

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

Lavonia Brown,

Appellant,

v.

Case No. 08-REC-07-0453

Cuyahoga County Board of Commissioners,
and
Cuyahoga County Office of Human Resources,

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 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, Cuyahoga County Office of Human Resources' determination that Appellant's position was properly classified as Budget Officer 1, classification number 1055311, from May 13, 2008 through February 9, 2009, be **AFFIRMED**. It is further **ORDERED** that Appellee's Comprehensive Position Questionnaire determination as applied to Appellant's current duties be **MODIFIED** and Appellant's position be **RECLASSIFIED** to Budget Officer 2, classification number 1055312, *effective no earlier than February 10, 2009*, pursuant to O.R.C. §§ 124.03 and 124.14.



Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

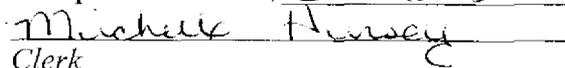


J. Richard Lumpe, *Chairman*

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 constitute (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, October 8, 2009.



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**

LAVONIA BROWN,

Case No. 08-REC-07-0453

Appellant

v.

May 13, 2009

CUYAHOGA COUNTY BOARD OF COMMISSIONERS

and

CUYAHOGA COUNTY OFFICE OF HUMAN RESOURCES,

Appellees

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came to be heard on April 23, 2009. Present at the hearing was Appellant, who was represented by David W. Neel, Attorney at Law. Appellee Cuyahoga County Board of Commissioners (BOC) was present through its designee, Felicia Harrison, Business Services Manager with the Department of Justice Affairs (DJA) which falls under the administrative control of the BOC. Appellee Cuyahoga County Office of Human Resources (OHR) was present through its designee, Albert Bouchahine, Personnel Manager. Both Appellees were represented at hearing by Reno J. Oradini, Assistant Prosecuting Attorney.

This cause comes on due to Appellant's July 23, 2008 timely filing of an appeal from a Comprehensive Position Questionnaire (CPQ) determination, notice of which was received on June 27, 2008. The OHR received the pertinent CPQ request on May 13, 2008 and the CPQ packet was returned on June 13, 2008. The results of the CPQ review were that Appellant's position with the DJA was determined to be properly classified as Budget Officer (BO) 1, 1055311. Alternately, Appellant believes her position would be more properly classified as Budget Officer 2, 1055312.

It should be noted that, on or shortly after February 10, 2009, DJA Director Gary Holland appointed Appellant to serve as the **JDA's Compliance Officer** over certain functions performed by the DJA (See Appellant's Exhibit 7.). Appellant's Compliance Officer duties have continued unabated through the date of record hearing in this matter.

Jurisdiction over the subject matter of this appeal was established pursuant to R.C. 124.03 and R.C. 124.14.

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

At hearing, three witnesses testified: **Lavonia Brown, Appellant**, whose current classification is Budget Officer 1; **Felecia Harrison**, Appellant's supervisor and the BOC's designee at hearing, whose current classification is Business Services Manager; and **Albert Bouchahine**, the OHR's Personnel Manager and the OHR's designee at hearing.

First to testify was **Lavonia Brown, Appellant**, a 23- year employee with the Department of Justice Affairs of the Cuyahoga County BOC. Appellant began her testimony by stating that she gives supervision to BO 1s, managers, and other employees from outside agencies. She noted that she reports to Felicia Harrison, Business Services Manager, who reports to Gary Holland, Director of the Department of Justice Affairs, who reports to the Cuyahoga County Administrator.

She offered that she has supervised many BO 1s and 2s during her tenure with Appellee and for the pertinent review period has supervised at least 5 to 6 BO 1s and 2s. She also averred that she has always worked in the capacity of a lead worker. She opined that no BO 2s currently perform lead work in her work area and other related work areas of the DJA.

Appellant declared that she performs various budgeting functions. These include, she stated, balancing the budget or the patterns of their spending for most of the DJA where she comes into contact with BOs and managers as well as interacted with BOs coming in asking for advice or leadership regarding their own respective budgets. She indicated that she prepares budgets, ensures that spending is performed in the appropriate category and that funds are appropriated

from the proper source and are available. She also indicated that she ensures that funds are utilized for program needs and not for example on salary needs, depending on the objective of the program that is being funded. She further averred that she utilized Excel spreadsheets to actualize where expenses lie and determine if free balances exist and where they can be utilized.

Appellant stated that her new duties as the Compliance Officer include dealing with department managers or Budget Officers on a one-on-one level to ensure compliance and to make certain that expenses do not exceed the budget. In this regard, she testified, she prepares budgets that go to Business Services Manager Felicia Harrison or to DJS Director Gary Holland as well as to the County's Office of Budget and Management, which sets up appropriations in the system of the Cuyahoga County Auditor.

Appellant confirmed that for the pertinent review period, she trained BO 1s on a regular on-going basis and that BO 1s and BO 2s in her area came into her office for guidance and suggestions. She gave the example of BO 1 Eugene Apostoluk seeking direction from Appellant regarding revenue posting to the system and transfers to another account. She indicated this specific activity occurs two to three times per week. Appellant offered that Mr. Apostoluk indicated to her that he did not receive much formal training and did not receive formal training from Ms. Harrison. She stated that he has been coming to Appellant for 8 years, the length of his tenure in the area.

Appellant also noted that Elaine Hoytt, a BO 2 who used to be a BO 1, comes to Appellant for some advice for her budgets at times and Appellant confirmed that Appellant is able to assist Ms. Hoytt. Appellant indicated that she has worked with Ms. Hoytt for at least 18 years.

Appellant offered that similar circumstances occurred with Paula Young, a BO 2, but Appellant noted that Ms. Young is no longer with the division. She also offered that Rosita Turner, a BO 2 who departed the division in 2009, would come to Appellant often, three to four times a week. She opined that Ms. Turner had been in Appellant's area at least eight years.

Appellant indicated that her new responsibilities, as a Compliance Officer, included receiving a spending plan from each agency so that she could ensure that each agency did not exceed the requisite appropriation level and ensure that the

expenditures were reasonable. She noted that there are nine to 10 divisions with the Department of Justice Affairs. In that regard, she identified Appellant's Exhibit 1. as an email from Kristen Brown, acting manager of DJA Treatment Services and at the same level as Ms. Harrison, to Appellant and Ms. Harrison, dated April 16, 2009, providing some initial information on fax/printer cartridges and noting that she had not gotten the requisite information to Appellant but would do so shortly. Appellant indicated that she prepares spreadsheets from the spending plans that are submitted to her and then provides those spreadsheets to Director Holland and Ms. Harrison on a weekly basis.

Appellant then identified Appellant's Exhibits 2., 3., 4., and 5. as spending plans that she had received from BO 1s and 2s and Administrative Secretaries in Appellant's role as Compliance Officer.

Appellant identified Appellant's Exhibit 6. as a roll up/compilation of all pertinent categories expenses for the divisions of DJA, including pending expenses.

Appellant identified Appellant's Exhibit 7. as a two-page document. Page 2. of the document is an email dated December 24, 2008 from Director Holland to Business Services Manager Harrison regarding the subject "Fwd: Office Supply Contract & Toner Cartridge Contract - Budget Reduction" which reads:

Please appoint a compliance officer to oversee that newest policy from the Office of Purchasing and Diversity.

Via that email, I am advising all division leads and managers to adhere as closely to this request as possible. The Fiscal Services Office will monitor monthly requests and notify me immediately of any orders that do not use the recycled products.

Page 1. of the document is an email from Director Holland to Ms. Harrison dated February 10, 2009. The "Please note and return" box is checked.

The "Comment or Reply" section reads:

Felicia I want action on this – tracking and managing the account. Give this to Lavonia and ask her to provide a weekly report on Friday!
[signature] Gary

Appellant indicated that she now prepares the report on a weekly basis. She confirmed that Ms. Harrison did not assign the compliance function after Director Holland first instructed her to do so and that it was Director Holland who assigned the Compliance Officer function to Appellant. Appellant averred that, while she does not have to submit her weekly reports to Director Holland through Ms. Harrison, Appellant does provide Ms. Harrison with a copy.

