

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

Youngstown State University Association of Classified Employees, OEA/NEA,

Employee Organization,

and

Youngstown State University,

Employer.

Case Number 2012-REP-06-0070

2014 OCT -9 PM 1: 20

STATE EMPLOYMENT
RELATIONS BOARD

**DIRECTIVE GRANTING PETITION FOR CLARIFICATION OF BARGAINING UNIT
(OPINION ATTACHED)**

Before Chair Zimpher, Vice Chair Schmidt, and Board Member Brundige:
October 9, 2014.

On June 22, 2012, Youngstown State University ("YSU") filed a Petition for Clarification of Bargaining Unit seeking to exclude the Manager of Employee Benefits in YSU's Human Resources Office and the Administrative Assistant 4 in YSU's Student Accounts and University Receivables Department from the bargaining unit represented by the Youngstown State University Association of Classified Employees, OEA/NEA ("ACE" or "Union"). YSU asserts that the incumbent employees perform job duties that qualify them as "supervisors" and "management level employees" as defined by Ohio Revised Code ("O.R.C.") §§ 4117.01(F) and (L). On July 12, 2012, the Union filed objections to the Petition for Clarification of Bargaining Unit.

On November 1, 2012, the State Employment Relations Board ("SERB" or "Board") directed this case and three other YSU representation cases to an evidentiary hearing to determine an appropriate bargaining unit and for all other relevant issues. A three-day hearing was held on January 23, 25, and 30, 2013, wherein testimonial and documentary evidence was presented. Subsequently, the parties filed post-hearing briefs. On June 13, 2014, the assigned Hearing Officer issued a Recommended Determination in this case, recommending that the Board find that the employee holding the position of Manager of Employee Benefits in the Human Resources Office performs job duties that qualify her as a "supervisor" as defined by O.R.C. § 4117.01(F) and a "management level employee" as defined by O.R.C. § 4117.01(L) and the employee holding the position of Administrative Assistant 4 position in the Student Accounts and University Receivables Department performs job duties that qualify her as a "supervisor"

as defined by O.R.C. § 4117.01(F) and, therefore, under the provisions of O.R.C. §§ 4117.01(C)(7) and (10), both of these positions should be excluded from the bargaining unit. Subsequently, the parties filed exceptions and responses to exceptions.

After reviewing the Hearing Officer's Recommended Determination, the parties' exceptions, responses to exceptions, exhibits, and the entirety of the record, the Board expressly adopts the reasoning in the Analysis and Discussion in the Recommended Determination, incorporated by reference, finding that the employee holding the position of Manager of Employee Benefits position in the Human Resources Office performs job duties that qualify her as a "supervisor" as defined by O.R.C. § 4117.01(F) and a "management level employee" as defined by O.R.C. § 4117.01(L), and the employee holding the position of Administrative Assistant 4 position in the Student Accounts and University Receivables Department performs job duties that qualify her as a "supervisor" as defined by O.R.C. § 4117.01(F). Further, the Board adopts the Findings of Fact, Conclusions of Law, and Recommendations set forth in the Recommended Determination, incorporated by reference, finding that the Manager of Employee Benefits is exempt from the definition of "public employee," pursuant to O.R.C. §§ 4117.01(C)(7) and (C)(10), and the Administrative Assistant 4 is exempt from the definition of "public employee" pursuant to O.R.C. § 4117.01(C)(10); grants YSU's Petition for Clarification of Bargaining Unit; and excludes these positions from the ACE bargaining unit.

It is so ordered.

ZIMPHER, Chair, SCHMIDT, Vice Chair, and BRUNDIGE, Member, concur.



W. CRAIG ZIMPHER, CHAIR

TIME AND METHOD TO PERFECT AN APPEAL

Any party that desires to appeal the order of the State Employment Relations Board shall file a Notice of Appeal setting forth the final order appealed from and the grounds of appeal with the Franklin County Court of Common Pleas within fifteen (15) days after the mailing of the State Employment Relations Board's order. The Notice of Appeal shall also be filed with the State Employment Relations Board, at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, pursuant to Ohio Revised Code Section 119.12.

PROOF OF SERVICE

I certify that a copy of this document was served upon each party by certified mail, return receipt requested, and upon each party's representative by ordinary mail, this 09th day of October, 2014.



ERIN E. CONN, ADMINISTRATIVE ASSISTANT

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

YOUNGSTOWN STATE UNIVERSITY	:	CASE NO. 2012-REP-06-0070
ASSOCIATION OF CLASSIFIED	:	
EMPLOYEES, OEA/NEA,	:	
	:	
Employee Organization,	:	ELAINE K. STEVENSON
	:	Hearing Officer
and	:	
	:	
YOUNGSTOWN STATE UNIVERSITY,	:	
	:	
Employer.	:	<u>RECOMMENDED DETERMINATION</u>
	:	

I. INTRODUCTION

On June 22, 2012, Youngstown State University ("YSU") filed a Petition for Clarification of Bargaining Unit, seeking to exclude the Manager of Employee Benefits in YSU's Human Resources Office and the Administrative Assistant 4 in YSU's Student Accounts and University Receivables Department from the bargaining unit represented by the Association of Classified Employees ("ACE" or "Union"). YSU asserts that the incumbent employees perform job duties that qualify them as "supervisors" and "management level employees" pursuant to Ohio Revised Code ("O.R.C.") §§ 4117.01(F) and (L), respectively. On July 12, 2012, the Union filed objections to the Petition for Clarification of Bargaining Unit. On November 1, 2012, the State Employment Relations Board ("SERB" or "Board") directed the matter to hearing.

