

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

SHARI SMITH,
JACQUELINE R. KEITH,
ANTHONY J. WOBLER,

Case Nos. 11-RED-03-0065
11-RED-03-0068
11-RED-03-0076

Appellants,

v.

OHIO DEPARTMENT OF TRANSPORTATION,

Appellee.

ORDER

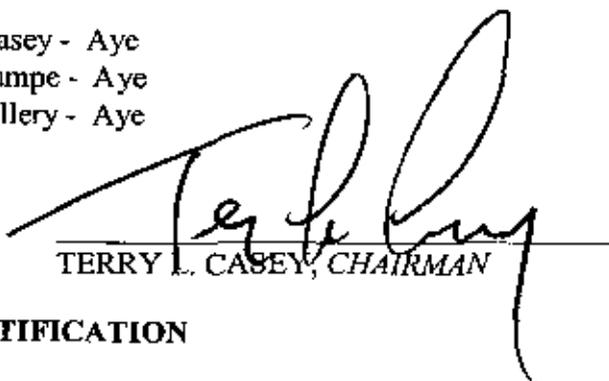
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeals.

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 Appellee's actions that completed the effectuation of the processing of the fallback rights of the three Appellants, herein, be **AFFIRMED**, pursuant to Ohio Revised Code §§ 124.03 and 124.11(D).



Casey - Aye
Lumpe - Aye
Tillery - Aye


TERRY L. CASEY, CHAIRMAN

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitutes (the original/a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, September 19 2011.


Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights. 9/19/11

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Appellants

v.

August 8, 2011

DEPARTMENT OF TRANSPORTATION,

Appellee

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes come on due to Appellants' respective filing of appeals from a downward change in the classification of each's respective position. Appellee, Ohio Department of Transportation (ODOT), argues that it effectuated these downgrades to return these three Appellants to classifications and positions they would have held, had the current ODOT administration's predecessors properly applied the fallback provisions set forth in R.C. 124.11 (D).

The records reflect that each Appellant began his or her respective service with ODOT in a classified position and served a probationary period. Further, each Appellant herein ultimately went from a classified to an unclassified position with ODOT. Following the most recent gubernatorial election, the then-ODOT administration placed all three Appellants in classified positions.

When the new ODOT administration assumed office, a review was conducted and the current ODOT administration determined that the three Appellants, among others, had not been placed in the proper classes to effectuate the intent and requirements of R.C. 124.11 (D). Accordingly, the current ODOT administration effectuated the following changes, which Appellants allege were improper reductions and which ODOT alleges were corrections to comply with R.C. 124.11 (D).

These changes are delineated, below:

Appellant Shari Smith went from Administrative Assistant (AA) 4, Pay Range 14, (Classified) to AA 2, Pay Range 10 (Classified).

Appellant Jacqueline R. Keith went from Management Analyst (MA) Supervisor 2, Pay Range 14, (Classified) to AA 3, Pay Range 12, (Classified).

Appellant Anthony J. Wobler went from AA 4, Pay Range 14, (Classified), to AA 3, Pay Range 12, (Classified).

R.C. 124.11 (D) states, in pertinent part for our purposes here:

... A person appointed pursuant to this division to a position in the unclassified service shall retain the right to resume **the position and status** held by the person in the classified service immediately prior to the person's appointment to the position in the unclassified service, regardless of the number of positions the person held in the unclassified service. ... (emphasis added)

Since ODOT has asserted that it effectuated the provisions of this provision when it placed Appellants in their respective positions, this Board is called upon to review whether ODOT properly effectuated R.C. 124.11 (D)'s requirements. When we examine the action that ODOT took regarding each Appellant herein, we discern the following.

The most recent classified position that **Appellant Smith** encumbered before going to the unclassified service was a Personnel Officer (PO) 2, Pay Range 10, position. Because ODOT most recently placed Appellant Smith in a classified AA 2 position, ODOT chose the correct status and Pay Range for Appellant Smith but could not effectuate this provision regarding her classification. This is because the Class Series that encompassed the Personnel Officer 2 classification has been rescinded and reconstituted as the Human Capital Management Class Series. Further, ODOT asserts that it refers to what was previously known as a PO 2 as an AA 2.

We may take notice that the current Specification that appears to align most closely with the former PO 2 Specification is the Human Capital Management (HCM) Analyst, 64612, Specification (still in Pay Range 10). **It would, thus, appear**

that ODOT was correct to have placed Appellant Smith in a classified AA 2 position. The one caveat to this would be if Appellant Smith's current position does not substantially perform the duties of her former PO 2 position, in which case, if feasible, she should be placed in an HCM Analyst position more closely aligned with her former PO 2 duties.

The most recent classified position that **Appellant Keith** encumbered before going to the unclassified service was an AA 3, Pay Range 12, position. **Because ODOT most recently placed Appellant Keith in a classified AA 2 position, it would appear that ODOT chose the correct status and position for Appellant Keith.**

The most recent classified position that **Appellant Wobler** encumbered before going to the unclassified service was a PO 3, Pay Range 12. Because ODOT most recently placed Appellant Wobler in a classified AA 3 position, ODOT chose the correct status and Pay Range for Appellant Wobler but could not effectuate this provision regarding his classification. This is because the Class Series that encompassed the Personnel Officer 3 classification has been rescinded and reconstituted as the Human Capital Management Class Series. Further, ODOT asserts that it refers to what was previously known as a PO 3 as an AA 3.

We may take notice that the current Specification that aligns most closely with the former PO 3 Specification is the Human Capital Management Senior Analyst, 64613, Specification (still in Pay Range 12). **It would, thus, appear that ODOT was correct to have placed Appellant Wobler in a classified AA 3 position. The one caveat would be if Appellant Wobler's current position does not substantially perform the duties of his former PO 3 position, in which case, if feasible, he should be placed in an HCM Senior Analyst position more closely aligned with his former PO 3 duties.**

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** ODOT's instant actions that completed the effectuation of the processing of the fallback rights of the three Appellants, herein, pursuant to R.C. 124.03.

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JAMES R. SPRAGUE
Administrative Law Judge