

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

Jane L. Riggs,

Appellant,

v.

Case No. 09-REM-04-0204

Allen County,
Civic and Convention Center of Lima,

Appellee.

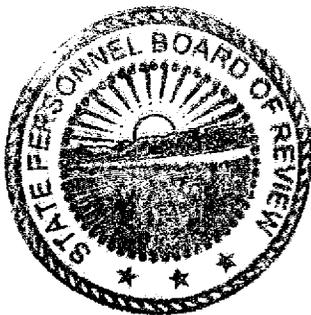
ORDER

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 the instant appeal be **DISMISSED** for lack of jurisdiction over its subject matter, pursuant to O.R.C. §§ 124.03 and 345.10.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



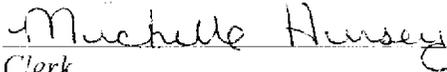


J. Richard Lumpe, *Chairman*

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, April 1, 2010.



Michelle Hursey
Clerk

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

11-10 MLH

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

JANE L. RIGGS,

Case No. 09-REM-04-0204

Appellant

v.

December 22, 2009

ALLEN COUNTY CIVIC AND CONVENTION CENTER OF LIMA,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This case came to be heard on November 3, 2009. Present at the hearing was Appellant, who was represented by William J. O'Malley, Attorney at Law. Appellee, Allen County Civic and Convention Center of Lima (a.k.a. Veterans Memorial Civic and Convention Center (VMCCC)), was present through its designee, Cindy Wood, Executive Director, and was represented by Edward S. Kim and David A. Riepenhoff, Attorneys at Law. By agreement of the parties, simultaneous post hearing brief were filed on or before December 14, 2009 and the record was thereafter closed.

This cause comes on due to Appellant's timely filing of an appeal from her removal from her position of Operations Manager (OM) for the VMCCC. That removal was effective on or about March 18, 2009 and was communicated to Appellant in a letter dated March 17, 2009.

Appellee has contended that Appellant's position, and indeed all positions with the VMCCC are unclassified by law. Appellee has also contended that Appellant's position fell within the unclassified service pursuant to R.C. 124.11 (A)(28). As will be shown below, the undersigned has found that all positions with the VMCCC, including Appellant's, fell within the unclassified service and, thus, that the instant appeal should be dismissed for lack of jurisdiction over its subject matter. As such, it is not necessary, at this time, to make a determination as to whether Appellant's position also fell within the unclassified service pursuant to R.C. 124.11 (A)(28).

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

Witness Testimony

At hearing, five witnesses testified.

Donald A. Reese, has served in several capacities in Allen County government, including as President of the VMCCC during the time of Appellant's removal. Mr. Reese's service also includes 12 years of service on a local school board and service as an Allen County Commissioner from May 1985 through December 1996. Mr. Reese also owns a small merchandise vending company and serves as its President and majority stockholder. Mr. Reese noted that the Revised Code (at R.C. Chapter 345.) sets forth the powers of the Soldiers' (U.S. Armed Forces) Memorial board. These powers include the power to appoint set forth in R.C. 345.10, the second paragraph of which reads:

The board may appoint and employ such superintendents, architects, clerks, laborers, and other employees as are necessary, and fix their compensation. Whenever qualified veterans are available such appointees shall be veterans of the armed forces of the United States.

Any such person may be removed at any time by a majority of the board.

Mr. Reese noted that members of the VMCCC are appointed by the Allen County Board of Commissioners (BOC) and that the VMCCC submits a requested budget to the BOC, but that the Board of Trustees (BOT) of the VMCCC acts independently. He averred that the VMCCC initially received funds from three sources that included the BOC and the City of Lima. He declared that the VMCCC has enacted written by-laws and that same are currently in place.

Mr. Reese noted that the Convention Center opened in October 1984 and that the VMCCC Board of Trustees has operated the Convention Center from its opening.

Mr. Reese stated that the VMCCC BOT reorganized the VMCCC including making personnel changes from the time period from November 2008 to late March/April 2009. These changes, he stated, were prompted by changes in funding, due to a BOC decision to cease covering the Convention Center's utilities

expenses. This, he noted, amounting to a \$300,000 drop in VMCCC funding based on that fixed expense with no BOC funding for same going forward. Funding continued to include \$25,000 per quarter from the City of Lima and concession income, he averred. Accordingly, Mr. Reese indicated, the VMCCC is down to six permanent employees, with eight to 10 former employees working for a temporary service and utilized by the VMCCC on an as needed basis.