This case has a lengthy procedural history. In 2010, YSU filed several clarification and amendment petitions regarding certain positions in the ACE bargaining unit. The parties engaged in settlement discussions and mediation sessions from early 2010, until October 2012. The parties were able to resolve a number of issues; however, four petitions remain unresolved. On November 1, 2012, the directed the above-captioned case in addition to Case No. 2010-REP-07-0052 and two consolidated cases, Case Nos. 2010-REP-04-0060 and 2010-REP-04-0061, to an evidentiary hearing to determine an appropriate bargaining unit and for all other relevant issues.

On January 23, 25, and 30, 2013, a three-day hearing was held during which testimonial and documentary evidence was presented concerning all four pending YSU representation cases.¹ With regard to Case No. 2010-REP-06-0070, YSU called the following witnesses: (1) Martin Bramlett, Director of Labor Relations; (2) Kevin

¹ A Recommended Determination was issued in Case Nos.: 2010-REP-04-0060 and 2010-REP-04-0061 on April 23, 2014, and a separate Recommended Determination was issued in Case No. 2010-REP-03-0052 on May 22, 2014.

Reynolds, Chief Human Resources Officer; (3) Kathleen Ferguson, Fringe Benefits Specialist; (4) Deborah LaRocco, Manager of Employee Benefits; (7) Gloria Kobus, Director of the Student Accounts and University Receivables Department; and (8) Cynthia Bella, Administrative Assistant in charge of student accounts and student collections. The Union called the following witnesses: (1) APAS President Michael Glonek; (2) ACE President Jeff Trimacco; and (3) Labor Relations Consultant Helen Matusick. Subsequently, the parties filed their post-hearing briefs and reply briefs in this case.

II. FINDINGS OF FACT

1. YSU is a “public employer” as defined by O.R.C. § 4117.01(B).
2. ACE is an “employee organization” as defined by O.R.C. § 4117.01(D) and is affiliated with OEA/NEA. ACE is the Board-certified representative for YSU’s classified civil service employees identified in Article 2 of the parties’ collective bargaining agreement.
3. YSU filed the instant Petition for Amendment of Certification seeking to exclude the positions of Manager of Employee Benefits in the Human Resources Office and Administrative Assistant 4 in the Student Accounts and University Receivables Department from the bargaining unit represented by ACE. The University asserts that the job duties performed by the incumbent employees qualify them as “supervisors” and “management level employees” pursuant to O.R.C. §§ 4117.01(F) and (L).
4. YSU is a state-assisted, urban institution of higher education. YSU has an enrollment of more than 13,000 in a wide variety of programs ranging from two-year associate degrees to the Doctor of Education degree. YSU’s colleges and schools include the College of Business Administration, College of Education, College of Science, Technology, Engineering and Mathematics, College of Health and Human Services, and the School of Graduate Studies Research.
5. YSU’s administrative and operational support is comprised of a number of divisions, departments, offices, and sections. The chain of command within YSU’s organizational structure includes levels of supervision and management, including supervisors, managers, directors, chiefs, department heads, vice presidents, a provost, and a president.

Manager of Employee Benefits in YSU’s Human Resources Office

6. Kevin Reynolds is YSU’s Chief Human Resources Officer. Mr. Reynolds reports to YSU’s Vice President of Finance and Administration. YSU’s Human Resources Office consists of five areas or sections that are overseen by the

following managers and a director who all report directly to Mr. Reynolds: (1) Director of Labor Relations and Employee Development; (2) Manager of Employment; (3) Manager of Human Resources Information Systems; (4) Manager of Processing and Employee Records, and (5) Manager of Employee Benefits. Mr. Reynolds is not directly involved in the daily activities of the five sections within Human Resources. He relies upon the manager of each section to oversee the daily activities of their respective sections with minimal supervision.

7. YSU currently offers its eligible employees medical, dental, prescription drug, group life, accidental death, and disability benefits plans, flexible spending accounts, and tax deferred annuities. YSU employs a Manager of Employee Benefits to manage and administer the University's benefit plans and to interact with vendors, insurance carriers, and consultants to ensure effective administration of employee benefits. YSU also contracts with an Employee Benefits Consultant to provide the University with advice on employee benefit matters.
8. YSU designated the Manager of Employee Benefits position as an exempt professional/administrative position in 1995. In July 1996, YSU hired Kathy Ferguson as Manager of Employee Benefits. Ms. Ferguson signed an employment contract that indicated the position was a professional/administrative position that was not included in a bargaining unit. Ms. Ferguson held this position for approximately eleven years.
9. During the eleven years that Ms. Ferguson served as Manager of Employee Benefits, the job responsibilities of the position evolved. Initially, Ms. Ferguson performed all of the duties in her position description without assistance from other employees. Ms. Ferguson's duties gradually increased as certain employees retired and additional benefits were added, including a vision plan and long-term disability. In 2001, Ms. Ferguson was assigned the responsibility to oversee two staff members. Ms. Ferguson trained these employees, assigned work to them, and prioritized their work assignments. In assigning work, Ms. Ferguson evaluated the nature of the work and the employee's skills. Ms. Ferguson trained a new employee to complete the deposit and service reports and then delegated this job duty to this employee. Ms. Ferguson also approved employees' time sheets and leave requests and completed their performance evaluations.
10. Ms. Ferguson served on YSU's health care advisory committee during contract negotiations in 2002 and 2005. Ms. Ferguson gathered information for YSU's management team and was present during the negotiation sessions that involved employee benefits. As part of the negotiations, Ms. Ferguson reviewed

the benefit plans and unions' proposals for additional employee benefits, and she worked with vendors to ensure the new benefits could be administered.

11. Ms. Ferguson worked with YSU's legal staff to develop and finalize privacy rules to comply with the privacy regulations set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Ms. Ferguson served on a search (hiring) committee to hire her replacement.
12. In 2007, YSU hired Kathy Bouquet to replace Ms. Ferguson as Manager of Employee Benefits. Ms. Bouquet held the position for approximately five years. Ms. Bouquet signed an employment contract that indicated the position was a professional/administrative position that was not included in a bargaining unit. The job duties described in the position descriptions issued to Ms. Ferguson and Ms. Bouquet are essentially the same. Ms. Bouquet continued to perform the job duties performed by Ms. Ferguson, and she assumed additional job responsibilities. Ms. Bouquet assisted with the development of procedures and practices to comply with the requirements of the Affordable Care Act (ACA), including plan design changes and health plan coverage changes.
13. In 2008, YSU's former Chief Human Resources Officer and the Union agreed to place certain non-bargaining unit positions from the Human Resources Office in the ACE bargaining unit. The Chief Human Resources Officer reclassified the Manager of Employee Benefits position as an Administrative Assistant 4 and placed this position in the ACE bargaining unit. The essential job duties of the position did not change. In 2009, YSU informed the Union that it considered the placement of the Manager of Employee Benefits position in the ACE bargaining unit to be an error.
14. When the Manager of Employee Benefits position became vacant in 2012, YSU posted the position as a professional/administrative position, to be excluded from the ACE bargaining unit. In June 2012, YSU hired Debra LaRocco as Manager of Employee Benefits. Ms. LaRocco also signed an employment contract that indicated the position was a professional/administrative position. On June 22, 2012, YSU filed the instant Petition for Clarification of Bargaining Unit regarding this position and the Administrative Assistant 4 position in the Student Accounts and University Receivables Department.
15. As Manager of Employee Benefits, Ms. LaRocco oversees YSU's employee benefits programs, works with providers of YSU's deferred compensation plans, oversees tuition remission, manages voluntary benefits plans, and works with the State Teachers Retirement System and the Ohio Public Employee Retirement System regarding pension matters. Ms. LaRocco administers monthly insurance reports and reconciles the insurance coverage charge backs with YSU's General Accounting Office. Ms. LaRocco ensures that her section

submits YSU's monthly employee counts for the Ohio Department of Job and Family Services and runs computer reports to provide quarterly OBES Wages for employees eligible for Unemployment Compensation.

16. Upon hiring Ms. LaRocco as Manager of Employee Benefits, YSU's current Chief Human Resources Officer, Kevin Reynolds, directed Ms. LaRocco to review YSU's processes and practices regarding employee benefits and advise him where operations could be made more effective and efficient.
17. Ms. LaRocco recommended that the University hire a new provider to administer health benefits to eligible recipients under "COBRA". Ms. LaRocco also worked with an insurance broker who had solicited proposals from a number of insurance companies to make a recommendation regarding the selection of a new health insurance carrier and a new carrier for life insurance. Ms. LaRocco recommended the carrier with the lowest premium. Ms. LaRocco developed a plan to offer a voluntary disability plan to supplement the existing plan. She worked with a carrier to provide supplemental life insurance that included an online open enrollment period. Ms. LaRocco recommended that the University follow an IRS regulation that extends the time for employees to incur expenses and submit claims under the University's Flexible Spending plan. Ms. LaRocco improved the University's procedure for employees to elect to have health insurance premiums deducted on a pre-tax basis. YSU's Vice President of Finance and Administration reviews all matters pertaining to employee benefits and he must sign off on these actions before they can be implemented.
18. As Manger of Employee Benefits, Ms. LaRocco oversees four employees: (1) Benefits Management Representative Evelyn Kellan, who handles the majority of YSU's health and welfare programs; (2) Carrie Clyde, who handles the wellness program; (3) Linda Moore, who handles faculty awards, student evaluations, and leave under the Family Medical Leave Act (FMLA); and (4) Sue Jones, who handles retirement and unemployment compensation. Ms. LaRocco reviews and approves employees' leave requests and time sheets through YSU' electronic system. Ms. Rocco establishes work schedules to ensure that staffing levels are sufficient.
19. Ms. LaRocco completes performance evaluations for her direct reports. Ms. LaRocco uses these performance evaluations to provide feedback and guidance for the employees she oversees. Ms. LaRocco has personally trained her direct reports regarding specific benefits tasks, including FMLA processes, tuition remission, and data entry in the "Banner System" accounting system. Ms. LaRocco provides guidance to employees and answers questions regarding coverage eligibility and benefits calculations.

20. As Manager of Employee Benefits, Ms. LaRocco assigns work to her four direct reports. In assigning work, Ms. LaRocco considers each employee's strengths and weaknesses and current workload. Ms. LaRocco has assigned and reassigned certain job duties based upon employees' skills and work demands. Ms. LaRocco transferred the processing of tax-deferred annuities to the employee who formerly performed duties related to service credit. Ms. LaRocco has delegated to her staff certain duties, including processing health and welfare benefits and tuition remission, data entry in YSU's accounting system, billing information regarding life and disability insurance, employee assistance plans, and flexible spending accounts.
21. Ms. LaRocco acts as the point person to ensure that the University remains compliant with ACA. Mr. Reynolds directed Ms. LaRocco to conduct research and work with her counterparts in other universities and YSU's legal counsel to revise existing procedures and develop new procedures to comply with ACA regulations as they become finalized. Ms. LaRocco has developed procedures to ensure compliance with ACA. Ms. LaRocco worked with the formula YSU's Provost's Office developed for translating credit hours into work hours and she designed a report to track hours paid to employees that includes indentifying hours for supplemental payments and calculations for work load hours.
22. As Manager of Employee Benefits, Ms. LaRocco ensures that YSU remains compliant with HIPAA's privacy rules and that staff members are properly trained regarding HIPAA requirements. Ms. LaRocco has individually trained her direct reports and she continues to provide training as regulations are updated.
23. Mr. Reynolds assigned Ms. LaRocco the task of working with a subcommittee of YSU's health care advisory committee to issue a request for proposals for a new YSU Benefits Consultant. Ms. LaRocco wrote the summary report of the six vendors' responses.
24. As Manager of Employee Benefits, Ms. LaRocco has served on search (hiring) committees and she has made recommendations regarding hiring. Hiring committees follow a structured process established by YSU's Human Resources Office, in accordance with any relevant provisions of the parties' collective bargaining agreement. YSU's Human Resources Office reviews hiring recommendation and makes final determination regarding personnel actions, including hiring, promotions, position upgrades, and job reclassifications.

Administrative Assistant 4 in YSU's Student Accounts and University Receivables Department

25. Prior to the hearing in this matter, YSU's customer service and operations section involving student accounts, student billing and non-student billing, and collections underwent reorganization and became a department or area (Student Accounts and University Receivables Department) under the Office of the Vice President of Finance and Administration. Gloria Kobus is employed by YSU as the Director of the Student Accounts and University Receivables Department. This department assesses charges and collects payments. The department consists of four areas or sections that are overseen by the following managers and administrative assistants: (1) Manager of Statistical Data; (2) Manager of Customer Service and Operations; (3) Administrative Assistant 4 in charge of Student Accounts Receivable and Student Collections; and (4) Administrative Assistant 3 who handles IT matters for the department.
26. Director Kobus is not involved in the daily activities of the four sections within her department. Ms. Kobus relies upon the manager of each section to oversee the daily activities of their respective sections with minimal supervision.
27. The Student Accounts Receivable and Student Collections section is responsible for processing student fees and charges, refunding Title IV student aid funds, collections, and appeals of decisions involving financial aid funds, fees, and charges. The Administrative Assistant 4 position that oversees this section was originally classified as an Account Clerk Supervisor in 2000. In 2006, YSU conducted a job audit and reclassified the position as Administrative Assistant 3 based upon an increase in job duties that occurred due to staff changes and a reorganization of the department. Shortly thereafter, this position was placed in the ACE bargaining unit in exchange for removing someone else from the bargaining unit. The job duties of this position increased. In 2008, YSU conducted another job audit and reclassified the position as Administrative Assistant 4. YSU and the Union could not agree on a job title for this position. Cynthia Bella has held this position since 2000. From 2000 to the present, Ms. Bella has had employees who report directly to her.
28. Title IV involves student financial aid from the federal government, including direct loans, unsubsidized and subsidized direct loans, Pell grants, Perkins funds, and "TEACH" grant money. Approximately 85 to 90 percent of YSU's students at YSU have some type of Title IV money. Ms. Bella ensures that YSU is in compliance with Title IV's comprehensive regulations regarding all aspects of funds use, including detailed calculations for refunds. Ms. Bella provides information to her supervisor and other managers and directors regarding Title IV funds and other student accounts receivable matters. Ms. Bella sends memos to other department managers and directors regarding dates for certain billing matters and collections. Ms. Bella acts on behalf of Director Kobus during her absence.

29. Ms. Bella utilizes various existing YSU reports and has developed additional reports regarding Title IV funds. Ms. Bella developed a report to identify students who have withdrawn from school and who have received Title IV funds. When YSU established the "Banner System," which is a centralized accounting system, Ms. Bella assisted in the transition to this system. She developed report/reports to identify students who have never attended classes, students who did not pass their classes, and students who attended classes but have ceased attending. Ms. Bella has developed procedures to address refund issues that show the method of review and actions taken depending upon the nature of the funds involved. Ms. Bella makes requests to YSU's Financial Aid Office to refund monies or return loans. Ms. Bella initiated a procedure regarding thirty-day demand letters for students who never attend classes whereby her office issues a letter to the student's lender requesting the lender to issue a thirty-day demand letter to the student. A student who fails to pay within thirty days is in default and cannot receive any Title IV funds. In analyzing Title IV regulations, Ms. Bella determined Title IV required that the University only send back to the government the loan amount minus any refund that was issued to the student. This resulted in significant savings for the University.
30. YSU has established a fees and charges board to address student refund requests. YSU allows student refunds in limited instances where a student has "involuntarily" withdrawn from school due to a medical issue or a similar issue that prevents the student from attending class. Ms. Bella reviews these requests and makes a determination based on the University's established guidelines regarding an involuntary withdrawal from school. All student refund requests that involve refund of Title IV monies are governed by Title IV regulations. Ms. Bella reviews and makes determinations regarding these requests based upon established Title IV regulations. Ms. Bella's decisions are not reviewed.
31. Ms. Bella presently has four Customer Service Assistant 2s and one Customer Service Assistant 3 who report directly to her. Ms. Bella reviews and approves these employees' leave requests and time sheets through YSU's electronic system. Ms. Bella establishes work schedules to ensure that staffing levels are sufficient and that work is completed.
32. Ms. Bella completes performance evaluations for her direct reports. Ms. Bella uses these performance evaluations to provide feedback and guidance for the employees she oversees. During performance evaluations, Ms. Bella meets with her direct reports to discuss their strengths and weaknesses. Ms. Bella provides ongoing training to her employees regarding new systems, including the "Banner System" accounting system. Ms. Bella also provides work guidance and training regarding changes in Title IV regulations. Ms. Bella

continues to train her direct reports on section matters that are impacted by changes in state, federal, and university regulations.

33. Ms. Bella establishes annual and semester schedules for collections and student accounts receivable functions, including billing, late fees, charges, fee assessment, and dates when different money refunds will occur. Ms. Bella sends a scheduling calendar to her direct reports, section managers, and the director. Ms. Bella regularly assigns work to the five employees who report directly to her. Ms. Bella meets with her staff informally each work day to provide guidance and to apprise staff of any work issues. Ms. Bella also provides work guidance via email. Ms. Bella assigns work based on employees' abilities. Ms. Bella assigned tasks involving workshops and financial aid to an employee based on the employee's ability to follow up on matters. Ms. Bella assigned the task of completing Title IV calculation worksheets to the most detail oriented employee in her section. Ms. Bella assigned other tasks involving Title IV reports to another employee based upon her skills. Ms. Bella regularly reviews employees' work for accuracy. Ms. Bella regularly prioritizes and reprioritizes work based on numerous deadlines for certain activities, such as Title IV reports, financial suspends, and collections for students with unpaid bills from the prior term. Ms. Bella reprioritizes work to address unexpected issues that may arise and to ensure that tasks are completed timely and accurately. Ms. Bella ensures that all section procedures are followed, including procedures for the lock box, parking services, the issuance of refund checks, and transcript holds.
34. Ms. Bella has served on search (hiring) committees as both a chair and a member, and she has made recommendations regarding hiring. Hiring committees follow a structured process established by YSU's Human Resources Office, in accordance with any relevant provisions of the parties' collective bargaining agreement. YSU's Human Resources Office reviews hiring recommendation and makes final determinations regarding personnel actions, including hiring.

III. ANALYSIS AND DISCUSSION

The issue in this case is whether the Manager of Employee Benefits in the Human Resources Office and the Administrative Assistant 4 in the Student Accounts and University Receivables Department are "supervisors" and/or "management level employees" as defined by O.R.C. § 4117.01(F) and O.R.C. § 4117.01(L) and thereby excluded from the definition of a "public employee" pursuant to O.R.C. § 4117.01(C).

O.R.C. § 4117.01 provides, in relevant part:

(C) "Public employee" means any person holding a position by appointment or employment in the service of a public employer...except:

* * *

(7) Management level employees;

* * *

(10) Supervisors[.]

* * *

Exclusions set forth in O.R.C. Chapter 4117 must be narrowly construed to facilitate employees' rights to organize and bargain collectively. *In re University of Cincinnati*, SERB 86-023 (6-5-86). The burden of establishing an exclusion from a bargaining unit under O.R.C. § 4117.01(C) rests upon the party seeking it. *In re SERB v. Fulton County Engineer*, SERB 96-008 (6-24-96).

A. The Manager of Employee Benefits in the Human Resources Office and the Administrative Assistant 4 in the Student Accounts and University Receivables Department are "Supervisors" Pursuant to O.R.C. § 4117.01(F).

O.R.C. § 4117.01(F) provides, as follows:

(F) 'Supervisor' means any individual who has authority, in the interest of the public employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other public employees; to responsibly direct them; to adjust their grievances; or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature but requires the use of independent judgment.

* * *

SERB precedent has established that an employee will be excluded from the bargaining unit as a supervisor if the record contains substantial evidence that the employee has the authority to perform one or more of the functions listed in O.R.C. § 4117.01(F), actually exercises that authority, and uses independent judgment in doing so. *In re Mahoning County Dept of Human Services*, SERB 92-006 (6-5-92). Supervisory issues are a question of fact in each case; therefore, supervisory status must be determined on a case-by-case basis. *In re City of Hamilton*, SERB 2010-012 (8-12-2010); *In re Lucas County Recorder's Office*, SERB 85-061 (11-27-85); *In re Franklin Local School Dist Bd of Ed*, SERB 84-008 (11-8-84).

To be a statutory supervisor, an individual must use independent judgment in the interest of the employer when carrying out the responsibilities set forth in O.R.C. § 4117.01(F). Independent judgment is the "opportunity to make a clear choice between two or more significant alternative courses of actions without plenary review or approval." *Ohio Attorney General, supra*. "An individual must not be using judgment of a routine or clerical nature." *Id.* Therefore, in analyzing whether an individual exercises supervisory authority under O.R.C. § 4117.01(F), the type of work must be considered.

In construing the statutory definition of a supervisor, recognition must be given to the basic reality in the public sector that final decisions regarding areas such as hiring, discipline, and salaries are reserved to persons far removed from the employee's immediate supervision. *In re Ohio Attorney General*, SERB 2000-002 (3-3-00) ("*Ohio Attorney General*"); *In re Muskingum Watershed Conservancy Dist.*, SERB 2001-002 (10-10-2007) ("*In re Muskingum*"). The ability to effectively recommend these changes in employment status, as described in O.R.C. § 4117.01(F), is accorded great weight in the public sector." *In re Muskingum, supra*, at 3-22. An "effective recommendation" has been defined as one "which, under normal policy and circumstances, is made at the chief executive level or below and is adopted by higher authority without independent review or de novo consideration as a matter of course." *In re University of Cincinnati*, SERB 89-028 (10-12-89) (citing *Davenport v. Public Employment Relations Board*, 264 N.W.2d 307, 319, 98 L.R.R.M. 2582, 2590-2591 (I.S. S.Ct., 1978)).

The Manager of Employee Benefits and the Administrative Assistant 4 use their independent judgment to assign work to the employees they oversee and to responsibly direct these employees. With regard to work assignments, SERB precedent has established that there are a variety of factors a supervisor may consider in making an assignment, factors such as the volume of work, complexity of the work assignments, priority of work assignments, the particular work experience of an employee, and personal qualities of an employee. See *Ohio Attorney General, supra*. See also *In re Medina County Health Dept.*, SERB 95-006 (4-21-95); *In re City of Dayton*, SERB 98-004 (2-27-98), *aff'd sub nom. Dayton Firefighters Local #136, IAFF v. SERB*, 1998 SERB 4-69 (CP, Franklin 12-1-0-98). The evidence in this case established the Manager of Employee Benefits and the Administrative Assistant 4 use their independent judgment to assign work to the employees they oversee. Both the Chief Human Resources Officer and the Director of Student Accounts and University Receivables testified that they are not involved in the daily activities of the office or department under their purview and therefore they rely on their section managers to oversee daily activities of their respective sections with minimal supervision. Both the Manager of Employee Benefits and the Administrative Assistant 4 assign work on a regular basis. They consider their employees' respective abilities, the nature of the work assignments, workloads, and priorities within their work sections. The Manager of Employee Benefits testified that she may need to reprioritize assignments in situations involving changes in work demands. The Administrative Assistant 4 testified that she assigns work based on deadlines for certain activities, such as Title IV reports, financial suspends, and

collections on students that have not paid bills from the prior term. She further testified that she may need to change work assignments or reprioritize assignments due to deadlines and unforeseen work demands.

With regard to the responsible direction of public employees, SERB precedent has established that in determining whether an employee responsibly directs public employees, the Board may consider factors such as whether the employee in question assigns work, counsels employees regarding their job performance, or prepares performance evaluations. See *Ohio Attorney General, supra*; *In re State of Ohio, Rehabilitation and Correction Dept*, SERB 99-023 (9-17-99); *In re City of Dayton*, SERB 98-004 (2-27-98). As noted above, the evidence established that the Manager of Employee Benefits and the Administrative Assistant 4 use their independent judgment in assigning work to their direct reports. These work assignments involve various tasks and situations that may require reprioritization of assignments and transferring certain duties to employees based on their specific abilities and work demands. The Manager of Employee Benefits and the Administrative Assistant 4 also responsibly direct their employees through the job performance evaluation process. Both employees testified that they use performance evaluations as a tool to discuss an employee's overall job performance and the employee's particular strengths and weaknesses in order to guide employees going forward. The Manager of Employee Benefits and the Administrative Assistant 4 also direct their employees through individual training and daily communications regarding changes and updates to applicable university, state, and federal regulations that affect the work of their respective sections.

In its post hearing brief, the Union argues that the Manager of Employee Benefits and the Administrative Assistant 4 act as "leadmen" rather than supervisors because they direct a small group of coworkers while also performing the same work as the other employees, and because their "leadman" job duties are routine and/or clerical in nature. In support of its argument, the Union cites *In re University of Cincinnati*, SERB 89-028 (10-12-89), which states, in relevant part:

The term "leadman" suggests some responsibility beyond that of the rank and file employee; it is customarily applied to an individual who directs the work of a small group of employees, while at the same time performing the same work as those employees. Leadman status is often conferred upon the most experienced employee on the job. *The critical element is whether their direction of the work is routine in nature and does not call for frequent exercise of independent judgment or managerial discretion.* [Emphasis added.]

In re University of Cincinnati at 3-193

The Manager of Employee Benefits and the Administrative Assistant 4 are not "leadmen". The critical factor in determining "leadman" status is whether the employee in question directs work that is routine in nature and does not call for frequent exercise of independent judgment. In this case, the evidence discussed, *supra*, established that the employees in question use their independent judgment to assign work on a daily basis to the employees who report directly to them. As previously noted, these work assignments are not made based on a routine schedule of familiar tasks; rather, these assignments involve varied tasks and require the employees in question to review detailed financial calculations, manage numerous deadlines, provide information to employees regarding current procedures and regulations, and address unforeseen work situations. Therefore, while there may be some job duties performed by the employees in question that fall into the category of routine or clerical, such as signing leave request forms and approving time, the majority of their job responsibilities are not routine.

Additionally, it is noted that the evidence indicates that the Manager of Employee Benefits and the Administrative Assistant 4 spend the majority of their work time overseeing the work of their direct reports, reviewing employees' work, answering questions regarding work issues, providing information to management, interacting with vendors and other outside entities, and maintaining procedures that comply with applicable university, state, and federal regulations. These duties are beyond the scope of the duties assigned to the other employees in the Employee Benefits section and the Student Accounts Receivable section.

In addition to the supervisory functions discussed above, YSU argues that the employees in question effectively recommend hiring. As previously stated, an "effective recommendation" is one that under normal policy and circumstances is made at the chief executive level or below and is adopted by higher authority without independent review or de novo consideration as a matter of course." See *In re University of Cincinnati*, SERB 89-028, *supra*. The evidence established that the Manager of Employee Benefits and the Administrative Assistant 4 have served on interview committees as raters for management. Interview committees are required to follow a structured process established by YSU's Human Resources Office in accordance with the relevant provisions of the parties' collective bargaining agreement. Ultimately, YSU's Human Resources Office reviews all personnel actions, including hiring, promotions, reclassification of positions, and upgrade of positions. While the employees in question make individual recommendations as raters, there is no evidence that they are individually responsible for hiring recommendations or that their recommendations are not reviewed by higher authority within YSU.

B. The Manager of Employee Benefits in the Human Resources Office is a "Management Level Employee" Pursuant to O.R.C. § 4117.01(L). The Administrative Assistant 4 in the Student Accounts and University Receivables Department is not a Management Level Employee" Pursuant to O.R.C. § 4117.01(L).

O.R.C. § 4117.01(L) provides as follows:

(L) 'Management level employee' means an individual who formulates policy on behalf of the public employer, who responsibly directs the implementation of policy, or who may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of collective negotiations, administer collectively negotiated agreements, or have a major role in personnel administration.

* * *

No evidence was presented to establish that the Manager of Employee Benefits or the Administrative Assistant 4 administer collectively negotiated agreements. Therefore, the definitional options under consideration in this case are whether the employees in question: (1) formulate policy on behalf of the public employer; (2) responsibly direct the implementation of policy; (3) have a major role in personnel administration; or (4) may reasonably be required to assist in the preparation for the conduct of collective negotiations.

