[Cite as *Summit Cty. Children Servs. Bd. v. State Personnel Bd. of Rev.*, 2011-Ohio-2543.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

Summit County Children Services Board,	:	
Appellant-Appellant,	:	
		No. 10AP-780
v.	:	(C.P.C. No. 09CVF02-2360)
State of Ohio, State Personnel Board of Review et al.,	:	(REGULAR CALENDAR)
Appellees-Appellees.	:	

D E C I S I O N

Rendered on May 26, 2011

Kastner, Westman & Wilkins, LLC, Keith L. Pryatel, and *John W. McKenzie*, for appellant.

Roderick Linton Belfance, LLP, William G. Chris, and *Todd Anthony Mazzola*, for appellees Kathy Pachell and Jay Littler.

APPEAL from the Franklin County Court of Common Pleas.

BROWN, J.

{¶1} The Summit County Children Services Board (sometimes referred to as "the agency"), appellant, appeals from a judgment of the Franklin County Court of Common Pleas in which the court affirmed the decision of the State Personnel Board of Review ("board"), appellee.

{¶2} Jay Littler, Kathy Pachell, and Dawn Lord, appellees, were employed by appellant. Littler and Pachell were the only two employees in appellant's managed care department, with Littler holding the title of Manager II/Managed Care, and Pachell holding the title Coordinator II/Managed Care. Lord was the sole psychologist working for appellant. On March 15, 2002, Littler, Pachell, and Lord were notified by appellant that their positions were being abolished, and they could either seek positions through the "displacement" process or appeal the abolishments to the board. Generally, "displacement" is the process by which an employee with more retention points exercises his or her right to take the position of another employee with fewer retention points. See Ohio Adm.Code 124-1-02(H). However, appellant informed Littler, Pachell, and Lord that no positions were available via the displacement process because no other employees were similarly classified. The three employees appealed their abolishments to the board.

{¶3} On December 1, 2003, an administrative law judge ("ALJ") for the board vacated the abolishments. The ALJ found that appellant was not operating under a systematic, uniform, and compliant classification system, rendering the availability of displacement indeterminable. The ALJ ordered appellant to reinstate the three employees to their former positions with back pay. The decision was affirmed by the board. Appellant appealed to the Franklin County Court of Common Pleas, which reversed the board's decision and remanded the matter to the board. The court found that the board may have applied the improper standard in making its determination.

{¶4} On remand, a different ALJ for the board again vacated appellant's abolishments, finding that appellant failed to group positions by classification or classification series based on duties but only grouped positions by pay grade. The ALJ

also found that appellant had not established that it had achieved efficiency by abolishing the jobs. On February 4, 2009, the board affirmed the ALJ's decision.

{¶5} Appellant again appealed to the Franklin County Court of Common Pleas, which affirmed the board's decision on July 30, 2010. The court found that appellant did not employ a classification system for the employees that had a rational relationship between the positions and their duties such that displacement rights could be determined. The court also agreed that appellant had not demonstrated the job abolishments had resulted in increased efficiency. Appellant appeals the court's judgment, asserting the following assignments of error:

> [I.] THE TRIAL COURT ERRED IN HOLDING THAT THE SUMMIT COUNTY CHILDREN SERVICES BOARD DID NOT HAVE IN PLACE LEGALLY COMPLIANT JOB "CLASSIFICATIONS."
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> [II.] THE TRIAL COURT ERRED IN HOLDING THAT THE SUMMIT COUNTY CHILDREN SERVICES BOARD DID NOT HAVE IN PLACE LEGALLY COMPLIANT JOB "CLASSIFICATION SERIES."
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> [III.] THE TRIAL COURT ERRED IN ITS FINDING AND DETERMINATION THAT THE EVIDENCE MARSHALED BEFORE THE STATE PERSONNEL BOARD OF REVIEW FAILED TO ESTABLISH THAT THE AT-ISSUE JOB ABOLISHMENTS WERE FOR INCREASED EFFICIENCY.
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> [IV.] THE TRIAL COURT ERRED IN RULING THAT PRECEDENTIAL DECISIONS ISSUED BY THE STATE PERSONNEL BOARD OF REVIEW WHICH WERE CONTRARY TO THE STATE PERSONNEL BOARD OF REVIEW'S DECISION ISSUED WITH RESPECT TO THE SUMMIT COUNTY CHILDREN SERVICES BOARD WERE NOT PERSUASIVE.

{¶6} We address appellant's third assignment of error first, as it is dispositive of appellant's appeal. Appellant argues in its third assignment of error that the trial court

erred when it found that the evidence presented to the board failed to establish that the job abolishments were completed for increased efficiency. Pursuant to R.C. 119.12, a court of common pleas reviewing the decision of an administrative agency may affirm the agency's order if it finds, upon consideration of the entire record and any additional evidence the court has admitted, that the order is supported by reliable, probative, and substantial evidence, and is otherwise in accordance with law. *Bartchy v. State Bd. of Edn.*, 120 Ohio St.3d 205, 2008-Ohio-4826. This requires the common pleas court to engage in a two-step process. The first involves a hybrid factual/legal inquiry, in which the court defers to the agency's resolution of evidentiary conflicts and factual findings, unless the court concludes that the agency's findings are internally inconsistent, impeached by evidence in the record, rest upon improper inferences or are otherwise unsupportable. *Ohio Historical Soc. v. State Emp. Relations Bd.*, 66 Ohio St.3d 466, 1993-Ohio-182. The second step requires the court of common pleas to construe and apply the law. Id.

{¶7} An appellate court's review of a trial court's determination regarding an administrative order is more limited, being confined to a consideration of whether the trial court abused its discretion in making that determination. *State ex rel. Commercial Lovelace Motor Freight, Inc. v. Lancaster* (1986), 22 Ohio St.3d 191. However, the appellate court's review of issues of law is plenary. *Bartchy*, citing *Univ. Hosp., Univ. of Cincinnati College of Medicine v. State Emp. Relations Bd.* (1992), 63 Ohio St.3d 339.

{¶8} R.C. 124.321(D) governs the abolishment of positions by an appointing authority. R.C. 124.321 has since been revised, but at the time that Littler's, Pachell's, and Lord's positions were abolished, R.C. 124.321(D) provided:

> Employees may be laid off as a result of abolishment of positions. Abolishment means the permanent deletion of a position or positions from the organization or structure of an appointing authority due to lack of continued need for the position. An appointing authority may abolish positions as a result of a reorganization for the efficient operation of the appointing authority, for reasons of economy, or for lack of work. The determination of the need to abolish positions shall indicate the lack of continued need for positions within an appointing authority. Appointing authorities shall themselves determine whether any position should be abolished and shall file a statement of rationale and supporting documentation with the director of administrative services prior to sending the notice of abolishment. If an abolishment results in a reduction of the work force, the appointing authority shall follow the procedures for laying off employees, subject to the following modifications:
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> (1) The employee whose position has been abolished shall have the right to fill an available vacancy within the employee's classification;
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> (2) If the employee whose position has been abolished has more retention points than any other employee serving in the same classification, then the employee with the fewest retention points shall be displaced;
>
> (3) If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall have the right to fill an available vacancy in a lower classification in the classification series;
>
> (4) If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall displace the employee with the fewest retention points in the next or successively lower classification in the classification series.

{¶9} In the present case, appellant takes issue with the trial court's application of the "documentation" requirement in R.C. 124.321(D) that an appointing authority "shall file a statement of rationale and supporting documentation with the director of administrative services prior to sending the notice of abolishment." Appellant argues that the board's

interpretation of the "documentation" requirement is so exacting and particularized it flies in the face of several decisions of this court. Appellant contends the board imposed additional, ultra-statutory obligations on appellant's "documentation" duty under R.C. 124.321(D) by requiring a cost analysis, study, investigation, survey, or significant analysis.

{¶10} The sole reason given by appellant to Littler, Lord, and Pachell in their notifications for the abolishment of their positions was a reorganization of certain areas of the agency to gain efficiency. The board's ALJ found that, although the purposed reason for the abolishments was to gain efficiency, the evidence presented indicated that the underlying reasons were for economy, and not one analysis was done to show any efficiency was gained. The ALJ further found the evidence presented at the hearing showed that appellant did not conduct any significant analysis of any economic benefit or improved efficiency gained by the abolishment of the positions held by Littler, Pachell, and Lord, and appellant presented no evidence to show that, since the abolishments, appellant conducted any study, investigation, survey, or commission to show if efficiencies were, in fact, achieved.

{¶11} However, the board's decision on the efficiency issue in the present case was not based upon a "documentation" failure pursuant to R.C. 124.321(D). The requirements of R.C. 124.321(D) concern the procedural requirements that an appointing authority must follow when abolishing a position, i.e., filing supporting documentation with the director of administrative services ("DAS"). The board here did not find that appellant failed to file supporting efficiency documentation with the DAS. Likewise, the cases relied upon by appellant in making its present argument, *Fragassi v. Lorain Cty. Bd. of Commrs.*

(Mar. 14, 1995), 10th Dist. No. 94APE07-950, and *Berndsen v. Westerville Personnel Rev. Bd.* (1984), 14 Ohio App.3d 329, both deal with the procedural requirement of providing supporting documentation to the DAS. Because the board's decision on the issue of efficiency was not based upon a failure to provide supporting documentation to the DAS under R.C. 124.321(D), appellant's argument under this assignment of error is a non-starter.

{¶12} Instead of a finding that appellant failed to comply with the procedural requirements under R.C. 124.321(D), the board in the present case based its efficiency determination on appellant's failure to meet the burden imposed upon it by Ohio Adm.Code 124-7-01(A)(1), which concerns appeals and proceedings before the board. Ohio Adm.Code 124-7-01(A)(1) provides that "[t]he appointing authority shall demonstrate by a preponderance of the evidence that a job abolishment was undertaken due to a lack of continuing need for the position based on: a reorganization for the efficient operation of the appointing authority; reasons of economy; or a lack of work expected to last one year or longer." The board here found that the evidence presented proved that appellant failed to meet this burden. Thus, the question now before this court must be whether the trial court abused its discretion in finding there was reliable, probative, and substantial evidence to support the board's conclusion that the job abolishments were undertaken based upon appellant's reorganization for efficient operation. To do so, we will review the testimony on this issue presented at the hearing before the ALJ.

{¶13} Before reviewing the testimony, however, we must determine what "efficient" means. "Efficient" is not defined in either Ohio Adm.Code 124-7-01 or R.C. Chapter 124. In *Penrod v. Ohio Dept. of Adm. Servs.*, 113 Ohio St.3d 239, 2007-Ohio-

1688, ¶60, Justice Lundberg Stratton, in her dissenting opinion, looked at the common usage of "efficient" to define the term for purposes of R.C. Chapter 124 as " 'marked by ability to choose and use the most effective and least wasteful means of doing a task or accomplishing a purpose' " and " 'marked by qualities, characteristics, or equipment that facilitate the serving of a purpose or the performance of a task in the best possible manner.' " Id., quoting Webster's Third New International Dictionary (1986) 725. Although our analysis focuses on Ohio Adm.Code 124-7-01 and not R.C. Chapter 124, the term "efficient" is used in the same general context, and the definitions noted by Justice Lundberg Stratton are useful.

{¶14} As for the testimony presented at the hearing before the ALJ in the present case, Connie Humble, former director of administrative services for appellant, testified that Lord was one of her direct reports. At the time Lord's position was abolished, Lord was the only person working in the family assessment unit. Humble said they abolished her position to make the agency as efficient as possible. Humble determined that efficiency would result from the abolishment of Lord's position because Lord was no longer supervising two other former workers in the family assessment department, and the agency was contracting out a number of psychological services at that time. She examined the number of hours Lord was actually in direct assessment of children and the amount of hours she was billing Medicaid compared to her salary. In November 2001, Lord billed Medicaid 23.5 hours out of a possible 123.5 hours per month. In December 2001, Lord billed Medicaid 20 hours. Lord billed Medicaid $5,416 for 1999; $5,984 for 2000; and $8,355 for 2001. During this period, Lord's salary was $55,640 per year, and about $72,300 including benefits. Humble said she concluded the agency could get Lord's

work done more efficiently by contracting it out. For 2003, the first full year after Lord's job was abolished, appellant paid outside contractors approximately $23,000 for the services that Lord had provided. Also, by eliminating Lord's position, a secretary would no longer have to type her assessments, Humble would not need to supervise her, and the subcontractor would bill Medicaid instead of appellant's staff.

{¶15} Humble also said that, although Lord's job description indicated that the majority of her job was to supervise two other former persons on the family assessment team, the job description should have been changed after the family assessment unit was disbanded to reflect that her primary function was to perform assessments of children and provide consultation to the clinics and receiving unit. Humble also admitted that, because the job description was never changed, there was no record as to what Lord's job responsibilities were.

{¶16} Furthermore, Humble knew of no reports or documentation of analysis of efficiency for Lord's position post-abolishment. She said that the fiscal department probably completed an economical efficiency report after the abolishment, but she did not know whether they were included in the hearing documents.

{¶17} With regard to Littler and Pachell, Humble testified she did not remember any documentation, assessments, studies, surveys, or cost analysis to determine whether their positions should be abolished, but she was sure the agency had them when making the decision.

{¶18} Lord testified at the hearing that she did not have a direct reporting relationship with Humble and only met with her twice, the first time being in January 2002. As of early 2002, her job responsibilities included psychological care and assessments of

children, meeting with social services staff, and providing consults with staff in relation to assessments she had completed. Even after the two workers she supervised left for other departments, she still supervised others on a day-to-day basis, specifically those in the receiving unit, and she consulted with the manager of that unit when the manager completed employee evaluations. Lord discussed credentialing issues and the needs of the children, and supervised the work of those in the receiving unit. In addition to Medicaid, Lord testified she also completed work that was billed under Social Security disability insurance and private insurance. She also said many of her clients were not Medicaid eligible. Lord said Humble never showed her the records documenting her billing, and Lord never spoke with anyone on the team tasked with abolishing her job.

{¶19} Robin Freedman, who was the director of organizational research and evaluation at the time of the abolishments, testified she received that position in December 2001. Littler reported directly to her, and Pachell reported to Littler. Pachell and Littler were the only two employees in the managed care department. When she first met with Littler upon initially starting her job, Littler told her that managed care was non-existent at the agency. He told her that he created work for himself, no one asked him to produce work, and no one used the work he produced. Later, he gave her an emergency placement report he produced monthly, but he said no one used it for anything. Freedman testified that an emergency placement census report was also completed by another worker who disseminated her reports to every social service manager on a daily basis. The other worker's reports were used on a daily basis by others, while Littler's monthly reports were used by no one. Littler also sent Freedman a report of his job description. Some of the tasks he listed, she had never heard of, and some of the tasks

he listed were redundant of work being done by others. She sent Littler a memorandum asking for clarification of some of the tasks, but she never asked him in person to explain some of the duties he mentioned. Freedman claimed she met with Littler five to ten times before deciding his job should be abolished, but she could produce notes from only one meeting with him on December 12, 2001.

{¶20} As to Pachell, Freedman testified that Littler told her Pachell produced a case management report. However, Freedman said Pachell's report was redundant of material already available to workers throughout the entire agency. Littler told her that no one asked that Pachell's report be made, and no one at the agency used it. Freedman also testified that several weeks after she began her job, Littler told her that Pachell was going to be out on extended leave for several weeks. When she asked him what work would need to be covered in Pachell's absence, he told her absolutely nothing. She never asked Littler if there were any reasons why Pachell would not need any one to cover for her while she was gone, such as: Pachell had planned ahead, had already completed much of her work, or had already made sure duties were covered. Freedman talked to a previous supervisor of Pachell's about her job responsibilities, but the supervisor had only been her supervisor for "a couple" of months. Freedman never looked at Pachell's employment file before making her recommendation, never met with Pachell before abolishing her job, and never witnessed any of Pachell's work ethics when she was her supervisor.

{¶21} Freedman said that, although she was new to the job, she had "some idea" of what Littler and Pachell were doing based upon their job descriptions and her talking to others. However, she admitted that the job descriptions in their department did not match

their actual job duties. She also said there was no cost analysis to determine whether the agency saved money because of the managed care work product.

{¶22} Freedman then testified that she decided to abolish Littler's position because managed care was no longer a "force" that was coming into the child welfare field; Littler's comment that managed care was non-existent at the agency; Littler's comment that none of the work being provided by them was being used by anyone; and all of the tasks Littler was doing in his job were being done by others to a greater degree. Freedman decided to abolish Pachell's position because the two reports she produced were already available routinely to workers, and Littler told her that no workers needed to cover for Pachell while she was on leave. After Littler's and Pachell's jobs were abolished, no one was hired to do their jobs.

{¶23} John Thompson, the former director of human resources for appellant, testified that there was "some amount" of cost analysis resulting from the abolishments, although he could not say where such an analysis could be found. He later said that he did not know whether any cost analysis had ever been completed with respect to Pachell's job abolishment, and he was not aware of any cost analysis completed after she left. Thompson never talked to Pachell or Littler about the work they did. He said there was no effort by the human resources department to determine whether there were any actual savings after abolishing the three positions. Thompson was not aware of any analysis Humble had ever completed that included interviews with Lord's supervisors.

{¶24} Based upon the above testimony, we find the trial court did not abuse its discretion when it found there was reliable, probative, and substantial evidence to support the board's conclusion that appellant conducted an insufficient analysis of any economic

benefit or improved efficiency that would be or eventually was gained by the abolishment of Littler's, Pachell's, and Lord's positions. Appellant conducted inadequate research and analysis of efficiency that failed to meet the preponderance of the evidence standard in Ohio Adm.Code 124-7-01(A)(1).

{¶25} With regard to Lord, although Humble made her abolishment assessment by looking at the number of hours Lord was billing Medicaid, and found those hours low compared to the number of possible billable hours, Humble failed to analyze the work Lord billed to Social Security disability insurance and private insurance, and Humble failed to take into consideration that many of her clients were not Medicaid eligible. Furthermore, Humble's stated reasons for abolishing Lord's position did not take into consideration the fact that Lord spent time meeting with social services staff and providing consults with staff. In addition, Humble had met with Lord only twice and admitted Lord's job description was wrong, thereby raising a question of credibility as to Humble's opinion on efficiency given her lack of familiarity with Lord's duties. Plus, no one from the team in charge of abolishing Lord's position ever asked Lord about her job duties. Therefore, we agree with the board that appellant failed to prove by a preponderance of the evidence that any efficiency would be gained by the abolishment of Lord's job.

{¶26} The evidence was equally sparse with regard to Littler and Pachell. Humble did not remember any documentation, assessments, studies, surveys, or cost analysis to determine whether their positions should be abolished. Freedman also admitted there was no cost analysis to determine whether the agency saved money because of the managed care work product. Likewise, Thompson did not know whether any cost analysis had ever been completed with respect to Pachell's abolishment, and he was not aware of

any cost analysis completed after any of the three workers were terminated. Although Thompson claimed there was "some amount" of cost analysis resulting from the abolishments, he was unable to speculate where such an analysis could be found.

{¶27} In addition, Freedman seemed to have based much of her abolishment decision on her opinion that Littler and Pachell created work for themselves and produced work that either no one used or was duplicative of others' work. However, the reliability of Freedman's opinion was called into question. Freedman held her supervisory position over Littler for only a few months prior to the abolishments. Freedman admitted she was new to the job but said she had "some idea" of what Littler and Pachell were doing based upon their job descriptions; however, she later admitted that the job descriptions in their department did not match their actual job duties. Also, Freedman could produce notes from only one meeting with Littler prior to the abolishments. She admitted she never witnessed Pachell's work, never talked to Pachell about her job responsibilities, and although she did consult with one of Pachell's supervisors, she had been Pachell's supervisor for only "a couple" of months. Similarly, Thompson never talked to Pachell or Littler about the work they did. Thus, the evidence demonstrates that neither Thompson, Humble, nor Freedman were sufficiently familiar with Pachell's and Littler's jobs to make knowledgeable determinations about the efficiency of their abolishments. Therefore, appellant failed to sustain its burden to prove by a preponderance of the evidence that any efficiency would be or was gained by the abolishment of Pachell's and Littler's jobs. For these reasons, we find the trial court did not abuse its discretion when it found the board's decision was supported by reliable, probative, and substantial evidence, and appellant's third assignment of error is overruled.

{¶28} Given our determination that appellant failed to sustain its burden to prove that the job abolishments were undertaken to reorganize the agency for efficient operation, we need not address the arguments raised in appellant's first and second assignments of error that the board erred when it found appellant did not have in place a legally compliant job "classification" or job "classification series" for the employees at the time of the job abolishments. Furthermore, appellant has failed to separately argue its fourth assignment of error as required by App.R. 16(A)(7). Pursuant to App.R. 12(A)(2), we may choose to disregard any assignment of error that an appellant fails to separately argue. Therefore, pursuant to App.R. 12(A) and 16(A), we decline to address appellant's fourth assignment of error and overrule it.

{¶29} Accordingly, appellant's third and fourth assignments of error are overruled, appellant's first and second assignments of error are moot, and the judgment of the Franklin County Court of Common Pleas is affirmed.

Judgment affirmed.

SADLER and DORRIAN, JJ., concur.

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