

**IN THE
SUPREME COURT OF OHIO**

JAMES MIRACLE,	:	CASE NO. 2018-0562
	:	
Plaintiff-Appellee,	:	On Appeal from the Franklin
	:	County Court of Appeals
v.	:	Tenth Appellate District
	:	
OHIO DEPARTMENT OF	:	
VETERANS' SERVICES, et al.,	:	Court of Appeals
	:	Case No. 16 AP-885
Defendants-Appellants.	:	

MERIT BRIEF OF PLAINTIFF-APPELLEE JAMES MIRACLE

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INTRODUCTION

Appellants Ohio Department of Veterans Services and the Office of the Governor (hereinafter “Appellants”) argue that Ohio Revised Code §124.27 places no limits on an employer concluding that the service of a probationary employee is unsatisfactory and explicitly forbids an appeal of the dismissal decision. (Appellants’ Brief p. 2). Appellee James Miracle (“Miracle”) does not dispute that statement. However, what Appellants fail to mention is that James Miracle WAS NOT terminated for unsatisfactory service. He was terminated explicitly because of political optics which is a clear abuse of power as is prohibited by Revised Code §124.56. Furthermore, it is exactly because R.C. §124.27 provides no right to appeal that Miracle must be permitted to pursue his public policy wrongful discharge claims. There can be no doubt that in Ohio there is a clear public policy in favor of retaining probationary civil servants who are satisfactorily performing the duties of their position because Ohio’s civil service law establishes a meritocracy.

In *Curtis v. State, ex rel. Morgan* (1923), 108 Ohio St. 292, 296, this Court stated:

"There is nothing complex or difficult to understand about civil service laws and rules. The fundamental purpose is to establish a merit system, whereby selections for appointments in certain branches of the public service may be made upon the basis of demonstrated relative fitness, without regard to political considerations. ..." And, in *McCarter v. Cincinnati* (1981), 3 Ohio App. 3d 244, 248, the Court reiterated, the purpose of the civil service system is to provide a "stable framework of public offices upon which a workable civil service system may be constructed" while "avoiding the traditional spoils system * * * and * * * providing a method of fair employee selection and promotion based upon merit and fitness." This principle, that civil servants should be *selected based upon merit*, provides the underpinning for Appellee James Miracles’ wrongful discharge claims.

In Revised Code §124.27 the Legislature explicitly expressed how state employers should determine whether to retain or remove a probationary civil servant, as follows, “No appointment or promotion is final until the appointee has satisfactorily served the probationary period. If the service of the probationary employee is unsatisfactory, the employee may be removed or reduced at any time during the probationary period. ...” According to Miracle’s probationary review and the sworn statement of his former superintendent, James Miracle was *meeting or exceeding the employer’s expectations*. Yet, because the Governor’s office didn’t like the political optics, he was fired.

Miracle’s wrongful termination was a clear abuse of power on the part of the Governor’s Advisor, Jai Chabria, and the Department of Veterans Services. At the Court of Appeals, Appellants conceded that Revised Code §124.56 establishes a clear public policy against abuse of power by individuals possessing the power of removal. (Decision ¶12). The statute provides a mechanism for the State Personnel Board of Review (“SPBR”) to investigate allegations of abuse of power by an entity or person having the power of removal. Where an abuse is found, the SPBR may make a general finding of official abuse and a *recommendation* for removal of the person or entity, but the statute says nothing about an adjudication of individual employee rights. *State ex rel. Turner v. State Pers. Bd. of Review*, 2008 Ohio 2021, 2008 Ohio App. LEXIS 1722 (Ohio Ct. App., Franklin County Apr. 29, 2008). These circumstances, where a statute prohibits certain behavior but provides no relief, are analogous to the facts of *Greeley v. Miami Valley Maint. Contractors* 49 Ohio St. 3d 228 (1990).

In *Greeley*, the statute at issue prohibited termination of an employee whose wages are garnished pursuant to a child support withholding order. Although the statute provided for imposition of a fine against an employer who violates that law, there was no mechanism for relief

for the terminated employee. As in *Greeley*, R.C. §124.56 provides for an investigation and penalty against the abusive individual, but no individual cause of action for the employee who is the target of the abuse.

In *Greeley* this Court held: “Public policy warrants an exception to the employment-at-will doctrine when an employee is discharged or disciplined for a reason which is prohibited by statute.” *Id.* at 228. This case presents a perfect example of why that precedent should be upheld.

I. STATEMENT OF THE CASE.

Appellee James Miracle filed his Complaint against Appellants the Ohio Department of Veteran’s Services (“ODVS”) and the Office of the Governor on July 14, 2016. The Complaint included and incorporated two exhibits. **Exhibit A** is a sworn statement from Mick Oppy, former Superintendent of the Ohio Veterans Home in Sandusky. **Exhibit B** is an email statement from Jackie Leisenheimer former HR Director at the ODVS. Oppy was one of Miracle’s supervisors and Leisenheimer was the HR Director during his employment with ODVS.

At issue before the Court are three of Miracle’s claims against the Defendants that were dismissed by the Court of Claims pursuant to a Civil Rule 12(b)(6) motion, but remanded by the Court of Appeals: 1) Wrongful discharge in violation of the public policy articulated in O.R.C. §124.27; 2) Wrongful discharge in violation of the public policy articulated in O.R.C. §124.56; and 3) Miracle’s request for the Court of Claims to make a determination as to whether Jai Chabria is entitled to immunity from civil suit under O.R.C. §9.86.

On March 6, 2018 the Court of Appeals issued its Decision reversing and remanding the case. The Tenth District took issue with Appellants’ broad mischaracterization of Miracle’s claim under R.C. §124.27, as follows: “Miracle derived from R.C. §124.27 a clear public policy against the discharge of civil service employees who provide satisfactory service during the probationary

period.” (Decision ¶10) And, that “in moving for dismissal of (that claim) defendants ignored the public policy Miracle stated in his complaint. Defendant, instead, argued that Miracle claimed that R.C. §124.27 established a clear public policy against any discharge of probationary employees in the service of the state. The trial court accepted defendants’ mischaracterization of Miracle’s claim, and it analyzed whether R.C. §124.27 manifested a clear public policy precluding the discharge of *any* probationary employee. In doing so, the trial court erred. The trial court was required to determine whether the clear public policy as articulated in the complaint, not in defendant’s motion (to dismiss) was apparent in R.C. §124.27.” (Decision ¶11).

Furthermore, the Court of Appeals ruled that because Appellants conceded that R.C. §124.56 states a clear public policy against abuse of power, the trial court erred in its analysis of the jeopardy element of Miracle’s claim. The court remanded the case and directed the Court of Claims to determine whether the discharge of probationary civil service employees who provide satisfactory service would compromise the clear public policy against the abuse of the power to remove employees. (Decision ¶17).

Appellants filed a timely Notice of Appeal to this Court and the Court accepted the case for review on all of Appellants’ Propositions of Law.

II. STATEMENT OF FACTS.¹

Miracle’s employment history with the State of Ohio began at the Ohio Department of Rehabilitation and Corrections. He worked there from 1995 until October 2013. Throughout most of that period, he was a permanent, classified employee. From 2009 through 2013 Miracle was employed as the Building Construction Superintendent at the Mansfield Correctional Institution.

¹ Because Miracle’s case was dismissed on the pleadings, facts are drawn from the Complaint and Exhibits thereto and must be taken as true.

Throughout his tenure in that position he received excellent performance evaluations, never receiving less than “meets” expectations on his performance evaluations. In July 2013 a prisoner escaped from the Mansfield facility. After an investigation of the escape, Management concluded that Miracle had violated a policy regarding tool inventory and alleged that he falsified documents. Miracle was one of four employees who were fired in connection with the escape. Miracle exercised his right to appeal his termination under O.R.C. §124.34 et seq. by filing an appeal with the State Personnel Board of Review (“SPBR”).

On the eve of Miracle’s hearing before the SPBR, the Department of Corrections negotiated a settlement of Miracle’s appeal which included reinstatement to a position at the Marion Correctional Institution. Pursuant to the settlement, Miracle’s seniority was restored. In December 2014, Miracle began work at the Marion facility as a permanent, classified employee.

In January 2015, Miracle was approached by Superintendent Mick Oppy, of the Ohio Veterans Home in Sandusky (the Sandusky Domiciliary). Oppy asked Miracle if he would be interested in the Administrative Officer 2/Facilities Maintenance Supervisor position at the Sandusky Domiciliary. Miracle was interested in the position, but told Oppy and Deputy Director John Cook about his previous termination and reinstatement, including the allegations that had been made against him. Oppy and Cook both assured Miracle that his termination would not be a problem and that they would report it to the Director.

Miracle accepted the position and began working in the new position on February 23, 2015. On or about his first day, Miracle met former Director Timothy Gorrell and personally thanked him for giving him the opportunity. Gorrell replied, that he was assured that Miracle was an excellent candidate for the position.

Because he accepted a new position, Miracle was placed on probation for six months. As such, he was an “at-will” employee during that period. During his probationary period, Miracle was stripped of the civil service rights guaranteed by Ohio law, including procedural due process rights. On or about June 9, 2015 Miracle received his probationary review from his Manager John Cook. He received “meets expectations” or “exceeds expectations” in every category.

On June 15, 2015 Miracle was informed by HR Director Jackie Leisenheimer that he was being removed from his position. Ms. Leisenheimer stated that the “department was moving in a different direction.” She declined to state the real reason for his removal except to say that Miracle was “on probation and we’re not obligated to give you a reason.” Miracle later learned that the decision to terminate him emanated from Governor John Kasich’s office. Mick Oppy provided Miracle with a detailed letter explaining the circumstances that led to his discharge. (Complaint, Exhibit A; Appendix pp. 22-23).

Oppy recounted a June 11, 2015 meeting with Governor Kasich’s Sr. Advisor, Jai Chabria. According to Oppy, Chabria questioned Oppy about why he hired Miracle after he was involved in the inmate escape at Mansfield. Even though Miracle had been reinstated and was doing a good job in his current position, Chabria wanted Miracle removed from his position because the press was questioning the Department about why Miracle was in that position.

Chabria apparently regarded Miracle’s reinstatement and continued employment as an embarrassment to the Governor. Oppy confirmed that Miracle was terminated because the Governor’s office did not want the bad press. In August 2015 HR Director Jackie Leisenheimer confirmed that the order to terminate Miracle came from the Governor’s office. On October 15, 2015 Leisenheimer sent Miracle an email describing the circumstances that led to his termination. (Exhibit B).

III. LAW AND ARGUMENT.

A. THE PUBLIC POLICY/WRONGFUL DISCHARGE CLAIM IS IMPORTANT TO THE RULE OF LAW IN OHIO

The common-law doctrine of employment-at-will generally governs employment relationships in Ohio. Under this doctrine, a general or indefinite hiring is terminable at the will of either the employee or the employer; thus, a discharge without cause does not give rise to an action for damages. *Collins v. Rizkana* (1995), 73 Ohio St.3d 65, 67, 652 N.E.2d 653. Because probationary civil servants have no contractual or statutory appeal rights, they too are subject to this doctrine, but, just as in the case of private employers, the right to discharge is not unfettered.

In *Greeley*, supra, this Court first recognized a cause of action in tort for wrongful discharge in violation of public policy. Specifically, the Court held that "public policy warrants an exception to the employment-at-will doctrine when an employee is discharged or disciplined for a reason which is prohibited by statute." *Greeley* at paragraph one of the syllabus. Thus, after *Greeley*, an employee terminated in violation of a statute could maintain a common-law action for damages.

After *Greeley*, this court refined the scope of the wrongful-discharge tort, holding that a valid *Greeley* claim is not limited to situations where the discharge violates a statute. Instead, the "clear public policy" sufficient to justify a wrongful-discharge claim "may also be discerned as a matter of law based on other sources, such as the Constitutions of Ohio and the United States, administrative rules and regulations, and the common law." *Painter v. Graley* (1994), 70 Ohio St.3d 377, 639 N.E.2d 51, paragraph three of the syllabus (overruling *Tulloh v. Goodyear Atomic Corp.* [1992], 62 Ohio St.3d 541, 584 N.E.2d 729).

In *Painter* the Court first suggested the four elements that a plaintiff must establish to prove the claim as follows:

1. That clear public policy existed and was manifested in a state or federal constitution, statute or administrative regulation, or in the common law (the *clarity* element).
2. That dismissing employees under circumstances like those involved in the plaintiff's dismissal would jeopardize the public policy (the *jeopardy* element).
3. The plaintiff's dismissal was motivated by conduct related to the public policy (the *causation* element).
4. The employer lacked overriding legitimate business justification for the dismissal (the *overriding justification* element).' (Emphasis *sic*.)

Painter, 70 Ohio St.3d at 384, 639 N.E.2d 51, fn. 8, quoting H. Perritt, *The Future of Wrongful Dismissal Claims: Where Does Employer Self Interest Lie?* (1989), 58 U.Cin.L.Rev. 397, 398-399. See, also, 2 Perritt, *Employee Dismissal Law and Practice* (4th Ed.1998) 3-4, Section 7.1.

In *Collins v. Rizkana*, (1995) 73 Ohio St.3d at 69-70, 652 N.E.2d 653, the Court established that the clarity and jeopardy elements were questions of law to be decided by the court while factual issues relating to the causation and overriding justification elements were generally for the trier of fact to resolve.

In *Greeley* the Court expressed confidence that courts throughout Ohio could identify the type of public policy that would be of such “serious import” as to justify an exception to the employment-at-will doctrine. *Greeley* at 235. In this case, Miracle derived from R.C. §124.27 a clear public policy against the discharge of civil service employees who provide satisfactory service during the probationary period and with regard to his second claim, Appellants conceded that R.C. §124.56 states a clear public policy against abuse of power. Where, as here, the public policy arises from statute, the analysis of the jeopardy element then focuses on the objectives of the statute and involves inquiry into the existence of any alternative means of promoting the particular public policy to be vindicated. *Wiles v. Medina Auto Parts*, 96 Ohio St. 3d 240, 244 (Ohio August 28, 2002). Neither R.C. §124.27 nor §124.56 provides any relief to James Miracle.

Furthermore, the alternative proposed by Appellants, a mandamus action under R.C. §2731.11, is a claim of last resort and would not have addressed Miracle's request for a determination of immunity under O.R.C. §9.86, as he was required to bring this before the Court of Claims.

B. RESPONSE IN OPPOSITION TO APPELLANTS' PROPOSITION OF LAW NO. 1

Appellants argue: "*A Greeley tort is not available under R.C. 127.27 or 124.56 and, more generally statutes about public employment ordinarily should not support Greeley claims.*"

1. The purpose of a *Greeley* Claim is to Vindicate and Enforce Public Policy Including Policy Arising out of Statutes about Public Employment.

Appellants attempt to make this case about more than what it is. The First Proposition of Law is an entirely new argument not raised in the Courts below. Rather than focusing upon the specific public policies articulated by Miracle in his Complaint, Appellants ask this Court to proclaim that no statutes about public employment should ever support a Greeley claim. Even after acknowledging that the purpose of Ohio's civil service law is to establish a system for appointments based on merit and fitness, Appellants attempt to explain why this underlying principle should not be enforced through the mechanism of a wrongful discharge claim. Appellants detail the history of O.R.C. §124.27 and argue that the legislature intended to divest probationary employees of their rights. Whether true or not, the examination of the statute cannot end there. The words of the statute still have meaning and those words are unambiguous.

2. Statutory Interpretation of O.R.C. §124.27 Supports Miracle's Claim Because He was not Terminated for "Unsatisfactory Service."

James Miracle was terminated because the Governor's office didn't want bad press.

R.C. §124.27 states in pertinent part:

No appointment or promotion is final until the appointee has satisfactorily served the probationary period. If the service of the probationary employee is unsatisfactory, the employee may be removed or reduced at any time during the probationary period. If the appointing authority decides to remove a probationary employee in the service of the state, the appointing authority shall communicate the removal to the director. A probationary employee duly removed or reduced in position for unsatisfactory service does not have the right to appeal the removal or reduction under section 124.34 of the Revised Code.”

The statute requires that, to terminate a probationary employee, the employer must determine that the employee’s *service was unsatisfactory*. Although it is true that the amendments to the probation statute have reduced the rights of probationary employees, the current version of the law is consistent with past versions in one regard: it requires a determination of unsatisfactory service in order to terminate. There was no such determination here.

In *Sears v. Weimer*, 143 Ohio St. 312, 313, this Court discussed when and how the principles of statutory interpretation should be applied. “In interpreting a statute, the intent of the law-makers is to be sought first of all in the language employed, and if the words be free from ambiguity and doubt, and express(ed) plainly, clearly and distinctly, the sense of the law-making body, there is no occasion to resort to other means of interpretation. The question is not what did the general assembly intend to enact, but what is the meaning of that which it did enact. That body should be held to mean what it has plainly expressed, and hence no room is left for construction. Where the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation. To interpret what is already plain is not interpretation, but legislation, which is not the function of the courts, but of the general assembly. An unambiguous statute is to be applied, not interpreted.”

There is no dispute that Miracle's performance was more than satisfactory. On June 9, 2015 he received his probationary review and obtained "meets expectations" or "exceeds expectations" in every category. In the sworn statement provided by Superintendent Mick Oppy (Complaint Exhibit A, Appendix pp. 22-23), Oppy stated: "Jim Miracle took care of the Veterans and staff at the veteran's home. Jim was making a difference on getting projects completed ahead of completion times and was motivating staff and the residents."

Lest there be any doubt, The State Department of Administrative Services publishes a "Performance Management and Development Guide" for use by State Agencies when administering performance reviews. The Guide provides definitions for the ratings to be used as follows:

"Does not meet" means: "Fails to meet standards (e.g., employees with this rating fail to satisfactorily perform most aspects of the position; performance levels are below established requirements for the job; employee requires close guidance and direction in order to complete routine assignments).

Meets Expectations means "Fully meets standards (e.g., achieves acceptable standards of performance, expectations and requirements; results can be expected which are timely and accurate; performance constitutes what is expected of a qualified, experienced employee performing in this position)."

Exceeds Expectations means "Exceeds standards (e.g. consistently goes above the communicated expectations for the job responsibility or goal; demonstrates a unique understanding of work beyond assigned area of responsibility; achievements are obvious to subordinates, peers, managers and customers).

(Appendix p. 13). And later in the Guide: a rating of "Meets Expectations" means that the employee performed his or her job *successfully*. His or her job performance was not average, mediocre, or inadequate; rather, it met expectations, and the expectations should have been set so that employees performing at that level support the agency in meeting its mission. (Appendix p. 20).

Appellants violated the dictates of R.C. §124.27 when they terminated Miracle, but the statute provides him no remedy. If allowed to stand, what is to prevent the State from further abuses of power? Miracle employed a wrongful discharge claim because it was the logical response to a decision that jeopardized clear public policy.

3. R.C. 124.56 Provides a Mechanism for Punishment of an Individual Who Abuses Their Power – But No Relief for the Aggrieved Employee.

In the lower courts, the Appellants had no choice but to concede that R.C. §124.56 articulates a clear public policy against abuse of power. Specifically, “(d)efendant admitted that R.C. 124.56 expressed a clear public policy ‘prohibiting the abuse of power by any ‘officer, board, commission, head of a department, or person’ who possess the power to remove a civil service employee.” (Decision ¶12). The Court of Appeals remanded the claim directing the Court of Claims to examine the jeopardy element of Miracle’s wrongful discharge claim and determine whether the “discharge of probationary civil service employees who provide satisfactory service would compromise the clear public policy against the abuse of the power to remove employees.” (Decision ¶17).

Now, in light of their previous concession, Appellants ask this Court to ignore the statute as a source of a public policy claim. Appellants argue that R.C. §124.56 is “simply a mechanism to enforce Chapter 124.” Appellants then renew their argument that because the statute says nothing about an adjudication of individual employee rights it cannot be a source of substantive rights. (Brief p. 10).

To accept this argument the Court must ignore an equally important source of substantive rights, the Common Law. In *Helmick v. Cincinnati Word Processing, Inc.* (1989), 45 Ohio St. 3d 131, 135, this Court analyzed the effect of statutory enactments on common law remedies and articulated the following principle: “...an existing common law remedy may not be extinguished

by a statute except by direct enactment or necessary implication.” In addition, it is a long recognized principle of statutory construction that the “General Assembly will not be presumed to have intended to abrogate a common law rule unless the language used in the statute clearly shows that intent. E.g., *Carrel v. Allied Prods. Corp.*, 78 Ohio St. 3d 284, 287, 1997-Ohio-12 (internal citation omitted) (“Thus, in the absence of language clearly showing the intention to supersede the common law, the existing common law is not affected by the statute, but continues in full force.”).

In *Greeley*, this Court confirmed that the Common Law of Ohio provides a substantive right to pursue a wrongful discharge claim where public policy is jeopardized by the acts of an employer. The employment at-will doctrine is not a free pass to terminate employees in violation of statute.

4. Allowing Miracle to Pursue a Wrongful Discharge Claim Would Not Necessarily Afford Him Greater Remedies Than Those Available to Tenured Employees.

Appellants argue that by allowing Miracle to pursue a tort claim to vindicate his rights he would thus be eligible for greater remedies than those available to non-probationary, classified employees. That argument is not necessarily true and it is certainly not what Miracle seeks as a resolution of his case. The Court faced similar arguments in *Sutton v. Tomco Machining, Inc.* 129 Ohio St. 3d 153, 155 (Ohio June 9, 2011).

Sutton was terminated from his employment within one hour of reporting a work related injury. He pursued claims against his employer including retaliatory discharge under R.C. §4123.90 and wrongful discharge in violation of the public policy articulated in that statute.

The Court readily recognized the legislature’s intent to state a clear public policy arising out of Ohio’s Workers Compensation Statute. Specifically, R.C. §4123.90 prohibits retaliatory discharge of an employee “because the employee filed a claim or instituted, pursued or testified in

any proceedings under the workers' compensation act for an injury or occupational disease which occurred in the course of and arising out of his employment with that employer.”

However, because Sutton was terminated from his position before he filed his workers compensation claim, he was unable to pursue a claim arising out of the statute nor seek the remedies defined therein, including reinstatement, back pay, and attorney’s fees. The employer argued that the workers compensation statute was an exclusive remedy and therefore, Sutton was ineligible to seek redress by way of a wrongful discharge claim. *Sutton* at 159.

Analyzing the jeopardy element of Sutton’s wrongful discharge claim, the Court discussed the coverage gap exposed by Sutton’s circumstances and rejected the idea that the legislature intended to permit retaliatory discharges so long as they took place before a claim was filed. The same logic may be applied in the present case. Certainly, the legislature did not intend to allow abuse of power so long as the abuse was exercised against a probationary employee. Does Ohio have a clear public policy against abuse of power or not?

The Court’s analysis was as follows:

In cases where the right and remedy are part of the same statute that is the sole source of the public policy opposing the discharge, the test for determining the jeopardy element is whether the remedy provisions adequately protect society's interest by discouraging the wrongful conduct. *Leininger v. Pioneer Natl. Latex*, 115 Ohio St.3d 311, 2007 Ohio 4921, 875 N.E.2d 36, at ¶ 26. Therefore, the test in this case is whether R.C. 4123.90 provides adequate remedies to protect the public interest against retaliatory firings.

The remedies portion of R.C. 4123.90 provides: "*Any such employee* may file an action in the common pleas court of the county of such employment in which the relief which may be granted shall be limited to reinstatement with back pay, if the action is based upon discharge, or an award for wages lost if based upon demotion, reassignment, or punitive action taken, offset by earnings subsequent to discharge, demotion, reassignment, or punitive action taken, and payments received pursuant to section 4123.56 and Chapter 4141. of the Revised Code plus reasonable attorney fees." (Emphasis added.)

The phrase "[a]ny such employee" is a limitation on the class of people that can avail itself of the remedies set out in R.C. 4123.90. By its express terms, R.C. 4123.90 does not apply to Sutton or others who experience retaliatory employment action after being injured but before they file, institute, or pursue a workers' compensation claim. Consequently, a claim for retaliatory discharge in those circumstances is not cognizable under the statute. It is precisely this reason that Sutton's statutory claim failed. Therefore, R.C. 4123.90 plainly does nothing to discourage the wrongful conduct that Sutton alleges. Accordingly, we hold that R.C. 4123.90 does not provide adequate remedies, and thus the jeopardy element is satisfied.

Sutton v. Tomco Machining, Inc., (2007) 129 Ohio St. 3d 153, 160-161.

Having determined that Sutton was eligible to pursue a public policy/wrongful discharge claim arising out of R.C. §4123.90, the Court went on to rule that his remedies were limited to those defined by that statute. The court stated, "To hold otherwise and allow pursuit of common-law remedies for wrongful discharges in violation of this public policy would undermine the entire workers' compensation scheme, purpose and operation. It would be nonsensical to acknowledge a tort in violation of public policy but fail to tailor the remedies in conformance with that public policy." *Id* at 162-163.

Like the plaintiff in Sutton, Miracle's claim arises in a gap left by the legislature. R.C. §124.27 establishes a public policy against terminating probationary employees who are satisfactorily performing the duties of their position, but excludes them from the remedies available to permanent employee under the remaining portions of Chapter 124, including the right to appeal an unlawful removal to the State Personnel Board of Review and seek, reinstatement, back pay and attorney's fees. Miracle agrees that, should he be allowed to pursue his wrongful discharge claims, his remedies should be no greater than those available to permanent classified employees who seek redress before the Board of Review. As in Sutton, the Court must ensure that there are adequate remedies to protect the public interest against abuse of power by public officials wielding the power of removal.

5. Mandamus Is a Claim of Last Resort and Would Not Have Addressed Miracle's Request under R.C. §9.86.

In addition to his wrongful discharge claims, Miracle sought a determination by the Court of Claims regarding Jai Chabria's entitlement to immunity. Pursuant to R.C. §9.86, "Except for civil actions that arise out of the operation of a motor vehicle and civil actions in which the state is the plaintiff, no officer or employee shall be liable in any civil action that arises under the law of this state for damage or injury caused in the performance of his duties, unless the officer's or employee's actions were manifestly outside the scope of his employment or official responsibilities, or unless the officer or employee acted with malicious purpose, in bad faith, or in a wanton or reckless manner." The Court of Claims has exclusive jurisdiction to determine whether a civil servant is entitled to immunity. R.C. 2743.02(F); *Johns v. Univ. of Cincinnati Med. Assocs.*, 101 Ohio St. 3d 234, 2004-Ohio-824, ¶1, 30 804 N.E. 2d 19. If, as Miracle alleges, Chabria was acting with malicious purpose, in bad faith or in a wanton or reckless manner, Miracle is entitled to pursue individual claims against Chabria in the Court of Common Pleas, but not until the Court of Claims rules on his right to immunity. Had Miracle begun this action with a petition for writ of mandamus against Appellants, he would not have been able to obtain the relief he sought because Appellants have no authority to rule on Chabria's entitlement to immunity.

A relator is only entitled to a writ of mandamus if the following conditions are satisfied: (1) the relator demonstrates a clear legal right to the relief prayed for; (2) the respondent is under a corresponding legal duty to perform the actions that make up the prayer for relief; and (3) the relator has no plain and adequate remedy in the ordinary course of law. *State ex rel. Serv. Emp. Internatl. Union, Dist 925 v. State Emp. Relations Bd.*, 81 Ohio St.3d 173, 176-177, 689 N.E.2d 962 (1998), citing *State ex rel. Ohio Assn. of Pub. School Emp./AFSCME, AFL-CIO v. State Emp. Relations Bd.*, 64 Ohio St.3d 149, 151, 593 N.E. 2d 288 (1992).

The Court of Claims refused to rule on Chabria's immunity because, having dismissed Miracle's wrongful discharge claims, the court determined that he had *NO* claim to pursue against the State or Chabria. The Court of Appeals remanded the case and ordered the Court of Claims to rule. (Decision ¶19). If Chabria is not immune from suit, Plaintiff could pursue claims of tortious interference with contract as well as other claims and damages that would not be available otherwise.

Because Miracle sought an immunity determination under R.C. §9.86 and because he had a plain and adequate remedy available to him via the Common Law, Miracle did not initiate this case with a Petition for Writ of Mandamus.

C. RESPONSE IN OPPOSITION TO APPELLANTS' PROPOSITION OF LAW NO. 2

Appellants Argue: *Only the Employer is Subject to a Greeley Claim.*

To make this argument Appellants necessarily ignore the facts of this case. The Governor's Office and the Governor's Advisor, Jai Chabria directly involved themselves in the decision to terminate James Miracle. Superintendent Mick Oppy's statement, which was attached to Miracle's Complaint (Appendix) leaves no doubt that the Governor's office not only had the power to terminate James Miracle, they exercised that power, Oppy states, in pertinent part:

On 6/11/15 I went to the 30th Floor in the Riffe Center to see Kim Kutschbach (currently employed as the Governor's Director of Cabinet Affairs) and Jai Chabria (formerly employed as the Governor's Advisor). I arrived around 11:48 a.m. and waited until about 15 min. prior to our 12:30 meeting and went up to the 30th floor. I arrived and checked in with the reception area and waited. Around 12:44 p.m. a young lady came out and asked for me by name and I followed her to Jai Chabria's office. Once in Jai's office I saw Jai, Kim and Mona Reed (currently employed as the Governor's Director of Administration) and shook hands with them all and had a seat.

Jai stated to me that it's never good when you get called to my office. Jai went on to ask me why I hired Jim Miracle. I tried to speak to him about Jim Miracle and Jai didn't want to hear a thing. I stated to Jai how the old maintenance supervisor was around \$700,000 dollars in the red and Jai stated that I addressed that issue but made a bad decision on selecting a guy who helped let an inmate escape and that it was a bad decision to hire him. I tried to explain to Jai that he was selected by the Deputy of support services John Cook and was interviewed by Director Gorrell but Jai didn't want to hear anything from me. I informed Jai that my hands were tied at the Ohio Veterans homes and that as long as I couldn't talk to the Sandusky Register that Andy was just going to print bad stories about the Ohio veterans homes. Jai informed me that if I had a problem with communication folks here that I could call him or Kim. ...

Jai informed me that he wanted me to remove Jim Miracle and to fix the problem and that I better not make it look like it came from the 30th floor. I told Jai that I am the Superintendent responsible for hiring staff and I do not believe it is fair to Jim or the veterans at the home to remove him. Jai said it's all my fault and I better fix it."

(Appendix pp. 22-23)

Appellants acknowledge that The Director of the Department of Veterans Services is a member of the Governor's cabinet and serves at the Governor's pleasure. Appellants admit that the Governor is at the top of Miracle's chain of command, yet they argue that somehow, the Governor's Office should not be responsible for their tortious acts because they are not the appointing authority.

In the private sector, this is not a new argument. Corporate entities have long attempted to distance themselves legally from their subsidiaries and to disclaim liability for the wrongful acts of related corporate entities. Outside the employment law context, this Court addressed the legal relationship between corporate entities in *Danzinger v. Luse*, 103 Ohio St. 3d 337 (Ohio October 13, 2004). In that case, shareholders of a corporation sued to examine the books of a wholly owned subsidiary. The lower courts ruled that because the shareholders did not own stock in the

subsidiary, they had no such right. Recognizing enterprise principles in determining parent and subsidiary corporation liabilities, this Court explained why that was the wrong outcome:

In this case, we conclude that the separate corporate existence of the bank should be disregarded. The company owns all of the stock of the bank and has no assets other than the bank. The company and the bank have the same directors. All of the officers of the company are also officers of the bank. The company and the bank hold shareholders' meetings on the same day and at the same place. All of the income of the company is derived from dividends paid by the bank. It is abundantly clear from reviewing the record that the company is the bank and that in this case, the bank's separate corporate existence should be disregarded.

Id. at 342.

As in *Luse*, the Governor's Office and Department of Veterans Services are so interrelated that, for the purposes of liability, their separate existence should be disregarded. The Governor's office appoints the Department's leadership and controls the budget. Based upon Oppy's statement, the Governor's office clearly has the power to override hiring decisions and direct the termination of staff working for the Department.

In the employment law context, the joint and/or integrated employer doctrine has been applied to many federal employment related laws to determine liability of parent corporations and other related entities. Just because an employee is hired and even paid by one entity does not necessarily relieve a second entity of liability. The FMLA, the Fair Labor Standards Act, and National Labor Relations Act each contemplate joint/integrated employer liability. The concept also applies to Title VII (see 42 U.S.C. § 2000e-2(a)); the Age Discrimination in Employment Act (ADEA) (see 29 U.S.C. § 623(a), and the Americans with Disabilities Act (see 42 U.S.C. § 12112(a). The doctrine has also been applied to claims under Ohio Revised Code Chapter 4112.

Under Title VII and other federal labor statutes, courts have fashioned various doctrines by which a defendant that does not directly employ a plaintiff may still be considered an "employer."

See *Swallows v. Barnes & Noble Book Stores, Inc.*, (6th Cir. 1997) 128 F.3d 990, 993. In *Swallows*, the Sixth Circuit identified three distinct doctrines:

In one approach, courts examine whether two entities are so interrelated that they may be considered a “single employer” or an “integrated enterprise.” . . . In another approach, courts consider whether one defendant has control over another company’s employees sufficient to show that the two companies are acting as a “joint employer” of those employees . . . A third approach examines whether the person or entity that took the allegedly illegal employment action was acting as the agent of another company, which may then be held liable as the plaintiff’s employer. . . .

Swallows, 128 F.3d at 993 [citations omitted].

Ohio Courts have applied the joint and/or integrated employer test to claims under Revised Code 4112. Very recently, in *Wittenbrook v. Elecs. Recycling Servs.* 2018-Ohio-208, P27-28 (Ohio Ct. App. Belmont County, January 8, 2018) a parent corporation sought review of a judgment rendered against it arising from sexual harassment and retaliatory termination charges filed by an employee of its subsidiary. The court of appeals affirmed the judgment and applied a joint employer analysis as follows:

The concept of joint employer liability has not been discussed at length in Ohio case law. As a general matter, it is a judicially-created doctrine that can be used to impose liability on one business enterprise for the employment actions of a related or subsidiary enterprise. As explained in greater detail in federal employment law jurisprudence, there are several sub-species of this doctrine that allow for liability on the part of the parent company. See *Swallows v. Barnes & Noble Book Stores, Inc.*, 128 F.3d 990, 993 (6th Cir.1997)(explaining the three different approaches courts use to impose employer liability on a parent company or related entity.)

As the Eighth District has explained: "[T]wo entities may be considered a single joint employer if, upon review of their intercorporate relationship, one exercises a degree of control that exceeds the control normally exercised by a parent corporation over its separate and distinct subsidiary corporation." *Wilmot v. Forest City Auto Parts*, 8th Dist. No. 75945, 2000 Ohio App. LEXIS 2734, 2000 WL 804616, *3, citing *Armbruster v. Quinn*, 711 F.2d 1332, 1337-1338 (6th Cir.1983). "Relevant considerations include: (1) interrelations of operation; (2) common management; (3) centralized control of labor relations; and (4) common ownership and financial control." *Id.*, citing *Armbruster*.

In *Morton v. Reliant Pharmaceuticals* (5th App. Dist. 2004) 2004 Ohio App. LEXIS 5228 the appellate court reviewed a summary judgment decision rendered against an employee alleging pregnancy discrimination and violations of public policy against two separate entities that she alleged were joint employers. The court applied both the joint employer and the integrated employer test and determined that there was an issue of fact as to the interrelation of the businesses. The court recognized that the question of whether an employer-employee relationship exists is fact-specific and depends on whether the employer controls the means and manner of the worker's work performance and stated that the determination requires consideration of all aspects of the worker's relationship with the employer. *Id. at 9*. Among the factors considered was the degree of control the employer had over the employee and whether the employer had the power to discharge the employee. *Id. at 9-10*.

In Miracle's case, the Governor's office exercised absolute power over Miracle's employment, terminating him even though his supervisors rated him as meeting or exceeding expectations and over the objections of Superintendent Mick Oppy who stated, "I am typing this letter up out of respect for a man who did nothing wrong while working at the Ohio's veterans home in Sandusky, Ohio. Jim Miracle took care of the veterans and staff at the veteran's home. Jim was making a difference on getting projects completed ahead of completion time and was motivating staff and the residents. The hiring of Jim Miracle ended up costing me my job. If I had to do it all over again, I would still have given my approval on hiring Jim. What happened to Jim was wrong and the Governor's office was wrong. Removing Jim was all because Governor Kasich was going to run for President of the United States...." (Appendix pp. 22-23).

Miracle was an Employee of the State of Ohio. The Governor is the Chief Executive Officer of the State. His office wields the power of appointment and removal over State agencies

like the Department of Veterans Services. The members of the Governor's staff provide direction about the human resource function and obviously, pay close attention to the day to day operations of the agencies. Just as parent corporations should not escape liability for the wrongful acts of their wholly owned subsidiaries, here to, the Governor's Office must accept responsibility.

D. THIS COURT SHOULD NOT RENDER AN OPINION THAT EXCEEDS THE SCOPE OF THE CASE.

Appellants' broad Propositions of Law invite this Court to issue an advisory opinion on issues that were not raised in the courts below. Appellants never once raised the question of whether civil service statutes were a proper source of public policy claims. In fact, they conceded that R.C. §124.56 articulated a clear public policy. Furthermore, until now, Appellants never questioned the Governor's authority to terminate James Miracle. Rather, they confirmed his authority in the courts below. In *Kyle v. Ohio State Univ.* 2014-Ohio-2143, P30 this Court reaffirmed that, [i]t has become settled judicial responsibility for courts to refrain from giving opinions on abstract propositions and to avoid the imposition by judgment of premature declarations or advice upon potential controversies." Citing, *Brookwood Presbyterian Church v. Ohio Dept. of Edn.*, 10th Dist. No. 12AP-487, 2013-Ohio-3260, quoting *Fortner v. Thomas*, 22 Ohio St.2d 13, 14, 257 N.E.2d 371 (1970), citing *Miner v. Witt*, 82 Ohio St. 237, 92 N.E. 21, 8 Ohio L. Rep. 71 (1910). Appellee James Miracle respectfully requests that the Court exercise restraint in the present case, not to be drawn into broad declarations of law that are not at issue here.

IV. CONCLUSION.

James Miracle took a chance when he accepted a position with the Ohio Department of Veterans' Services. He knew that he was leaving a permanent position in the classified civil service and that he would be required to prove himself during a probationary period with the new

agency. He knew what it meant to be a probationary employee. But because he was confident in his own abilities and he was motivated to serve Ohio's veterans, he accepted the risk. If he had not performed his job well or if he had failed to live up to his employer's expectations, Miracle would have accepted his termination and moved on with his life, but that is not what happened here. James Miracle was doing a good job, meeting and exceeding his employer's expectations. Yet, he was terminated because he was regarded by the Governor's office as a political embarrassment. If the Civil Service system in the State of Ohio is truly a meritocracy and if abuse of power is regarded as a real threat, then this claim must be allowed to go forward to trial. Will this Court be heard to say that there is no public policy in the State of Ohio against abuse of power? In *Greeley*, the Court made the right decision to send employers a message that the courts in the state of Ohio will be allowed to vindicate public policy even where statutory law does not provide complete relief. Miracle is not asking this Court to create new claims, but rather enforce the law that already exists.

Wherefore, Appellee James Miracle respectfully requests that the Court affirm the Tenth District Court of Appeals' Decision and remand this case for trial on the merits.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Appellee's Merit Brief was served upon Counsel for Appellants: Michael Dewine, Attorney General of Ohio, Eric E. Murphy, State Solicitor, Michael J. Hendershot, Chief Deputy Solicitor, Lee Ann Rabe, Asst. Attorney General at 30 East Broad Street, 17th Floor Columbus, Ohio 43215 via electronic mail and regular U.S. Mail this 5th day of October, 2018.

/s/Sharon Cason-Adams
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APPENDIX



Performance Management and Development Guide

Updated July 16, 2018

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Section I: Introduction to Performance Management and Development

Performance management and development is commonly known as a communication practice by which and leaders are accountable for establishing and adjusting performance expectations and job goals, identifying development opportunities, giving ongoing feedback and coaching regularly, recognizing and evaluating performance results. In other words, it is a continuous practice of planning, coaching, engaging, evaluating, and developing employee performance.

Supervisors most likely conduct these activities on a daily basis for their employees, but common reactions supervisors have to formal performance evaluations include some reluctance, and thoughts that performance evaluation is time consuming and offers minimal value. Fortunately, many of these reactions can be avoided when supervisors know the importance of managing the performance of their employees and utilize the tools to make performance management and development more efficient and easier.

Understanding the State of Ohio's formal performance evaluation cycle and related processes will benefit supervisors and their employees by:

1. Informing employees of the agency mission and strategic goals as well as the performance expectations and goals supervisors establish for employees;
2. Informing employees of their progress toward achieving their performance expectations;
3. Improving employee performance and productivity;
4. Strengthening supervisor and employee work relationships and improving communication with employees;
5. Developing the knowledge, skills, and abilities of employees; and
6. Recognizing the accomplishments and contributions of employees.

By managing employee performance more effectively, supervisors will have more time to accomplish their own work. Note that, while performance documentation is created and maintained within the ePerformance system, most of the activities surrounding performance management and development are completed outside the system. Although the ePerformance system will be referenced throughout this guide, the remainder will provide readers with best practices in performance management and development that are not related to system use, as well as evidence demonstrating why and how effective performance management and development will assist both supervisors and employees.

Section II: Performance Management and Development Cycle

Performance management and development is often illustrated as a cycle, but it is important to understand that most performance management and development practices need to take place daily. The State of Ohio's Performance Management and Development Cycle consists of three major phases that occur in a continuous loop.

1. **Plan:** During this phase, a collaborative effort between the supervisor and employee occurs which involves reviewing the job description, identifying critical performance objectives, developing goals, setting expectations, explaining how an employee can meet and exceed standards, and discussing training objectives to help the employee develop competencies or identify career development objectives.
2. **Engage:** Supervisors are expected to engage employees as much as possible in their performance by providing scheduled as well as in-the-moment feedback and recognition to ensure positive behaviors are reinforced and the right skills are acknowledged consistently. When employees are noticed, appreciated, and empowered, they are more likely to become and remain engaged, which results in a higher level of performance. Remember, in-the-moment feedback discussions should be documented by supervisors to support completion of the Evaluate phase. Feedback can be either positive or constructive; both types of feedback should be provided to employees as appropriate. Contrary to popular practice, performance management and development is not just a quarterly or annual evaluation exercise, but rather an ongoing communication practice that occurs throughout the year to ensure employees are engaged and productive.
3. **Evaluate:** During the year-end evaluation phase, supervisors gather specific examples that support the final evaluation, assessing overall performance observed throughout the entire evaluation period and referring to notes collected on the employee's performance. Also, during the Evaluate phase, the supervisor presents the overall evaluation to the employee during a formal one-on-one meeting.

There are two additional components within the cycle: **Coach** and **Develop**.

Coach: The Coach phase involves observation, feedback, and documentation of each employee's performance. Coaching is an ongoing component of strong performance management and development that addresses concerns and issues so that employees contribute positively to the organization. During this phase, the employee and supervisor meet regularly to assess progress, identify performance barriers that may prevent the employee from achieving a goal, share feedback on goals, discuss changes in expectations and/or goals, and determine if additional support is needed. The ongoing nature of this phase helps engage employees in their performance and development. The greater part of the Performance Management and Development Cycle should be invested in coaching-related discussions and feedback, which should be routinely documented to support and aid in completing the Evaluate phase.

Develop: This phase provides opportunities for supervisors and employees to collaborate in developing new skills or competencies. Development is a critical, yet often-overlooked, part of the cycle that can result in an employee's increased level of engagement and motivation. It is important that supervisors begin to shift from a corrective approach to one that supports the development of employees by creating Performance Improvement Plans or Career Development Plans.

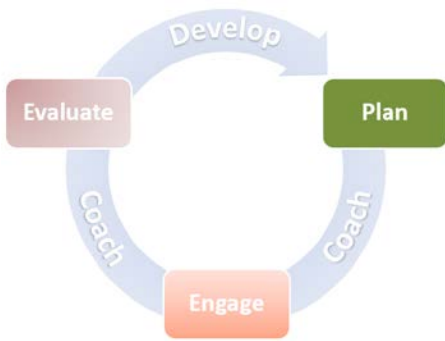
Keep in mind: coaching and development can occur at any point throughout the entire Performance Management and Development Cycle.



Note that throughout the Performance Management and Development Cycle, the majority of time invested is in coaching. During this phase, supervisors provide feedback, support, and resources to help employees successfully complete their goals and performance expectations while ensuring their ongoing development.

With this in mind, each phase of the cycle is essential to effectively managing performance. While each agency's Performance Evaluation Policy provides the cycle dates for completing evaluations and perhaps for creating initial goals in the ePerformance system, the phases illustrated above should occur on a regular, frequent basis. These regular conversations can be informal; however, frequent meetings are very helpful, but are not required.

Plan Phase



At the State, we define **performance expectations** as the requirements for work product quantity, quality, timeliness, and results that apply to regular and routine job duties. Performance expectations are the same for every employee performing the same job, so if multiple supervisors in an agency oversee employees in the same classification performing the same work, all supervisors should agree on the performance expectations for that work.¹ They are included as a way of evaluating how employees perform the main responsibilities of their job.

Performance expectations are not related to following normal work environment guidelines (e.g., locking computer when leaving work area).

Goals

We define **goals** as specific, measurable tasks or actions which drive performance toward achievement. Supporting elements of goals include:

- Agreed-upon goal statements between supervisors and employees;
- Activities and work products that are created by employees to support the agency's purpose or mission; and
- Duties that are to be fulfilled which are reflected by employee behaviors.

Note that goals can be different for different employees.

Performance Expectation:

Process each case within 45 days to comply with Ohio Revised Code.

Return voicemail messages within one business day.

Goal:

Research and summarize the pros and cons of three methods of process improvement within the next six months.

Decrease the average amount of time you take to process a case by 10% while maintaining your current quality ratings within the next 12 months.

Supervisors may ask why they need to set goals if there are clearly outlined performance expectations established for the employees. Fortunately, goal-setting has been thoroughly studied, and studies show that employees tend to perform their job better when they have **specific goals** rather than being told to "do their best".² ePerformance has a section entitled *Goals and Performance Expectations*, but there is not a separate section for each, so supervisors will have to explain to employees which items are performance expectations and which items are individual goals.

Goals should always be based on the needs of the agency, not the capabilities of employees.³ Supervisors can, however, write a goal to improve the capability of their employees. To write an **effective goal**, supervisors need to:⁴

- ✓ Understand what needs to be achieved, improved, maintained, or discontinued;
- ✓ Make the goal challenging but not impossible;
- ✓ Identify measurable outcomes for the goals;
- ✓ Provide a tight, but still achievable, timeline for goal achievement;

- ✓ Relate the goal to the agency's mission (goals that provide indirect support for the agency's mission may require more explanation to employees); and
- ✓ Avoid setting the goals so narrowly that employees ignore other important aspects of their jobs.

There are several methods of goal-setting, two of which are Cascading Goals and SMART Goals. Supervisors may want to apply each depending on the type of work performed. The following table discusses these two methods of goal-setting and the circumstances in which they are most and least successful.

Method	Method Explanation	Good for:	Does not work well for:
Cascading Goals	Goals are set from the top-down and goals at each subsequent level should link back to the goal at the level above.	The first two or three levels of executive management.	The entire organization. Not every goal needs to tie directly back to a supervisor's goal. Also, cascading through the entire organization takes a long time as each level's goals have to be completed before moving on to the next level.
SMART Goals	A format for writing goals in which the goal must be Specific, Measurable, Achievable, Relevant, and Time-bound.	Most employees. Also used to ensure pertinent information is included in the goal.	Goals that need to be relevant over a long period of time, such as a year, or some tasks that require innovation.

These methods contain elements of what makes goals effective. When supervisors are able to explain to their employees how his or her goal will help the agency achieve its mission, employees will be more committed to achieving the goal.⁵ When supervisors create a tight, but still achievable, timeline for the goal, employees will perform their work with more urgency than if the goal had a loose or undefined timeline.⁶

There are also several different types of goals, which are outlined in the following table. Remember that performance expectations are the requirements for work product quantity, quality, timeliness, and results that apply to regular and routine job duties. Goals look at performance that is *beyond* these regular and routine job duties but they are still within the scope of an employee's classification.

Method	Method Explanation	Good for:
Job/Work Goals	Goals that clearly describe tasks that align to the job as outlined in the position description.	Emphasizing or giving focus to specific aspects of a job.
Project Goals	Goals the employee pursues with specific beginning and end dates that may be above and beyond routine duties.	Breaking up work into meaningful milestones based upon a specific timeline.
Development Goals	Goals that specify what employees will learn during a given time period.	Expanding knowledge and skills.
Improvement Goals	Goals designed to change employee behavior and performance outcomes.	Documenting performance deficiencies and measuring against desired outcomes.

Writing goals may seem like a daunting task for supervisors. Therefore, supervisors should begin by considering the agency's purpose (e.g., mission statement). Every goal, directly or indirectly, should help employees achieve the agency's purpose, advancing the strategy set forth by agency leadership. Supervisors can also consider previous goals, their own goals, or the employee's current job performance. These considerations should give supervisors a good idea of what they want their employees to achieve, improve, maintain, or discontinue.

When the supervisor identifies something for an employee to achieve or improve, it is important that what the supervisor has chosen is actually in the employee's control to impact or change. The following examples demonstrate goals that are out of an employee's control and how to alter them to be in the employee's control.

Not in employee's control:

Respond to 10 customer inquiries a week. *The employee is not in control of how many inquiries are submitted each week.*

Improve efficiency of processing requests by using the new software system. *The employee is not in control of the software system. It may malfunction or may not be user-friendly.*

In the employee's control:

Respond to customer inquiries within 24 hours of their submission, either with an answer or with a timeline of when the customer will receive the answer. *The employee can control how quickly he or she responds to the inquiries.*

Improve knowledge of how the new software system works by taking the training class and reviewing the manual within the next 2 months. *The employee can control how familiar he or she is with the system.*

It may initially be difficult to create **measurable outcomes** for the goals. The best methods to measure work products are usually quality, quantity, cost, and/or timeliness. When using quality as a measure of job performance, supervisors can use descriptive measures and examples so the employee will understand the level of performance expected.⁷ For example, "Write a user manual for the software that is *easily* understood by our employees" or "Create a safety message that is easy to remember *like stop, drop, and roll*".

Many supervisors need to know **how many goals and performance expectations** they should establish for their employees. While there is no universal number of goals that should be established for every job, supervisors do need to consider how many factors an employee can realistically improve in one year. Since the goals on the performance evaluation should only reflect the most critical aspects of job performance,⁸ limiting goals and performance expectations to five or fewer would likely work for many jobs.⁹

The content of employees' goals does not have to be permanent. Many issues may come up during the performance evaluation period that would change the employee's ability to achieve the goal, such as:

- new legislation;
- process changes;
- resource availability; or
- adjustment of administrative priorities.

It is each supervisor's role to make sure employees have the resources to meet their goals and to take the necessary steps to remove obstacles that prevent employees from accomplishing their goals.¹⁰ If these things cannot be done, then supervisors will need to revise employees' goals. When supervisors enter goals into ePerformance, it is recommended to not mark the *Establish Evaluation Criteria* step as "Complete" until it is time to start the Evaluate phase of the cycle. This way, goals can be updated in the system if they need to be changed throughout the evaluation

period. Of course, supervisors should discuss any changes with employees when they are making any changes to the goals.

In the past, supervisors may have heard that goals have to be set collaboratively with employees in order to be effective. When this issue was studied, however, goals were found to be effective as long as employees understood what the goal was and why the goal was important. This means **goal-setting can be a collaborative effort or and independent one**. As long as the goals are communicated to and understood by the employee, either option can result in effective goals.¹¹

In ePerformance, expectations and goals are set at the beginning of the process within the *Establish Evaluation Criteria* step. Related job aids can be found on the Department of Administrative Service's website in the [ePerformance Toolkit](#) section.

Goal Examples

Now that the best practices for writing goals have been discussed, it is time to put these practices into action. The following examples demonstrate what effective goals could look like for a procurement unit.

Administrator:

Reduce the unit's budget by 10% by Fiscal Year 2019 without compromising the quality of services and goods that the unit purchases for the agency.

Supervisor:

Identify one program area where we can reduce costs without compromising the quality of services and goods purchased for the program within the next two months.

Analyst 1:

1. Identify three new suppliers and their prices for office supplies by the end of the month.
2. Respond to procurement requests within 24 hours by providing the timeframe for approval and ordering.

Analyst 2:

1. Identify how many supplies are being used, regularity of orders, and how much inventory is necessary to have on-hand by the end of the month.
2. Respond to procurement requests within 24 hours by providing the timeframe for approval and ordering.

In these examples, all of the goals contain specific outcomes, include a timeline, and are somewhat challenging. The goals contain more specific details for the analyst level, but all of them allow the employees to determine the best way to approach the goal. Also, the analysts have performance expectation goals that do not tie directly back to the supervisor's goal. This is because the regular work of the procurement unit must still be conducted in addition to the special project of reducing the budget. When the supervisor discusses the goals with the analysts, he or she should discuss the unit's goal of reducing the budget and how the analysts' activities will help achieve that goal.

Competencies

The State of Ohio’s performance evaluation system also uses **competencies** as a way to describe and evaluate the behaviors employees exhibit as they perform their job. Essentially, a competency is the observable and measurable knowledge, skills, and abilities required for successful job performance. The State of Ohio utilizes 42 competencies that supervisors use to evaluate their employees. These competencies were carefully selected to be applicable to many classifications across the State.

ePerformance has three groups of competencies: **Statewide**, **Agency-wide**, and **Classification-specific**. There is one statewide competency, **Customer Focus**. All employees in the state are evaluated on their customer focus behaviors, which has been defined as “Focuses on the customer, whether internal or external, by understanding the needs of the customer and responding in a timely fashion, responding to customer feedback, and seeking out help and information when needed.”

Agency-wide competencies apply to every employee of a given agency. Those competencies will likely be identified by agency executive leaders. Each agency’s Performance Evaluation Policy will state whether the agency will use agency-wide competencies. Supervisors should consult with their respective Human Resources representative for a copy of the agency’s policy.

Finally, classification-specific competencies apply to every employee in a classification. In 2016, the State assigned three competencies to all classifications, which automatically populate in all ePerformance-based evaluation documents.

Overall, the total number of competencies that should be evaluated, including statewide, agency-wide, and classification competencies, should be fewer than five if possible¹². The list of the State’s ePerformance competencies can be found in the [ePerformance Toolkit](#).

The following example is the competency list for a Deputy Director at an agency that uses both Agency-wide and Classification-specific competencies.

Statewide Competency:

Customer Focus

Agency-wide Competency:

Communicating with Supervisors, Peers, and Subordinates

Classification-specific Competencies:

Developing Objectives and Strategies

Making Decisions and Solving Problems

Monitoring and Controlling Resources

Communicating Expectations and Goals

Within the first few weeks of the evaluation cycle, supervisors should relay their expectations and goals to each employee (e.g., by January 15 for January’s annual cycle). When possible, it is best to provide this information during a one-on-one meeting with each employee to encourage open discussion and allow for clarification if necessary.

When supervisors communicate to employees what their goals are and explain how the goals relate to the agency’s purpose, it is also important to explain what specific actions and behaviors will be **required for the employees to receive a “Meets Expectations” rating as well as an “Exceeds Expectations” rating** on their performance evaluations. Once again, if multiple supervisors oversee employees in the same classification with the same goals and competencies, the actions and behaviors required to earn the “Meets Expectations” rating should be consistent for all of those employees.

The table below outlines the basic rating definitions that can be used to help define each item’s expected actions and behaviors. It is alright not to have exact definitions of what behaviors and results would earn an “Exceeds Expectations;” however, supervisors need to communicate that fact, why that is, and be very specific about what actions will earn a “Meets Expectations,” so that it is clear to both them and the employee when he or she exceeds those expectations.¹³

Rating	Definition
1. Does Not Meet	Fails to meet standards (e.g., employees with this rating fail to satisfactorily perform most aspects of the position; performance levels are below established requirements for the job; employee requires close guidance and direction in order to complete routine assignments).
2. Meets Expectations	Fully meets standards (e.g., achieves acceptable standards of performance, expectations and requirements; results can be expected which are timely and accurate; performance constitutes what is expected of a qualified, experienced employee performing in this position).
3. Exceeds Expectations	Exceeds standards (e.g., consistently goes above the communicated expectations for the job responsibility or goal; demonstrates a unique understanding of work beyond assigned area of responsibility; achievements are obvious to subordinates, peers, managers and customers).

During this conversation, supervisors should also discuss all other performance expectations, whether they are included on the performance evaluation or not, and any competencies that will be evaluated. This ensures that employees will be given a complete picture of all of their respective supervisor’s expectations for their performance.¹⁴

As mentioned before, anytime performance expectations or goals for employees change, supervisors should discuss those changes with each employee as soon as possible.

Coach



Supervisors should identify ways for employees to develop their knowledge, skills, or abilities on a regular basis. While training classes and seminars are good tools to use in the developmental process, most employees will develop the majority of their knowledge, skills, or abilities through on-the-job experiences. When supervisors invest time in developing their employees, they are providing a specific kind of feedback called **coaching**. Regular communication around development — having *coaching conversations* — is essential. In fact, according to [research](#), the single most important supervisor competency that separates highly effective supervisors from average ones is coaching.¹⁵

When supervisors coach employees, their conversations should focus on what employees could change in the future, rather than focusing on what was ineffective in the past.¹⁶ For example, when coaching an employee, a supervisor would ask, “What techniques could you use to keep the meeting on track with the agenda?” rather than telling the employee, “We did not meet the objectives of the agenda in the meeting because you let everyone get off track.”

Coaching can be used to reinforce effective behavior as well as to correct ineffective behavior. When coaching employees, supervisors should:¹⁷

- ✓ Give advice based on past experiences;
- ✓ Provide guidance about how employees can develop their knowledge, skills, and abilities;
- ✓ Provide support when employees need help;
- ✓ Provide confidence that employees can accomplish their goals or that their actions are on the right course; and
- ✓ Steer employees toward the competencies they should develop for future roles.

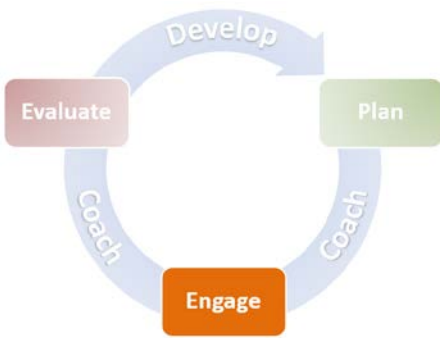
Additionally, coaching helps the supervisor to have the following positive impacts on their employees.

Motivate	Includes internal or external factors that stimulate desire and energy in people to be engaged, interested and committed to their job.
Empower	Enables someone to do more; empowers the employee; provides additional opportunity for independent action.
Support	Provides assistance to help your employees perform or function at a higher level. This can be done via feedback, encouragement, listening, providing additional training, tools and resources.
Develop	Encourages and builds increased capabilities or higher level of contribution from the employee; helps the employee to be more effective by expanding their skills.

The State follows a question-based coaching model. This means that, instead of telling employees what they should do, supervisors should try asking them targeted questions to help them discover their next steps, solution alternatives, or final decision. At its most basic, the State’s coaching model is outlined below. Additional information, including sample questions, may be found by visiting the supervisor toolkit.

Component	Definition
C urrent	Assist employee in reviewing current performance behaviors
O pportunities	Help the employee explore possibilities to identify new performance behaviors
A ction	Set expectations and supporting steps to be taken – agree to start/end dates supported by an action plan
C hange	Support new behaviors with defined measures and recognize achievement; or identify additional improvement areas
H old Accountable	Hold the employee responsible and accountable by setting start/end dates to move forward and provide an action plan

Engage Phase



Supervisors should be engaging employees as much as possible in their performance by providing scheduled as well as in-the-moment feedback and recognition to ensure positive behaviors are reinforced and the right skills are acknowledged consistently. When employees are noticed, appreciated, and empowered, they are more likely to become and remain engaged, which results in a higher level of performance.

Engaging employees in their performance and providing them with feedback is the part of the Performance Management and Development Cycle that supervisors will conduct daily. Many supervisors are unaware, however, that their observational skills may need some improvement.

Multiple studies have demonstrated that human brains excel at finding patterns in the information it receives. Unfortunately, the brain is also very good at dismissing inconsistent details or even inventing details in order to make that information fit into a pattern.¹⁸ We also tend to categorize and evaluate behaviors when we see them rather than remembering the actual behavior.¹⁹

What this means as supervisors is that when performance is observed of an employee already considered to be a good performer, a supervisor may see, but not remember, a mistake in the employee's work. However, when the supervisor observes the performance of an employee already considered to be a poor performer, he or she may see and remember a similar mistake and rate that employee lower. People also tend to remember negative behavior better than positive behavior²⁰ and may look at the results of an employee's behavior and make up what their actions were from those results, rather than observing the actions themselves.²¹

All of this means that supervisors need to train their brain to **be a better observer of employee job performance**. When observing employees' job performance, supervisors should:²²

- Look and listen for specific actions and words that demonstrate something about an employee's performance;
- Observe as many details as possible;
- Get information from multiple sources if possible (e.g., direct observation, reports from coworkers, inspection of work products);
- Avoid comparing the employee's past job performance when observing current performance;
- Avoid allowing the situation or setting to influence your observations; and
- Avoid evaluating the performance while observing it.

Since employees may perform differently at different times, especially if they are aware that they are being observed, it is important to make many observations of job performance over a long period of time.²³ One of the best ways to track and remember employee behaviors is to keep a **performance log** for each employee.²⁴ The performance log could be an electronic document, an email folder, or a paper file. The logs should include descriptions of employees' actions and words, not evaluations of their performance. This will help the supervisor recall employees' actual behaviors when they are ready to evaluate their overall performance. Examples of performance may be found by visiting the supervisor toolkit.

Since it can be difficult for supervisors to realize when they are evaluating or categorizing an employee's performance rather than observing his or her behaviors, the following example demonstrates how remembering an evaluation of performance can cause a supervisor to miss important performance details.

Evaluative observation:

5/5/2018 - Observed Paul provide great customer service today when he was interacting with an angry customer at the customer service desk. Paul listened well and provided the information the customer needed. The customer left calmer than he had arrived.

Behavioral observation:

5/5/2018 - Observed Paul interacting with an angry customer at the customer service desk. The customer was using an agitated tone of voice when asking why his claim hadn't been processed yet, even though it had passed the 45 days by which the Ohio Revised Code required the agency to respond. Paul listened to the customer, responded in a calm voice, and explained that the Code required 45 days from a certain point in the submission process, not from the submission itself, and told the customer that he, too, had trouble understanding that part of the Code when he first read it. Paul then provided the date when the 45-day count started and said the customer would receive notice when his claim had been processed. The customer left the office calmer than when he arrived. Paul did not provide the exact date the 45-day count would be up, nor did he provide the customer service number that the customer could have called instead of coming to the office.

Both examples describe Paul performing his job well; however, the evaluative observation missed the details that would allow Paul to improve his performance in the future. Also, the evaluative observation will not help the supervisor remember all of the behaviors that led to Paul performing well, such as empathizing with the customer.

Providing Feedback

Supervisors probably think that they give their employees enough feedback. Most employees, however, do not think they receive enough feedback from their supervisors.²⁵ While there is a limit on how much feedback a supervisor should provide to his or her employees, most supervisors never come close to reaching that limit.²⁶

Supervisors may be wondering **why they need to provide feedback** about an employee's performance if they have already set and clearly explained the performance expectations. First, employees need regular feedback so they can adjust their performance to meet the goals and performance expectations their respective supervisor has set.²⁷ Second, providing feedback to employees will result in them putting more time and effort into the tasks the supervisor has commented on, which usually leads to improving their performance on those tasks.²⁸ Finally, if a supervisor does not provide enough feedback to his or her employees, they will try to get feedback from other sources such as their coworkers, other supervisors, or even as a result of the tasks themselves. This may lead employees to put more effort into the tasks they can get the most feedback from rather than the tasks their respective supervisor thinks are most critical.²⁹ Employees may also interpret the lack of feedback as unspoken approval of their job performance, even if they are performing poorly.³⁰

When supervisors want to provide feedback to employees, they should follow the guidelines listed below.³¹

- Make it timely. Provide feedback as close to when employees' performance was observed as possible.
- Make it specific. Detailed examples are more likely to be accepted by employees.
- Make it a regular occurrence. Supervisors do not have to hold a formal meeting to provide performance feedback, but they should provide some form of feedback at least a few times a month.

- Ensure the focus is on aspects of job performance that are in the employee's control to change.
- Recognize and respect individual employee preferences in receiving feedback (e.g., face-to-face or written; group setting or privately).
- Ensure the feedback is about tasks that are critical to performance, not just the tasks for which feedback is easy to provide.
- Remember to provide feedback about an employee's strengths. Research has revealed that feedback about strengths may improve performance more than feedback about weaknesses.³²

Providing Constructive Feedback

Providing constructive feedback may be one of supervisors' least favorite tasks to perform. It is usually an uncomfortable experience for everyone involved. Unfortunately, delaying or avoiding constructive feedback will cause more harm than good. **Consequences of delaying or avoiding constructive feedback** include:³³

- Letting the problem last for so long that it is only addressed in anger rather than with constructive feedback;
- Providing too much constructive feedback at one time, causing the employee to escalate his or her defensive behaviors;
- Increasing the employee's perception of unfairness when the supervisor rates him or her lower than he or she expects to be rated; and
- Lowering the work unit/department/division/agency's productivity.

An example of the last two points can be found in *Liner v. Montgomery County Engineer*, a 2014 appeal to the State Personnel Board of Review.³⁴ In this case, a culture of rating everyone's work as acceptable in order for everyone to receive an annual pay increase led to an engineer working for 10 years without ever having one of his designs continue to the construction stage. Once new leadership determined that constructive feedback should not be avoided any longer, the employee felt strongly enough about the disconnect between his previous feedback and the new, more accurate feedback to appeal his termination. Even though the termination was upheld, the old culture of avoiding constructive feedback meant that the termination took over two years to finalize, including the performance improvement process, termination, and subsequent appeals.

The most important best practices around **providing constructive feedback** are outlined below.³⁵

- Deliver it in private. Never provide constructive feedback publicly.
- Make it specific. Include details about what behaviors are causing the poor performance and a specific plan for improving performance. Employees are likely to perceive constructive feedback as inaccurate, so providing specific details can help employees accept the feedback.
- Deliver it soon after you observed the unsatisfactory performance. If there are many things to improve, however, spread the constructive feedback out over a few conversations.

Many supervisors have heard of or learned about a constructive feedback technique called the feedback sandwich in which a supervisor surrounds constructive feedback with positive feedback in order to spare the employee's feelings. While this method is well-intentioned, supervisors should absolutely **AVOID the feedback sandwich** when providing constructive feedback to an employee. Not only do employees typically figure out this pattern quickly, it demotivates

good employees by diminishing their good work and weakens the message for poorly performing employees, who will only focus on the positive feedback you provided.³⁶

Feedback Examples

Throughout many sections of this Performance Management Guide, the solution to improve the process has often been to include specific, detailed information. The following examples will demonstrate how to change vague feedback into the specific, detailed feedback that will help employees improve their performance.

Performance meets expectations:

Vague

“Your report was well received at the meeting today. Good job.” *While it is a good idea to praise satisfactory work, no details are included as to why the report was well received.*

Specific

“Your report was well received at the meeting today. The graphs you included illustrated the data clearly, and when I read the rest of the report, I noticed that the executive summary captured all of the important details. Good job.” *The supervisor specifically described what he or she liked about the report, making it likely that the employee will continue to use appropriate graphs and pay close attention to what information should be included in the executive summary in the future.*

Performance exceeds expectations:

Vague

“This project had a great outcome. You really exceeded my expectations this time.” *The employee will not know exactly what actions he or she took that the supervisor thought affected the outcome.*

Specific

“The process you implemented decreased the timeline to complete this project by so much that we saved 15% of our budget. You really exceeded my expectations for this project.” *The supervisor included the actions the employee took and what he or she thought was great about the outcome.*

Performance does not meet expectations:

Vague

“This report isn’t good enough to present to our leaders. You need to fix this by Monday.” *While the employee will know the work doesn’t meet expectations, he or she will not know whether it is the format of the report, the content, or both that should be improved.*

Specific

“I saw statistical errors in section two and the graphs in section three were confusing. We cannot present this to our leaders. You need to correct the report by Monday.” *The employee will know what to fix and what details to pay attention to in the future.*

Remember that, contrary to popular practice, performance management and development is not just a quarterly or annual evaluation event, but rather an ongoing communication practice that occurs throughout the year to ensure employees are engaged and productive.

Evaluate Phase



If supervisors have followed the previous sections of this guide, compiling the summary evaluation reflecting on the employees' performance should prove to be relatively easy. The most important step supervisors should take for performance evaluations is to make sure that supervisors and employees have the same expectations of how the evaluation scales will be used. The State has two evaluation scales:

1 – Individual Goal and Competency Ratings:

- Exceeds Expectations
- Meets Expectations
- Does Not Meet

2 – Summary and Overall Performance Ratings:

- Outstanding
- Exceeds Expectations
- Meets Expectations
- Needs Improvement
- Does Not Meet

In both scales, “Meets Expectations” is the middle rating, and that is the rating that most employees will achieve. Some employees equate a “Meets Expectations” to a “C”, “70%”, or “Average”, since that is how the typical grading scales worked in school. Supervisors need to explain to employees that **performance evaluations are different from grades received in school**. A rating of “Meets Expectations” means that the employee performed his or her job *successfully*. His or her job performance was not average, mediocre, or inadequate; rather, it met expectations, and the expectations should have been set so that employees performing at that level support the agency in meeting its mission.

Remember that before a supervisor begins rating, and as early as when he or she told employees what their expectations were, the supervisor should have defined what behaviors and/or results will earn a “Meets Expectations” rating. If more than one supervisor at an agency supervises the same classification, **all of those supervisors should agree on what “Meets Expectations” consists of for common goals and competencies**. It may be helpful for the supervisors to meet during the rating process so that they can discuss how they are rating performance and adjust their ratings if they are considerably different from the rest of the group. This process is called **rating calibration**. Anything discussed about specific employees' performance during these rating calibration sessions must remain confidential among the supervisors involved.³⁷

Remember that, during the Plan phase, behaviors and results were defined that would earn a rating of “Exceeds Expectations” or “Outstanding.” It is now time to revisit these definitions during the Evaluate phase. Supervisors may find that the definitions were too relaxed or too difficult to achieve; if this is the case, redefine expectations and clearly communicate the changes along with the reasoning to the impacted employees. The more clearly a supervisor defines his or her expectations, the easier the Evaluate phase will be.

When evaluating employees on their goals and competencies in the ePerformance system, there is space for supervisors to provide comments after each rating. **Providing comments with ratings will be beneficial to the employees and the performance management and development process**. Since performance evaluation ratings are a form of feedback about employees' performance, the same guidelines of providing feedback apply. Using detailed comments will demonstrate to employees that the supervisor assigned the ratings as objectively as possible. Supervisors keeping behavioral observations in their performance log provides sufficient material for rating comments.

While performance evaluations will always be somewhat subjective in nature, supervisors can make their observations and comments as objective as possible. The following examples demonstrate **how to alter comments about attitudes to contain more objective and actionable information.**

Performance meets expectations:

Subjective attitude

“You are a good team player.” While it is important to identify that the employee works well with others, there is no information to indicate why the employee works well with others.

Objective behavior and results

“I saw you consistently demonstrate good teamwork skills when you listened patiently to your coworkers and helped them find solutions during the rollout of the new software.” The supervisor specifically described what behaviors he or she observed, making it likely that the employee will continue to conduct him or herself that way in the future.

Performance exceeds expectations:

Subjective attitude

“You bring great professionalism to the office.” The employee will not know exactly what actions he or she took that the supervisor thought were great.

Objective behavior and results

“I frequently hear you praise the efforts of your coworkers and you always take time to find an answer or the correct person to ask when your coworkers ask you a question.” The supervisor included the actions the employee took that make him or her great to work with.

Performance does not meet expectations:

Subjective attitude

“You display a bad attitude during meetings.” While the employee will know his or her behavior doesn’t meet expectations, he or she will not know what actions could be improved.

Objective behavior and results

“You are not supporting your coworkers when you roll your eyes when you hear an idea with which you don’t agree during meetings. I have also heard you cut the other person off to say what you think is wrong with the idea in multiple instances.” The employee will know what behaviors to fix in the future.

The ePerformance system contains a feature called *Writing Tools* to help supervisors write comments or provide developmental suggestions for specific competencies. These suggestions will not be replacements for the job observations supervisors recorded in their log, but they may help summarize those observations. More information about how to use the Writing Tools can be found in the *Manager (Rater) Evaluates Employee* job aid in the [ePerformance Toolkit](#).

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On 6/11/15 I went to the 30th floor in the Riffe center to see Kim Kutschbach and Jai Chabria. I arrived around 11:48 am and waited until about 15min prior to our 12:30 meeting and went up to the 30th floor. I arrived and checked in with the reception area and waited.

Around 12:44 PM a young lady came out and asked for me by name and I followed her to Jai Chabria office. Once in Jai office I saw Jai, Kim and Mona Reed and shook hands with them all and had a seat.

Jay stated to me that it's never good when you get called to my office. Jai went on to ask me why I hired Jim Miracle. I tried to speak to him about Jim Miracle and Jai didn't want to hear a thing. I stated to Jai how the old maintenance supervisor was around 700,000 dollars in the red and Jai stated that I addressed that issue but made a bad decision on selecting a guy who helped let an inmate escape and that it was a bad decision to hire him. I tried to explain to Jai that he was selected by the Deputy of support services John Cook and was interviewed by Director Gorrell but Jai didn't want to hear anything from me. I informed Jai that my hands were tied at the Ohio Veterans homes and that as long as I couldn't talk to the Sandusky Register that Andy was just going to print bad stories about the Ohio veterans homes. Jay informed me that if I had a problem with communication folks here that I could call him or Kim.

NOTE: I had already talked to Kim prior when she called me about another issue. Kim sits in the meeting and didn't say a word. Kim knew I had already talked to her about the Sandusky Register and she knew I wanted to have a good working relationship with the paper.

Jay informed me that he wanted me to remove Jim Miracle and to fix the problem and that I better not make it look like it came from the 30th floor. I told Jay that I am the Superintendent responsible for hiring staff and I don't not believe it is fair to Jim or the Veterans at the home to remove him. Jai said it's all my fault and I better fix it. They were done talking with me and I stood up and shook hands with all three and left the office.

I went down to the 7th floor of the riffe center and informed Director Gorrell of what just took place. Director Gorrell told me that he goes through the same thing. I told him about Kim just sitting there and not saying a word about me talking to her prior about the Newspaper issue. Director told me that we would get with Jackie (DVS HR) to see what needed done. Director Gorrell talked about removing Jim Miracle and I informed Director Gorrell that I didn't agree with it and that I had to live with doing that and it was wrong.

I told the Director that I was going to contact DRC and asked about DRC maybe hiring Jim Back. Director said that he had a meeting with Jackie and that we would talk after that meeting.

Prior to going into an outreach meeting the director, Jackie and I went into the Director's office and talked to Jackie about Jim Miracle. Director asked her if he had fall Back rights. Jackie said no and that she would type up a letter to remove Jim and that we didn't have to give a reason. The Director texted me that he would take the letter up to Sandusky on Tuesdsy. The Director told me that the story on Jim (being removed from DRC) will come out tomorrow morning and that it's not a good time to remove him right after the news comes out.

I am typing this letter up out of respect for a man who did nothing wrong while working at the Ohio's veterans Home in Sandusky, Ohio. Jim Miracle took care of the Veterans and staff at the veteran's home. Jim was making a difference on getting projects completed ahead of completion times and was motivating staff and the residents. The hiring of Jim Miracle ended up costing me my job. If I had to do it all over again I would still have given my approval on hiring Jim. What happened to Jim was wrong and the Governor's office was wrong. Removing Jim was all because Governor Kasich was going to run for President of the United States and Governor's office didn't want any story coming out in the paper about the Ohio veterans home hiring a military veteran who had been removed from DRC.

Michel R. Oppy
Former Superintendent of the Ohio Veterans Homes for the state of Ohio

*I Michel R Oppy Drafted this Letter on October 29, 2015
and sent by email to James Miracle.*



*SWORN TO AND SUBSCRIBED BEFORE ME ON
THIS 5th Day of April, 2016.*



SHARON CASON-ADAMS
Attorney At Law
Notary Public, State of Ohio
My Commission Has No Expiration
Section 147.03 R.C.