

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

YOHANCE V. THOMAS,

Appellant,

v.

Case No. 08-REC-01-0028

OHIO STATE UNIVERSITY,

Appellee

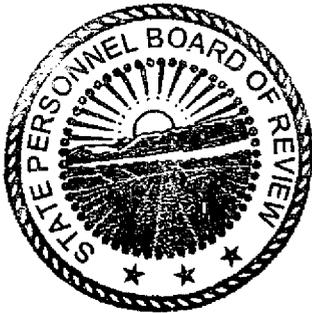
ORDER

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 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 Appellee's determination that Appellant's position was properly classified as Air Quality Technician 1, 12002, be **AFFIRMED**, pursuant to R.C. 124.03 and R.C. 124.14.

Lumpe - Aye
Booth - Aye
Sfalcin - Aye



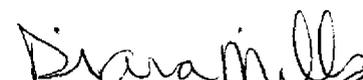


J. Richard Lumpe, *Chairman*

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, November 20, 2008.



Clerk

11/20/08

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

Yohance V. Thomas,

Case No. 08-REC-01-0028

Appellant

v.

October 9, 2008

Ohio State University,

Appellee

Christopher R. Young
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on June 11, 2008, at approximately 11:00 a.m. and concluded upon the submission of post hearing briefs filed by the Appellee on July 10, 2008 and by the Appellant on July 11, 2008. Present at the hearing were the Appellant, Yohance V. Thomas, represented by Michael A. Moses, Attorney at Law, and the Appellee, the Ohio State University was present through its Attorney, Brooke E. Leslie, an Assistant Attorney General. Also present at the hearing was the Ohio State University's person who conducted the audit, Sara Gauntner, a Human Resource Consultant with the Ohio State University, and the Appellant's immediate supervisor, Mr. Will Nazareth, a Building Maintenance Superintendent 2.

On September 9, 2007, the Appellant, Yohance V. Thomas, requested a job audit of his position as an Air Quality Technician 1, classification specification number 12002. Subsequently, on or about December 28, 2007, the Appellant received the results of his audit request which notified him that his proper classification for his position was that of an Air Quality Technician 1, classification specification number 12002. After receiving the Ohio State University's audit decision, the Appellant timely filed his appeal to this Board on or about January 11, 2008. Further, it should be noted that the aforementioned was stipulated to, as well as the subject matter jurisdiction of this Board was established.

Further, it should be noted that prior to proceeding onto the record, the Appellant stated that although he is presently classified as an Air Quality Technician

1, he was seeking to be reclassified as to an Air Quality Technician 2, classification specification number 12003.

STATEMENT OF THE CASE

The Appellant, Yohance V. Thomas, testified he is presently employed at the Ohio State University as an Air Quality Technician 1 and has been so since April 2002, but has previously served in the capacity of a Maintenance Repair Worker 2 for the proceeding three years. The witness testified that on or about April 2007, Rick Powell, an Air Quality Technician 2 at that time was his supervisor for approximately six months prior to his filing for a job audit request when Mr. Powell took a different position and was upgraded to a Building Maintenance Superintendent 1. The Appellant explained that Mr. Powell had supervisory duties over two (2) Maintenance Repair Workers and five (5) Air Quality Technician 1s, including himself. The witness explained that his office was within the facilities operations development department at the university at the Kinnear Road shop when he initially applied for his audit. However, the witness testified that on or about April 2008 he asked to be transferred and was given a transfer to the extended shop at the Kenny/Lane shop, still within the facilities operations department.

The Appellant then identified Appellee's Exhibit C as a position description/data position that both he and his supervisor put together in terms of his audit request. The witness explained his essential duties were as follows: fifty percent of the time he spent performing corrective HVAC maintenance; maintains, tests, troubleshoots, repairs, replaces and installs HVAC equipment including, but not limited to, cooling towers, boilers, fans, dampers, steam traps, pressure regulators, heat exchangers, etc.; tests water; welds, brazes, and/or solders piping; repairs or replaces pneumatic control systems; cleans coils; performs seasonal switchover of controls; responds to too hot and cold calls. Further, the witness testified that forty percent of his time he performs preventative maintenance on HVAC systems; orders and replaces filters; logs and keeps records of chillers and other equipment; lubricates and adjusts HVAC equipment; maintains chemical and other supplies. The Appellant testified that five percent of his time was spent maintaining, testing, diagnosing and repairing building electric, mechanical, and plumbing systems; assists other crafts to perform group projects; cleans and maintains work area. The witness stated that his last five percent of his job duties were spent reading layouts, blueprints and schematics; attends meetings and

training, operates departmental vehicles; performs other duties as required. The Appellant explained that he wrote this up with Mr. Powell and signed off on this on November 16, 2007. Further, the witness explained that there were two other drafts prior to signing this one wherein he had put down that he operated DCC and/or digital control systems and steam control and that he also worked with various steam components which was taken out of his initial draft. The witness stated he also wrote that he provided supervision, in his second draft but that was taken out.

When questioned, the witness testified in January 2008, Will Nazareth took over as his supervisor because Mr. Powell had left to the main campus along with explaining that on or about April 1, 2008 that Dale Cheney, a Building Maintenance Superintendent 2 then took over as his supervisor, as well. The witness testified he was a full-time employee, working forty hours per week, Monday through Friday from 7:15 a.m. to 3:45 p.m. When further questioned by the undersigned with respect to whether he supervised or not, the witness explained he provided work instruction or direction to either an Air Quality Technician or a Maintenance Repair Worker from time-to-time, including but not limited to, approximately twenty-five to thirty percent of his time. However, upon further questioning, the Appellant testified he did not complete performance evaluations of these employees, nor did he approve leave time, nor did he effectively recommend discipline and that he never acted on behalf of the supervisor anytime.

Upon questioning by Appellant's counsel, Michael Moses, the Appellant agreed that he would direct the work of the Air Quality Technician and the Maintenance Repair Worker as he instructed them as they had, in his opinion, fewer skills and that he would show them how to fix various things. With respect to training, the witness testified he would instruct the Air Quality Technicians and the Maintenance Repair Workers from time-to-time, as well. The Appellant explained after he transferred in April 2008 he received his job assignments from Dale Cheney and that he felt that his overall jobs had diminished because there was a lot less equipment for him to take care of. The witness re-identified Appellee's Exhibit C and explained this in fact was the third document he put together and that there were two other drafts that he had previously put in that he was a supervisor, but that was taken out in the third draft. The witness then identified Appellant's Exhibit 1 as a series of documents and work orders which showed he did have various individuals from time-to-time assisting him. The witness testified if he needed help he would request it, but sometimes he would be working in a building and even though he had not requested any assistance, individuals would in fact assist him

without him reporting it. When he first was seeking to have a job audit completed, the witness stated he had gone to Heather Hudnell, a Human Resource Professional within the Facilities Operations and Development Department in Human Resources, and that she in fact gave himself the position description and data to fill out.

Upon questioning by Appellee's counsel, Ms. Brooke Leslie, the Appellant testified at various times other Air Quality Technician 1s would request his help, as well. Upon further questioning by Appellee's counsel, the Appellant testified he understood he could have in fact refused to sign Appellee's Exhibit C, the description of his job duties, and testified that the job duties he listed on that were accurate to the best of his knowledge.

The next witness to testify was Mr. Wilford Nazareth, a Building Maintenance Supervisor 2, a position that he has held since 2004, within the department of Facilities Operations and Development at OSU. Mr. Wilford testified he has been employed in one capacity or another with the Ohio State University since September 1979 and he had been working at the Kinnear Road shop since December 2005. The witness explained that he was in the hearing room and heard the Appellant's testimony and testified what the Appellant reported on Appellee's Exhibit C was accurate to the best of his knowledge with a few exceptions. The witness explained the Appellant in his testimony talked about working with digital computer controls and steam work, which this was not done as the digital control computer system was handled by a totally different department and there is very little steam-work at all within the buildings they work with. The witness testified even though Rick Powell was his supervisor on or about the time he put in for his job audit request, that he was in fact Mr. Powell's supervisor and he delegated this duty to Mr. Powell as there had been a retirement of a Building Maintenance Superintendent 1, which left him with approximately twenty-five subordinate employees to manage, which he then delegated some to Mr. Powell. Mr. Wilford explained he was off on an extended vacation and returned in January 2008 and Mr. Powell at that time was put on loan to another department and he was still responsible for supervising the Appellant in this case.

The Appellee's counsel did not ask any questions from the witness.

Upon questioning by Appellant's counsel, Mr. Wilford testified on a typical table of organization which they do not currently have one, he would in fact be over

the Air Quality Technician 2s and Mr. Powell and on or about November 2007 he was in fact an acting Building Maintenance Superintendent 1. Further, with respect to the Maintenance Repair Worker 2, Donald Prior, which the Appellant had previously testified and identified in Appellant's Exhibit 1, worked with the Appellant as his helper. Further, the witness stated that it was his understanding on a job reclassification request that Mr. Thomas could have attached his own version of what he thought his duties were on Appellee's Exhibit C.

Upon questioning by Appellee's counsel, Mr. Wilford testified that Mr. Thomas never stated that he had supervisory duties, but that he only directed and led the work of others who assisted him.

The next witness to testify was Ms. Sara Gauntner, a Human Resource Consultant at the Ohio State University since August 2007. The witness testified she performed a paper audit on the Appellant in this matter. The witness explained as in all the job audits she has performed she reviews the position description and/or the position data, along with the class that the Appellant was currently serving in and the higher and lower classes, as well in formulating the rationale for their determination. When she reviewed the classification specification of an Air Quality Technician 2, the witness stated that twenty-five to forty percent of the time one is to supervise, instruct and train other Air Quality workers in the skills needed to properly install, repair, inspect, diagnose, test and maintain air conditioning, air handling, refrigeration heating systems, equipment components and controls; assigns and evaluates tasks, completes and maintains related records. The witness testified that when comparing those duties when reviewing the position description and position data that was filled out by both the Appellant and his supervisor, it did not state he performed supervision. Thus, the witness stated she rejected this classification as being the best fit for the Appellant.

When reviewing the classification specification of an Air Quality Technician 1, the witness stated that she found this to be a classification that was a proper fit for the Appellant herein.

Upon questioning by Appellant's counsel Ms. Gauntner testified that Thomas Bond, the author of a letter denying the Appellant's reclassification from an Air Quality 1 to an Air Quality Technician 2's position explained he was the Compensation Manager and that she in fact gave the information to Mr. Bond to write to Mr. Thomas and that Mr. Bond signed off on the letter dated December 28,

2007. When questioned if an employee and supervisor would disagree on their duties, and what would happen in that regard, the witness explained she simply did not know. The witness further stated that if a position description and data did not have the term supervisor in that description she would not consider a classification specification which provided for supervision, as well.

FINDINGS OF FACT

There was no real discrepancy between the Appellant's characterization and the duties that he performed and those of the testimony of his supervisor, Mr. Will Nazareth, the Building Maintenance Superintendent 2 for the Facilities and Operations and Development Department within the Ohio State University. Thus, I find as a matter of fact the Appellant performed the duties about which he testified with the exception that he may have performed duties with the digital computer control systems and performed some various steam work.

CONCLUSIONS OF LAW

This Board is required to perform several functions when determining the most appropriate classification for an Appellant coming before it. The Board must always review relevant classifications specifications to determine which classification best describes the Appellant's actual job duties for the pertinent period of time. *Ford v. Ohio Department of Natural Resources* (1990), 67 Ohio App. 3d 755. In making this determination, the Board considers the classification specification and the job duties outlined therein, as well as the percentages of time the Appellant devotes to each group of job duties. *Klug v. Ohio Department of Administrative Services* (May 19, 1988), Franklin Co. 87AP-306, unreported, 1988 WL54277. This Board's consideration is not solely limited to the duties contained within the classification specification, but may also embrace other relevant facts submitted by the affected parties. *Gordon v. Ohio Department of Administrative Services* (March 31, 1988), Franklin Co. 88AP-0122, unreported, 1988 WL37094.

As a general rule, the Appellant seeking a reclassification to a higher position must demonstrate that his or her respective job duties substantially satisfy those of the higher classification. *Mounts v. Ohio Department of Administrative Services* (1984), 17 Ohio App. 3d 125; *Deist v. Kent State University* (May 23, 1987), Franklin Co. 87AP-28, unreported.

As was previously stated, the Appellant is currently classified as an Air Quality Technician 1, but was seeking to be reclassified to an Air Quality Technician 2. After a thorough review of the above mentioned classifications, along with consideration of the testimonial evidence and documentary evidence presented at the record hearing, it is my recommendation that the Appellant was properly classified as an Air Quality Technician 1, classification specification number 12002.

When reviewing the classification specifications for both classifications of Air Quality Technician 1 and 2, the major difference between the two classifications contained therein is whether one is providing supervision to subordinate employees. Thus, this matter would turn on whether one occupying his or her position was actually performing supervisory duties.

Further, the Appellant's counsel raised in his argument to the undersigned that the University's definition of "supervises" is just simply one who supervises a subordinate employee and cited The Ohio State University's own Administrative Rule O.A.C. 3335-55-04(C) defining supervises under the specifications language.

O.A.C. 3335-55-04(C) defines "supervises" as follows:

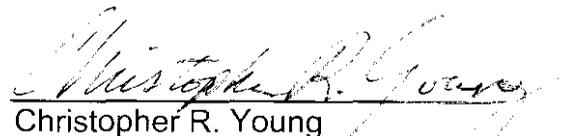
(C) For the purpose of classifying positions and making job audit or review decisions only, wherever the word "supervises" appears in a classification specification, unless otherwise defined in the specification, "supervises" means that an employee assigns and reviews work, completes performance management procedures, rewards exemplary employee performance, recommends disciplinary action, adjusts grievances, and requires the use of independent judgment in exercising authority.

In this case, it was clear that the Appellant through his testimony did not assign any employee work, nor did he complete performance evaluation forms, recommend or authorize leave, or initiate disciplinary action for any employee. However, the Appellant did testify he would at times would instruct and act as a lead worker in terms of individuals who were assigned to work with him from time to time. But this fact alone did not raise the Appellant's level of responsibility to that of a supervisor, under the Appellee's own rules and regulations.

Further, when reviewing the classification specification of an Air Quality Technician 1 compared to the duties which the Appellant performed were as follows: fifty percent of the time he spent performing corrective HVAC maintenance; maintains, tests, troubleshoots, repairs, replaces and installs HVAC equipment including, but not limited to, cooling towers, boilers, fans, dampers, steam traps, pressure regulators, heat exchangers, etc.; tests water; welds, brazes, and/or solders piping; repairs or replaces pneumatic control systems; cleans coils; performs seasonal switchover of controls; responds to too hot and cold calls. Further, the witness testified that forty percent of his time he performs preventative maintenance on HVAC systems; orders and replaces filters; logs and keeps records of chillers and other equipment; lubricates and adjusts HVAC equipment; maintains chemical and other supplies. The Appellant testified that five percent of his time was spent maintaining, testing, diagnosing and repairing building electric, mechanical, and plumbing systems; assists other crafts to perform group projects; cleans and maintains work area. The witness stated that his last five percent of his job duties were spent reading layouts, blueprints and schematics; attends meetings and training, operates departmental vehicles; performs other duties as required, were almost an exact match. Thus, the undersigned rejected the classification specification of an Air Quality Technician 2 since the Appellant did not provide any supervision and the classification specification of an Air Quality Technician 1 was almost an exact match.

RECOMMENDATION

Therefore, after careful consideration of the evidence presented at the record hearing, as well as the post hearing briefs, and based upon the forgoing analysis of the job duties performed by the Appellant and the relevant classification specifications, I conclude that the classification specification of an Air Quality Technician 1 was the most appropriately classification for the Appellant's position. Therefore, I respectfully **RECOMMEND** that the Appellee, the Ohio State University's decision, that the Appellant was properly classified as an Air Quality Technician 1, classification specification number 12002, be **AFFIRMED**, pursuant to Ohio Revised Code Section 124.03 and 124.14.


Christopher R. Young
Administrative Law Judge