Appellant further indicated that Ms. Harrison has never complained about Appellant's work and does not provide any direction or assistance to Appellant. Appellant offered that, after working in the area for so long, Appellant knows how to compile the data sought by Director Holland and how to make it as accurate as possible.

Appellant agreed that she did not include budget analysis in her component of the CPQ, identified as Joint Exhibit 1, and indicated that she did not think it was necessary. Following up on the weekly spending plans, she averred that she does not only receive information from others and incorporate this information into her report for Director Holland. She noted that she also analyzes, comments, questions and talks with the Budget Officers regarding information shared on her spreadsheet. She confirmed that she provides communication and a leadership role and that she usually discusses the data and result with the Budget Analysts.

She stated that as a Compliance Officer, she has a number of occasions to have one-on-one discourse with Director Holland every week on any item that is up for consideration. She agreed that Ms. Harrison has not attended these meetings.

Next to testify was **Felicia Harrison**, DJA Business Services Manager, who serves as Appellant's supervisor and was the BOC's designee at hearing. She indicated that the Director had assigned one person to serve as a point of contact regarding spending on supplies and equipment and that the Budget Officers reviewed their data with Appellant as well as submitted their data to Appellant.

She stated that managers from each of the divisions were responsible for preparing spending plans and that the division's budget officer just reviews it. No Budget Officer is responsible for coordinating the work of another Budget Officer, she offered. There are no lead roles among the Budget Officers and there are seven Budget Officers under Ms. Harrison's supervisory control, she stated. Ms.

Harrison indicated that BO 2 Hoytt prepares contracts, meets with vendors, is involved in the Request For Proposal process, *et cetera*, consistent with the BO 2 specification. She agreed that Appellant monitors budgets. She indicated that, sometimes, Appellant also monitors third-party obligations.

Ms. Harrison explained the delay in appointing a Compliance Officer following Director Holland's December initial December 24, 2008 email to her, indicating that she has responded initially to Director Holland that each Budget Officer could do this function under each Budget Officer's respective division or area. Ms. Harrison offered that she did not think of appointing Budget Officer 2 Hoytt and the Director appointed Appellant since Ms. Hoytt had assumed new duties.

Ms. Harrison opined that managing an account is different from monitoring an account. She further offered that Director Holland wanted someone to monitor to ensure that there was not overspending and that cartridges were re-cycled. Ms. Harrison equated being a Compliance Officer with ordering supplies. She stated that each division still places its own orders and that the Director just wanted to know about that spending. Ms. Harrison stated that she sees this function as similar to the other budget functions that Appellant performs.

Last to testify was Albert Bouchahine, Personnel Manager for the Cuyahoga County Office of Human Resources and the OHR's designee at hearing. Mr. Bouchahine indicated that the OHR utilized the duties and responsibilities listed in the CPQ and the comments of the Director in making its CPQ determination. Mr. Bouchahine stated that the Budget Officer 2 classification could be used in this division.

Mr. Bouchahine opined that there is a distinction between monitoring and managing. Mr. Bouchahine indicated that most employees perform a certain percentage of duties that fall outside the classification for the employee's position. He noted that whether by Ohio Administrative Code provision or the rules of a county personnel department or office of human resources, most employees are required to spend at least 20 percent of their time performing duties at a higher level of complexity before the employee can be considered for a classification upgrade.

Based on the testimony presented and evidence admitted at hearing, I make the following Findings:

First, I note that I incorporate, herein, any find set forth, above, whether express or implied.

Next I find that Appellant performs budget analysis for a majority of her working day and performs lead work for a significant percentage of her working day, beginning with her assumption of the DJA Compliance Officer duties specifically assigned to her by Director Holland. In this capacity, Appellant not only compiles and synthesizes data, she qualitatively reviews same with other Budget Officers from the divisions of DJA, assesses the data with these officers, and reports her findings and numbers directly to Director Holland on a weekly basis. Additionally, Appellant now frequently meets with Director Holland on a one-on-one basis.

Even before Appellant began her Compliance Officer duties, Appellant was clearly offering some work direction to her cohorts. Moreover, it is clear that Appellant functioned in this capacity more often than might ordinarily be expected of a highly competent veteran employee. Even long-term employees and those with classifications higher than that of Appellant's position would come to Appellant for assistance, advice, and counsel.

These duties both quantitatively and qualitatively intensified with Appellant's recent assignment as the DJA Compliance Officer.

There was some attempt to minimize the importance of these duties (e.g. managers, not Budget Officers, make purchasing decisions; this function was limited to supplies, equipment, and toner; Appellant only compiled the data she was given). These arguments do not take full account of the complexity, discretion and authority that Director Holland personally gave to Appellant to perform this function. Further, Director Holland's email and memo to Ms. Harrison attest to the seriousness that Director Holland seems to have attached to these duties in what, one can surmise, is an ongoing and challenging fiscal and budget environment. Finally, while the amounts involved in Appellant's reports do not necessarily involve millions of dollars of expenditures, neither are these amounts small or trivial.

CONCLUSIONS OF LAW

This case presents this Board with the question of whether Appellant's position with the Cuyahoga County Department of Justice Affairs should remain

classified as a Budget Officer 1 or should be upgraded to a Budget Officer 2? Based on the findings set forth, above, and for the reasons set forth, below, this Board should answer this question in two parts: 1) finding that Appellant's position was properly classified as Budget Officer 1 until the time of the assignment of Compliance Officer duties to Appellant and 2) finding that Appellant's position should be reclassified to Budget Officer 2 with Appellant's assumption of additional duties subsequent to the February 10, 2009 date on which DJA Director Gary Holland instructed Business Services Manager Felicia Harrison to assign Appellant the aforementioned Compliance Officer duties.

Let us turn, first, to the classification specification for Budget Officer 1, 1055311. The Classification Function statement for this specification reads:

The purpose of this classification is to monitor and maintain operating budgets and ledgers and to assist in budget preparation and development.

Rank one of the Essential Job Functions section of this specification reads, in its pre-parenthetical language:

Monitors and maintains operating budgets and ledgers ...

Clearly, Appellant performed, at a minimum, the duties listed in the Classification Function statement and in the Essential Job Functions section for the entirety of the review period and there is really no dispute among the parties that this was the case. The dispute here arises because Appellant claims that her duties better fit within the duties set forth in the Budget Officer 2, 1055312 specification, which she believes provides a better fit for the entirety of the review period.

Yet, it appears that the Budget Officer 2 specification better fits Appellant's duties, beginning with the addition of her Compliance Officer duties which can be described as more complex and of a higher level than those she was previously performing.

The Classification Function statement for Budget Officer 2 reads:

The purpose of this classification is to function as lead worker over lower-level budget officers, and accounting and clerical employees in

preparation, evaluation and coordination of budgets and budget programs and to maintain system for expenditure control and fiscal accountability.

Rank one of the Essential Job Functions section reads:

Functions as lead worker (e.g. – provides work direction, coordination, and training to other budget officers and accounting and clerical employees).

The preponderance of the evidence in the instant record does not support a conclusion that Appellant performed the above-referenced Budget Officer 2 duties prior to assuming the additional duties of Compliance Officer. Indeed, one can argue that Appellant's duties were and could be compared to a very knowledgeable and accessible veteran employee with excellent communication skills, who other employees could rely on to give counsel and direction regarding issues and procedural complexities that might arise.

With the advent of Appellant's Compliance Officer duties, Appellant was actually performing lead work instructing and directing those same employees at her level and even above. For this reason, Appellant's position should be reclassified to Budget Officer 2 with the advent of her assumption of her Compliance Officer duties.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the Comprehensive Position Questionnaire determination of the Cuyahoga County Office of Human Resources that Appellant's position was properly classified as Budget Officer 1, 1055311 from May 13, 2008 through February 9, 2009. I further **RECOMMEND** that the State Personnel Board of Review **MODIFY** the Comprehensive Position Questionnaire determination as applied to Appellant's current duties, and, as a result, **RECLASSIFY** Appellant's position to Budget Officer 2, 1055312, *with an effective date no earlier than February 10, 2009*, pursuant to R.C. 124.03 and R.C. 124.14.

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A handwritten signature in cursive script, reading "James R. Sprague".

JAMES R. SPRAGUE
Administrative Law Judge

JRS: