

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

JARED CUNNINGHAM,

*Appellant,*

v.

Case No. 11-REM-11-0379

OHIO STATE UNIVERSITY,

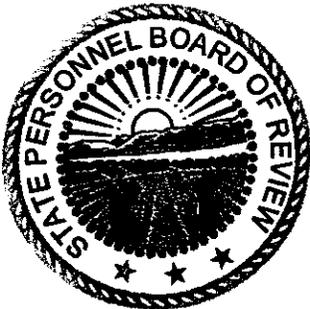
*Appellee*

**ORDER**

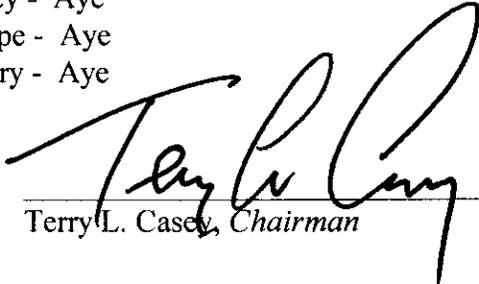
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the entirety of the record, including 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 Motion to Dismiss is granted and the instant appeal is **DISMISSED** for lack of jurisdiction over the parties.



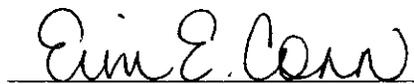
Casey - Aye  
Lumpe - Aye  
Tillery - Aye

  
Terry L. Casey, Chairman

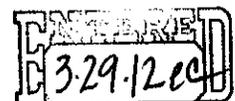
**CERTIFICATION**

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, March 29, 2012.

  
Erin E. Conn  
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**

Jared Cunningham,

Case No. 11-REM-11-0379

*Appellant*

v.

March 8, 2012

Ohio State University,

Jeannette E. Gunn

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause comes on due to Appellant's November 23, 2011, filing of an appeal of his removal from the position of Lab Manager with Appellee. On January 13, 2012, Appellee filed a Motion to Dismiss with this Board asserting that Appellant's position fell within the unclassified service pursuant to R.C. 124.11(A)(7)(a). Because R.C. 124.03 generally limits this Board's jurisdiction to actions concerning classified employees, the initial determination that must be made by the Board is whether Appellant's position was in the classified or unclassified service.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Civil service employment in the State of Ohio is divided into the classified and unclassified services; the division between these two types of public employment is outlined in R.C. 124.11(A), which describes a variety of positions in the public sector which are placed in the unclassified service. As noted above, Appellee alleges that Appellant's position and job duties fall within the statutory exemption from the classified service found in R.C. 124.11(A)(7)(a), which states that the following positions are unclassified:

(7)(a) All presidents, business managers, administrative officers, superintendents, assistant superintendents, principals, deans, assistant deans, instructors, teachers, and such employees as are engaged in educational or research duties connected with the public school system, colleges, and universities, as determined by the

governing body of the public school system, colleges, and universities; (emphasis added)

Specifically, Appellee asserted in its Motion to Dismiss that Appellant functioned as a business manager for Appellee. This Board must consider whether the actual job duties performed by Appellant were those of a business manager. In re Termination of Pratt, (1974) 40 Ohio St.2d 107; Yarosh v. Becane, (1980) 63 Ohio St.2d 5; State ex rel. Emmons v. Guckenberger, (1936) 131 Ohio St. 466.

Were this matter to proceed to record hearing, the only testimony considered relevant at an initial hearing to determine classified/unclassified status would be that which furthered the evidence of Appellant's job duties. In this instance, however, sworn affidavits of Appellant's supervisor and Appellant, attached to Appellee's Motion to Dismiss and Appellant's Reply to that Motion provide a clear recitation of the job duties performed by Appellant, thereby obviating the need for a hearing.

Appellant acknowledged that for the eight years preceding his termination from employment he held the position of Lab Manager, UHE Rapid Response Lab. Appellant's sworn affidavit indicates that until May 27, 2011, his duties included hiring, firing and disciplining staff; supervising staff; ordering laboratory and office equipment; communicating hospital and departmental goals verbally and in written form; conducting performance appraisals; preparing, monitoring and reviewing budget performance for the lab; and scheduling staff. Appellant noted in his affidavit that he was on leave for approximately six weeks and, upon his return in mid-July 2011, the duties of ordering laboratory and office equipment were removed from him; in addition, he was no longer involved in the process of devising hospital and departmental goals, and he no longer had input into the lab's budget and budget performance. Appellant averred that, although he could still make recommendations to his supervisor for employee hiring, firing, and discipline, he no longer had the authority to make an ultimate decision in those areas after mid-July 2011. Appellant indicated that for the final months of his employment his supervisor ran the day-to-day operations of the lab and Appellant acted as his assistant.

Ohio Administrative Code Section 124-7-04 provides that:

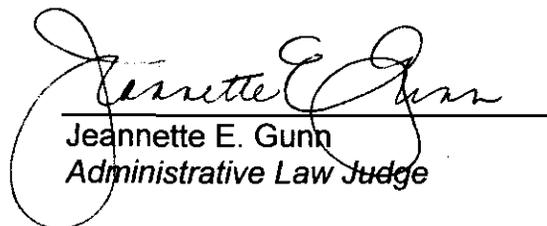
When an employee has been adversely affected as an unclassified employee, the burden of proving the unclassified status of the employee is on the appointing authority. The board will take evidence

of the employee's duties over a reasonable period of time, which is generally defined as at least two calendar years immediately prior to the adverse action, provided that the employee was in an active work status during that time period.

After reviewing the information contained in the record, I find that it is undisputed between the parties that for the majority of the "look back" period referenced in O.A.C. 124-7-04 Appellant performed managerial duties. In fact, the parties do not dispute that Appellant performed those same duties for the nearly eight years he was employed as Lab Manager of Appellee's UHE Rapid Response Lab prior to mid-July 2011. I find that these duties are consistent with the designation of "business manager" referenced in R.C. 124.11(A)(7)(a) and placed Appellant's position in the unclassified service.

Although it appears that Appellant's job duties were diminished upon his return from leave in July 2011, he did retain the authority to independently perform some managerial duties and continued to assist his supervisor with the day to day operations of the lab. Upon consideration of the totality of the circumstances, I find that Appellee's reassignment of tasks for the several months prior to Appellant's termination was insufficient to remove the position of Lab Manager from the unclassified service.

Therefore, based upon an analysis of the duties performed by Appellant as reflected in the sworn affidavits of Appellant and his supervisor, I find that the position of Lab Manager occupied by Appellant was unclassified pursuant to the provisions of R.C. 124.11(A)(7)(a). Accordingly, I respectfully **RECOMMEND** that Appellee's Motion to Dismiss be granted and the instant appeal be **DISMISSED** for lack of jurisdiction over the parties.

  
Jeannette E. Gunn  
Administrative Law Judge

JEG: