

Designating Management Employee Positions

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PERSONNEL COUNCIL
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ORC §5126.22

- Lists specific titles of management employees.
- Includes “positions designated by ODMRDD as having managerial or supervisory responsibilities and duties.”
- Includes “positions designated” by County Board – so long as the position does not involve providing services or instruction to consumers, or directly supervising employees who provide services or instruction to consumers.
- Includes “confidential employees” per R.C. §4117.01:
 - Any employee that works in the personnel office and deals with information used in collective bargaining or any employee who works in a close and continuing relationship with public officers or representatives in collective bargaining.

Fields v. Fairfield County Board of MR/DD, 07-REM-03-0122
State Personnel Board of Review



- Fields was employed as Administrative Assistant to the Superintendent.
- She was listed as a classified civil service employee.
- During her employment, the Board determined she was a management employee (as a “confidential employee”). The Superintendent presented her with a management contract, which she refused to sign.
- Fields continued to work in the position of Administrative Assistant until her contract was non-renewed. She appealed to SPBR.

Fields v. Fairfield County Board of MR/DD, 07-REM-03-0122
State Personnel Board of Review



- Fields argued that since she did not participate directly in collective bargaining, and was not a “confidential employee.”
- She urged an interpretation of the second option of the definition of confidential employee – that only employees who participate in collective bargaining are covered.
- SPBR and the Courts rejected this interpretation in part because it makes the first option – dealing with collective bargaining information – superfluous.
 - One cannot participate in collective bargaining without dealing with the information used in collective bargaining.
- Instead, the SPBR and the Courts construed the second option of §4117.01 as placing in the unclassified civil service those who work closely with other employees who participate in collective bargaining.

Fields v. Fairfield County Board of MR/DD, 07-REM-03-0122
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- The question of whether an employee works in a close and continuing relationship with an employee who participates in collective bargaining is a factual one.
- The facts that weighed in favor of the County Board included:
 - Superintendent directly participated in collective bargaining – i.e., he was at the table for negotiations.
 - Fields opened Superintendent's mail, including mail marked "confidential".
 - Fields worked in close physical proximity to Superintendent and saw everyone who visited Superintendent.
 - Fields answered the telephone for Superintendent.
 - Fields prepared county board agendas and minutes.
 - Fields had unrestricted access to Superintendent's office and organized the information and documents in the office.
 - Fields scheduled appointments and kept Superintendent's calendar.

Fields v. Fairfield County Board of MR/DD, 07-REM-03-0122
State Personnel Board of Review

- Fields was included in management team meetings where collective bargaining issues were discussed.
- Fields maintained employee records.
- Fields maintained confidential documents and communications.
- Fields had access to communications between Superintendent and legal counsel to the Board.

Fields v. Fairfield County Board of MR/DD, 07-REM-03-0122
State Personnel Board of Review

- The Fairfield County case was not a “designation” case.
- Since Fields was a confidential employee pursuant to R.C. §§4117.01 and 5126.22, no “designation” was required.
 - She was a management employee from the moment she was hired although mistakenly identified as a classified civil servant in the position description and although she was not employed under a management contract for a period of time.
 - The actual duties and responsibilities control whether or not a position is in the classified civil service, not employment records.

Crabtree v. Scioto County Board of MR/DD, 07-REM-05-0163
State Personnel Board of Review.

- Crabtree held the title of “Medicaid individual Funds Manager” – a position not specifically identified in R.C. §5126.22(A) as a management position.
- Previously, she served as the Board’s Business Manager (a statutorily designated management position) and was non-renewed in 2005. Thereafter, she was hired into the Medicaid Individual Funds Manager position.
- She was employed under a contract.

Crabtree v. Scioto County Board of MR/DD, 07-REM-05-0163
State Personnel Board of Review.



- Crabtree was removed, and appealed to SPBR.
- Crabtree argued that she was a classified civil servant.
- SPBR found that she was a classified civil servant, not an unclassified management employee.
- Since a “R.C. §124.34 order” was not provided to Crabtree, the ALJ ordered reinstatement and back pay.

Crabtree v. Scioto County Board of MR/DD, 07-REM-05-0163
State Personnel Board of Review.



- The ALJ held that the following facts led to the conclusion that Crabtree was in the classified civil service:
 - She did not supervise any other employees.
 - Her position is not listed in R.C. §5126.22.
 - She did not participate in or prepare materials for collective bargaining.
 - She did not administer collective bargaining agreements.
 - She did not participate in personnel administration.
 - After Crabtree’s employment was terminated, her duties were assigned to a clerical person.
 - ODMRDD did not designate her position as a management position.
 - The County Board did not designate the position as a management position (not could it have according to the A.L.J., since Crabtree worked directly with consumers).

Crabtree v. Scioto County Board of MR/DD, 07-REM-05-0163
State Personnel Board of Review.

- The County Board argued that, by accepting the pay and benefits afforded by her management contract, Crabtree could not now challenge her status – so called “waiver and estoppel.”
- The ALJ acknowledged that waiver and estoppel can prevent an employee from claiming to be in the classified civil service if the employee accepted the job as an unclassified position, regardless of the duties.
- However, the ALJ found the evidence lacking in several areas:
 - The ALJ found that Crabtree did not fill out a job application indicating the position was unclassified.
 - The ALJ found that Crabtree did not review a job posting that made it clear the position was unclassified.
 - Although Crabtree was paid a 2% pay supplement – other classified employees received the pay supplement – therefore it was not clear that she received anything more in exchange for giving up the protection of the classified civil service.

Crabtree v. Scioto County Board of MR/DD, 07-REM-05-0163
State Personnel Board of Review.

- The Crabtree case presents an opportunity to develop waiver and estoppel evidence for the future.
- Following the A.L.J.’s observations in Crabtree, County Boards of DD should consider using clear acknowledgement forms for employees the Board wishes to place in the unclassified civil service.
- In fact, it is required by R.C. 124.12
 - Part of HB 187
- Have provided you a sample form to use

Benefits for Management Employees

- **R.C. §5126.21(C) provides:**
 - All management employees shall receive employee benefits that shall include sick leave, vacation leave, holiday pay, and such other benefits as are established by the board. Sections 124.38 and 325.19 of the Revised Code do not apply to management employees.

Benefits for Management Employees

- **What is the minimum amount of sick leave or vacation leave that can be granted?**
 - Nothing contained in Ohio Revised Code or Ohio Administrative Code requires a minimum amount.
 - Depending upon the hours worked, sick leave can simply be based upon the same formula as classified employees: 4.6 every 80 hours.
 - Holidays should be based upon the same calendar of holidays for classified employees.
 - Vacation should be commensurate with experience, years of service, level of responsibility, and work time.

ACKNOWLEDGEMENT OF UNCLASSIFIED STATUS

1. I am currently an applicant for (___)/employed in (___) the position of _____ for the _____ County Board of Developmental Disabilities ("Board").

2. I understand that, pursuant to Ohio Revised Code Section 124.11(A)(19), management employee positions for the Board are in the unclassified civil service. I understand that the position of _____ is an unclassified management employee position. I understand that this position is either specifically listed as a management employee position in Ohio Revised Code Section 5126.22(A) or has been designated by the Board, or the Director of the Ohio Department of Developmental Disabilities, as a management employee position in accordance with Ohio Revised Code Section 5126.22(D) and (E).

3. I understand that, as an unclassified management employee, the Superintendent of the Board, in his/her sole discretion, may not renew my employment contract upon its expiration, provided such non-renewal is in accordance with Ohio Revised Code Section 5126.21(A)(1). I understand that I have no right to appeal to any administrative body the Superintendent's decision not to renew my management employee contract.

4. I have read and understand the information contained in paragraphs 1-3 of this document regarding the unclassified nature of the position of _____. I hereby, knowingly and voluntarily:

- (a) Accept appointment for (___)/confirm my previous execution of a management contract for (___) the position of _____;
- (b) Accept the benefits provided by the unclassified management employee position; and
- (c) Waive any protections of the classified service, to the extent that any such protections were otherwise applicable to my employment with the Board.

(Employee)

(Witness)

Date

Date