Mr. Reese testified that he is familiar with Appellant and knew her first in the position of Front of House Manager, when she was hired when Mr. Reese was a member of the Allen County BOC. He identified Appellee's Exhibit 5 as consisting of several documents including a January 20, 1989 dated memorandum from new then-Executive Director (ED) Florian B. Smith submitting for a resolution for approval regarding the hire of Appellant for the position of Front of House Manager and BOC Resolution # 50-89 wherein the BOC employ Appellant for same effective January 16, 1989. Mr. Reese offered that he did not know why this request was submitted to the BOC but that it was not unusual to receive a request for a resolution and thereafter not inquire too vigorously. He stated that the BOC has no role here and that the BOC employs personnel working in its offices. He asserted that, while the VMCCC and the BOC each has its own handbook, the VMCCC tries to ensure that the provisions in its handbook do not conflict with those in the BOC handbook.

Mr. Reese also identified (as part of Appellee's Exhibit 5) Appellant's letter of removal, dated March 17, 2009 from Cynthia A. Wood, the VMCCC Executive Director and himself, as VMCCC President, to Appellant. The letter cites and quotes R.C. 345.10. (Please see the second paragraph of R.C. 345.10, set forth, above.)

Mr. Reese also identified Appellee's Exhibit 18 as consisting of several documents, including a September 11, 1990 dated memorandum from then-ED Florian B. Smith submitting for a resolution for approval regarding the hire of Michael Petrey as Facilities Technician Manager and Resolution # 697-90, wherein the BOC grants the request and employs Mr. Petrey for same effective September 11, 1990. Mr. Reese stated that the BOC approved the resolution just because they received the request.

On cross, Mr. Reese agreed that a number of Standing Committees of the VMCCC are identified on page 6 of the VMCCC By-laws contained within Appellee's

Exhibit 19. He noted that the Director was on the committees and that the Director and the Buildings and Grounds employee for the county were normally on Buildings and Grounds.

Mr. Reese explained that Allen County owns the building and that he assumed that the Bed Tax was just paid straight to the Allen County Treasurer, and noted that some of the Bed Tax goes to the Convention Center and that the percentage assigned to same does not vary. Mr. Reese noted that the exercise of the BOC's authority *vis a vis* the VMCCC consists of deciding what portion of the General Fund to allocate to the Convention Center and appointing the members of the VMCCC Board of Trustees.

Mr. Reese was again directed to Appellee's Exhibit 5 and questioned regarding why then-VMCCC ED Florian Smith would submit a request to hire to the BOC. Mr. Reese indicated that he did not know but was forthright in offering an opinion that then-ED Smith may have simply been "covering his butt" in asking the BOC to put its stamp of approval on this personnel transaction. Mr. Reese then answered a series of questions that dealt with the structure of Allen County government and with the boards, commissions, and other entities that, to some degree or another, fell under the BOC's actual or limited authority.

Mr. Reese indicated that the BOC did not have to approve of any personnel change or change to the VMCCC By-laws.

Next to testify was **Vickie K. Fowler**, a Member of the Convention Center Board of Trustees. Ms. Fowler stated that she serves as Vice President of MR/DD Services for the International Phoenix Group and as the ED of Lincolnway Planned Health Hospital. She stated that she also serves as a classroom teacher and administrator with the then-Allen County Board of MR/DD.

Ms. Fowler averred that she is serving her second five-year term with the VMCCC BOT, having been appointed in approximately 2003. She stated her service on the Standing Committees includes her current service, as Chair, on the Policy and Personnel Committee (PPC). Regarding hiring under her tenure, she indicated that the PPC makes a recommendation to the BOT and the BOT approves the hire.

Ms Fowler was directed to Appellee's Exhibit 3, the January 2003 version of the VMCCC Employee Personnel Manual. She agreed that paragraph 2 of the acknowledgement form in the manual indicates that VMCCC has an employment policy of employment-at-will and that Section 1.01 ("nature of Employment") reaffirms the employee's stated employment-at-will status.

Ms Fowler also confirmed that when the job of VMCCC ED became available, Appellant submitted a cover letter and resume (dated November 13, 2008) and applied for the ED position. Ms. Fowler also confirmed that Appellant submitted same to Mr. Reese, as President of the BOT, and not to the BOC.

On cross, Ms. Fowler, confirmed that Appellant's position was one of three positions eliminated with the budget shortfall. She also confirmed that the handbook indicates that it is not a contract or a legal document, Yet, she stated, it does provide guidance. She agreed that the law, and not the handbook, takes preeminence in questions of this sort.

Next to testify was **Cindy Wood**, current Executive Director of the VMCCC, who has served in that capacity since February 9, 2009. Ms. Wood indicated that she met Appellant a week or two prior to Ms. Wood's start date and that Ms. Wood served briefly as Appellant's immediate supervisor.

Ms. Wood indicated that she assisted in the preparation of a reorganization plan for the VMCCC and that the BOC was not involved in the preparation of the plan or in the subsequent reorganization.

She confirmed that there was a job posting in the newspaper for the ED position and that the VMCCC BOT utilized an outside agency to facilitate that process.

Ms. Fowler stated that she reviews payroll documents every other Thursday and that same are prepared by the Business Manager. Once she approves them, she declared, they are sent to the Allen County Auditor and BOC personnel are involved in this process.

Ms. Fowler identified Appellee's Exhibit 12 as a compilation of documents that includes the authority to purchase and request for release of funds documents. These contain Appellant's signature and three of the VMCCC Board members'

signatures and are approved at each VMCCC meeting regarding VMCCC spending, Ms. Fowler stated. Once the VMCC BOT approves, the spending approval is sent to the Allen County Auditor's Office and never to the BOC, she noted.

On cross, Ms. Fowler covered the review process that the VMCCC BOT utilized to pursue its reorganization, following the BOC's news that it would be slashing its financial support for paying for the Convention Center's utilities. She also covered Appellant's signature authority regarding VMCCC spending.

Next to testify was **Jane L. Riggs, Appellant** on as if on cross. Appellant confirmed that the VMCCC ED was her supervisor and that the ED is an employee of the BOT. Appellant testified that the Civic Center is a county department.

Appellant confirmed that she sent her resume to the BOT as the head of the department. Appellant confirmed that she did not get a Personnel Manual/Handbook from the BOC. She noted that the handbook is for Allen County and that she got the Civic Center handbook.

She further indicated that she believed that all of the original employees of the Civic Center were hired by BOC resolution. Appellant agreed that her signature on the Program Account (Appellee's Exhibit 10) and the Special Account (Appellee's Exhibit 11) and Liquor Account documents were for the Civic Center and not the BOC. She confirmed that she named the VMCCC and not the BOC in her appeal to this Board but asserted that the VMCCC is a department of Allen County.

Next to testify was **Brian Keegan**, former ED of the VMCCC from January 4, 1993 to February 4, 2009. Mr. Keegan currently serves as a Part-Time Lecturer at the Ohio State University Lima campus.

Mr. Keegan confirmed that, in his opinion, the BOT is the appointing authority for employees of the VMCCC and that the VMCCC can hire employees under certain conditions. Mr. Keegan also confirmed that he terminated the employment of former VMCCC employee Michael Petrey and that a hearing at this Board subsequently occurred as well as two in Allen County.

Mr. Keegan referenced Appellee's Exhibit 18 and noted that, in the early days, whenever someone was hired, the BOT would request a resolution. Mr. Keegan opined that this was probably due to a misunderstanding of authority. He continued

that, since the Allen County Auditor is the fiscal agent of the county, the BOT would need a resolution of the BOC to get a VMCCC employee into the county Auditor's payroll system.

Last to testify was **Jane L. Riggs, Appellant**, testifying on direct and re-direct off as if on cross. Appellant indicated that when she first applied for a position at the VMCCC, she participated in a two-day personal interview with then-ED Florian Smith. She averred that she then met with most of the members of the BOT. She stated that, once the BOT determined she was a good person, they forwarded the recommendation to the BOC for a resolution and that she would be hired as a public employee just like a Sheriff.

She noted that once she actually accepted the offer of employment with the VMCCC, signed all the paperwork, and was there a couple of days (approximately one week), the BOC passed the resolution pertinent to her position and she was told that now she was an official employee. She opined that she worked for the Civic Center as the department, that the Civic Center was a department of Allen County, and that this view did not change over time.

Appellant offered that she took the inventory at the end of the year and entered it into the county computer and that they were all in the Allen County inventory system as a department for all of the VMCCC's equipment. She stated that it was the same way with payables and that, typically, these would go to the BOT's Board meetings and the Board members would approve. She averred that she would only get into approval if the ED was not available and then she would review and countersign after approval. This process, she stated, was mimicked by the system in place for ordering linens.

Appellant was directed to Appellee's Exhibit 3 (regarding the removal of Tom Ragland) and noted that Florian Smith had reason to dismiss Mr. Ragland and that the BOC resolved to remove Mr. Ragland (See Resolution # 677-89 and accompanying Minutes).

She also confirmed that she interacted with the County Administrator on personnel issues, with one in particular regarding whether an employee could come back to work or needed to have a physician clear that employee before being able to return to work. She pointed out that she did discuss this person's employment with the County Administrator.

Appellant identified Appellee's Exhibit 4 as Appellant's pay stub and offered that Allen County paid her and that the money to pay her came from the account of the Allen County Auditor. She also offered that she participated in Deferred Comp. and PERS and was under the County Medical Plan.

Findings of Fact

Based upon the testimony presented, evidence admitted, and post hearing briefs submitted by the parties, I make the following Findings:

First, I incorporate, herein, any finding, above, whether express or implied.

I find that Appellant was appointed by the VMCCC to the position of Front of House Manager and then, approximately one week later, the BOC agreed with a request from then-ED Florian Smith for the approval of the hire of Appellant.

I further find that Appellant was subsequently promoted to the position of Operations Manager, from which position she was removed effective March 15, 2009; for the stated reason of lack of funding for Appellant's and several other of the VMCCC's positions at that time. That removal was communicated by a March 17, 2009 dated letter, signed by VMCCC President Donald A. Reese and VMCCC ED Cindy Wood. This letter both cited and quoted R.C. 345.10

Additionally, I find that Appellant performed all of her work for the VMCCC and none for the BOC.

I find, as well, that the BOC's decision to resolve to approve the hire of Appellant to the Front of House Manager position had no impact on Appellant's employment status other than, at most, to assist to ensure that her employment and service were properly entered into and properly tracked by Allen County's payroll system, shared with all other Allen County employees.

Moreover, I find that the BOC had very little control over the VMCCC other than to appoint the VMCCC's Board of Trustees, to approve the VMCCC's submitted budget, and to provide (or not to provide, as it turned out), funds to cover various of the VMCCC's expenses, including its utilities costs.

Accordingly, I find, as a matter of fact, that the VMCCC both hired and removed Appellant, in accordance with its authority set forth in R.C. 345.10.

CONCLUSIONS OF LAW

This case presents this Board with the question of law of whether the employees of a Board of Trustees of a County Soldiers' (U.S. Armed Forces) Memorial are unclassified employees serving at the pleasure of that appointing authority? Based on the Findings, set forth, above, and for the reasons set forth, below, the State Personnel Board of Review should reiterate its ruling that all employees of a County Soldiers' Memorial are unclassified by operation of R.C. 345.10. Accordingly, an employee of a County Soldiers Memorial BOT cannot invoke the jurisdiction of the State Personnel Board of Review as a result of filing an appeal from his or her removal by the County Soldiers' Memorial BOT, such as occurred here.

The SPBR case of *Michael Petrey v. Veterans' Memorial Civic and Convention Center* (SPBR Case No. 98-REM-03-0110, ALJ Marcie M. Scholl, Report and Recommendation July 22, 1998; final Order issued August 27, 1998) serves as this Board's seminal ruling regarding the question of whether the employees of a County Soldiers' Memorial BOT are unclassified by law. In the *Petrey, supra*, case, this Board ruled 1) that a BOT for a County Soldiers' Memorial (specifically the Allen County Veterans' Memorial Civic and Convention Center) constitutes the appointing authority for all employees of a County Soldiers' Memorial and further ruled 2) that all employees of that appointing authority serve in the unclassified service by operation of R.C. 345.10, paragraph 2 of which is set forth, above.

To reiterate, I have found, as a matter of fact, that Appellant was at all times of her employ with Allen County an employee of the VMCCC and that her appointing authority was the VMCCC BOT. Further, based on this Board's previous ruling in the *Petrey, supra*, case, all employees of the VMCCC serve in the unclassified service. Thus, Appellant's position fell within the unclassified service for all times pertinent to the instant appeal. As a result, this Board lacks jurisdiction over the subject matter of Appellant's instant appeal and it should, therefore, be dismissed.

JANE L. RIGGS
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RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **DISMISS** the instant appeal for lack of jurisdiction over its subject matter, pursuant to R.C. 124.03 and R.C. 345.10.



JAMES R. SPRAGUE
Administrative Law Judge

JRS: