. At project progress meetings, pre-construction meetings, special issues meetings, public hearings, post construction meetings, etc., he represents the District Construction Engineer. Appellant implements partnering on construction projects and acts as liaison to different parties. He communicates through all types of correspondence and he monitors and modifies the operations to improve construction OPI measures. Finally, he coordinates and participates in the final inspections in the multiple counties.

10 percent of the time he performs plan reviews and attends design review meetings during the design phase and provides technical input to the designer relative to constructability and maintainability.

10 percent of the time Appellant Irons coordinates with other departments and participates in the interview committees' process.

10 percent of the time he provides technical direction to the County Manager concerning Maintenance Projects and ensures compliance with ODOT standards relative to contract administration. Appellant provides technical support and supervision for maintenance operations to maintenance supervisors and other support staff and may provide supervision for snow and ice operations. At special issues meetings, he represents the County Manager in their absence. He makes recommendations concerning the budget for equipment, vehicles, and other personnel and assists with future project planning.

Appellant Irons' supervisor states in the Job Audit Report that Appellant Irons' job duties are as follows:

30 percent of the time he is on multiple, complex construction projects in two counties and he supervises the lower level transportation engineers. He assists the supervisor in planning and coordinating engineering policies and scheduling of inspector forces.

Appellant is a registered professional engineer. Accordingly, 40 percent of the time he interprets plans on multiple complex construction projects in two counties and reviews design adequacy and makes recommendations on required changes to the work that has already been planned out. He frequently visits construction sites to ensure contractor compliance with department specifications and certifies the acceptance of all materials incorporated into the project work. He also documents all the daily work into the Construction Management System.

25 percent of the time he works with contractors and other officials to ensure that the interests of all parties are satisfied and he conducts monthly progress meetings, advises the supervisor on project status, performs calculations on minor design changes, and investigates and resolves project related complaints.

5 percent of the time he performs miscellaneous duties that include answering correspondence in writing and maintaining project files.

At the record hearing, there were several exhibits that were identified by both parties. Appellants identified Exhibit 1, which contained a thank you email sent to multiple work units and seven different counties pictures and the names of the subordinates in those counties.

Exhibit 10 was identified and showed examples of different independent correspondence sent out on different dates to different engineers.

Exhibit 2 was identified and showed examples of when the Appellants certified the materials for the construction projects.

Exhibit 3 was identified as an Affidavit signed by David Fisher stating that when Appellant Eilerman was tasked to Shelby County, Appellant Eilerman represented Mr. Fisher in his absence.

Exhibit 6 was identified as the construction operations overview.

Exhibit 7 was identified and showed examples of the pre-construction notice for the project in four different counties.

Exhibit 8 was identified as a photograph of a mailbox in the District Construction Office identifying Appellant Eilerman as the Area Engineer.

Exhibit 9 was identified and showed the District 7 April Newsletter article identifying Appellant Eilerman as the Area Field Engineer.

However after the hearing on July 14, 2006, the Appellees filed an "Objection" to the Exhibits.

Also testifying at hearing was Laura Kukucka, Human Resources Analyst and Appellee DAS' designee.

Ms. Kukucka indicated that, in formulating its job audit determination, DAS reviewed the employee statements of the Appellants and the statements of Appellant's supervisors. She noted that these statements respectively were compared to the pertinent classification specifications in the Transportation Engineer classification series to ascertain which classification within that series provided the most appropriate match for each the respective duties of Appellants Eilerman, Karns, Stanley, and Irons.

Ms. Kukucka stated that she did not see any of the options listed for the Transportation Engineer 4, 85644, specification that would apply to the work performed and responsibilities held respectively by the Appellants. She noted, for example, that none of the Appellants acts as a Staff Specialist, none performs effective supervision of the construction function, and none performs effective

supervision of two or more work units with each unit assigned different functions. She averred that one of these three examples must be fulfilled for an employee to have qualified under the requirements set forth in the Transportation Engineer 4 specification.

Ms. Kukucka averred that she assumed some of the functions listed, for example, in the Transportation Engineer 4 specification, overlap to some extent. She testified that she also believes that the Appellants do probably perform supervision over lower level transportation engineers, transportation technicians, and transportation support personnel..

She reiterated that O.A.C. 123:1-7-15 defines supervision (effective supervision) for the purposes of classification specifications unless otherwise noted in the specification. Given that definition, she did not believe that any of the Appellants performed sufficient effective supervision for the requisite delineated employees and different work units required by the Transportation Engineer 4 specification. She also opined that the comments and testimony of Appellants' respective supervisors supported her determination regarding Appellants not performing effective supervision of two differing work units with two or more employees within each unit.

Ms. Kukucka further responded that separate work units with two separate functions would need to be delineated separately on the Table of Organization. She additionally stated that the Table of Organization or the pertinent Position Descriptions should list the employees supervised within different functions.

FINDINGS OF FACT

Based on the testimony presented and evidence admitted at hearing and filed thereafter with this Board during the time the instant record remained open, I make the following Findings:

I find that the percentage and descriptive breakdown of duties offered by Appellants and their respective supervisors in testimony and in the job audit materials may differ somewhat but essentially reflects core duties that do not vary to an important degree. Accordingly, I adopt herein the comments and testimony as reflected in the instant Statement of the Case, above.

I further find that Appellants' supervision exceeds that of lead work or functional supervision and is exercised over various engineers, technicians, and

support personnel, as listed in the Transportation Engineer 3 specification. I further find that Appellants do not perform as Staff Specialists, do not principally or dispositively in the "production" area, and do not supervise two or more work units each assigned different functions. I also find that Appellants act as Professional Engineers and sign off on plans or other pertinent engineering documents.

CONCLUSIONS OF LAW

These cases present this Board with the question of whether employees of the Ohio Department of Transportation who **do** supervise transportation engineers, technicians, and support personnel and sign off on plans or other pertinent documents as Professional Engineers but who **do not** act as Staff Specialists, dispositively perform in the "production" area, or supervise at least two work units with different functions qualify for their positions to be reclassified upward to Transportation Engineer 4, 85644? Based on the Findings above and for the reasons set forth below, this Board should answer this question in the negative and should affirm the job audit determination of the Department of Administrative Services that Appellants' respective positions should remain classified as Transportation Engineer 3, 85643.

Distilled to its essence, the Transportation Engineer 2 Class Concept calls for the incumbent to perform lead work in managing multiple complex construction projects. The level of responsibility exercised by the Appellants clearly exceeds the level contemplated in the Transportation Engineer 3 Class Concept.

Conversely, the Transportation Engineer 3, 85643 Class Concept calls for the incumbent to either supervise transportation engineers, transportation engineers, and support personnel or to perform as a Staff Specialist and, in addition to one of these functions, sign off on plans or other engineering documents as a Registered/Professional Engineer.

Appellants generally perform the level of supervision and responsibility contemplated by this Class Concept. Appellants also sign off on the requisite engineering documents contemplated by this Class Concept. Appellants do not perform as Staff Specialists but are not required to do so; since Appellants perform the requisite supervision of engineers, technicians, and support personnel contemplated by the Class Concept. Accordingly, the Transportation

Engineer 3, 85643 provides a valid and fairly accurate summation distillation of the duties performed by Appellants herein.

The Transportation Engineer 4, 85644 Class Concept calls for the incumbent to supervise personnel assigned to a minimum of two work units with different functions or, in production only, supervise two or more teams/squads, or act as Staff Specialist. Appellants do not supervise two or more work units assigned different functions, do not work dispositively in "production", and do not act as Staff Specialists. Accordingly, Appellants duties do not fulfill the requirements set forth in the Transportation Engineer 4, 85644 Class Concept. Thus, in accordance with R.C. 124.14, this Board is precluded from reclassifying Appellants' respective positions to Transportation Engineer 4, 85644.

I have found, above, that Appellants' respective duties exceed the duties and level of responsibility contemplated by the Transportation Engineer 2, 85642 Class Concept.

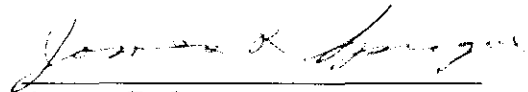
I have also found above that Appellants' respective duties generally comport with duties and level of responsibility contemplated by the Transportation Engineer 3, 85643 Class Concept.

Finally, I have found, above, that Appellants' respective duties do not fulfill the duties and level of responsibility contemplated by the Transportation Engineer 4, 85644 Class Concept.

Appellants unquestionably perform important work that demonstrably contributes to the successful operation of Ohio's transportation system. However, that work does not, at this time, qualify their respective positions for a reclassification to Transportation Engineer 4 and, accordingly, DAS's job audit determination should be affirmed.

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the job audit determination of the Ohio Department of Administrative Services that Appellants' respective positions are properly classified as Transportation Engineer 3, 85643, pursuant to R.C. 124.03 and R.C. 124.14.

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