With regard to formulating policy and responsibly directing the implementation of policy, SERB precedent has established that O.R.C. § 4117.01(L) is directed at high level management and its assistants. *In re City of Gahanna*, SERB 85-052 (9-30-85). "O.R.C. § 4117.01 anticipates that limited, top-level, management authority can be shared with high-ranking department personnel, exempting them from the definition of "public employee" pursuant to O.R.C. § 4117.01(C). *In re City of Twinsburg* SERB 2010-015 (8-12-2010).

In re University of Cincinnati, SERB 98-003 (2-26-98), SERB determined that to meet the management employee component of policy formulation and/or responsible direction of management policy implementation, an employee must have direct access or direct influence on anyone in a policy making role and formulate, determine, and effectuate management policy on an employer-wide basis. *Id.* In analyzing policy formulation and the direction of implementation of policy, SERB considered a number of factors: (1) the nature of the policy and the policy formulating process; (2) whether the policy significantly affects the mission of the employer; (3) whether the policy, by its nature, identifies its author as a member of the management team; and (4) whether the policy in question has an employer-wide application.

In Twinsburg Firefighters, Local 3630, the Franklin County Court of Common Pleas followed the analysis in *In re Cincinnati* to determine whether four fire captains were management level employees pursuant to O.R.C. § 4117.01(L). In its analysis, the court considered the mission of the employer and found that the policies formulated and implemented by the fire captains were *directly related* to the mission of the employer, as

set forth in its mission statement. The court also found it significant that the fire captains had significant personnel administration duties. In finding the captains to be management level employees the court stated that: "The vast majority of the tasks they have been assigned involve the formulation, implementation, or enforcement of policy. Probably most revealing is their role in the implementation of the collective bargaining agreement, their involvement on the side of management in the grievance procedure, and the intention of the chief to have the captains participate at the bargaining table on the management team." *Twinsburg Firefighters, Local 3630, supra.*²

As the above-cited cases demonstrate, the Board must consider the employer's mission and its organizational structure in order to ascertain the scope and nature of the policy formulation or policy implementation attributed to a particular employee. Although the parties did not submit a copy of YSU's mission statement, a review of the position postings and other documents admitted into evidence indicate that YSU's mission is to provide high level educational opportunities to its students through programs established in its various colleges. With respect to its organizational structure, YSU has extensive administrative and operational support that is comprised of a number of divisions, departments, offices, and sections, including but not limited to, the Human Resources and Student Accounts and University Receivables departments. Therefore, the types of policies that would affect YSU's mission would be those that have a direct impact on the educational programs provided, such as a policy to add another two-year degree program, or a policy that changes requirements of an existing program, or a policy that merges colleges.

In this case, the two employees in question do not formulate policy or responsibly direct the implementation of policy. Instead, the evidence establishes that these employees provide important administrative support in the areas of employee benefits and student accounts receivable. As discussed above, the primary purpose of the Manager of Employee Benefits is to oversee YSU's employee benefits programs and supervise four employees who perform job duties related to employee benefits functions. YSU's Chief Human Resources Officer testified that he relies on the Manager of Employee Benefits to oversee the daily activities of her section and to review YSU's processes and procedures regarding employee benefits and advise him where operations could be made more effective and efficient. The Manager of Employee Benefits updates procedures and processes to ensure that YSU remains compliant with federal laws related to health care, including HIPPA and ACA, and she gathers information to make recommendations regarding insurance carriers and their products. With respect to the Administrative Assistant 4, the evidence established that the primary purpose of this position is to oversee student accounts receivable and student account collections, which includes refunding of Title IV student aid funds, student fees and charges, collections, and appeals of decisions involving funds, fees, and charges. The

² While the court applied the analysis set forth in *In re University of Cincinnati*, SERB 98-003 (2-26-98) and found that the fire captains formulated, implemented, and enforced policy, ultimately, it distinguished that case on its facts.

Administrative Assistant 4 supervises five employees who perform functions related to student accounts receivable and collections. The Administrative Assistant 4 establishes schedules for completing tasks related to collections and student accounts, including billing, late fees, charges, fee assessment, and when different money refunds will occur. The Administrative Assistant 4 establishes procedures and processes for handling Title IV funds and she resolves student refund appeals following applicable University guidelines and Title IV regulations. Therefore, while it is recognized that the aforementioned job duties are very important to YSU's administrative operations, the scope and nature of these job duties are limited to specific functions that do not encompass the formulation or implementation of management level policy that would exclude the employees in question from the definition of a public employee under O.R.C. § 4117.01(L). See *In re University of Cincinnati*, SERB 98-00, *supra*.

The two remaining definitional options in O.R.C. § 4117.01(L) to consider are whether the employees in question have a "major" role in personnel administration and whether they may reasonably be required on behalf of the public employer to assist in the preparation for the conduct of negotiations. SERB precedent and case law has established that a "major" role in personnel administration is one that is extensively involved in crucial aspects of the employer's personnel functions. In *In re State of Ohio, Rehabilitation and Correction Dept*, SERB 99-023 (9-17-99), SERB determined that the captains and lieutenants had a major role in personnel administration. The captains and lieutenants performed investigations of complaints made by members of the public against correction officers and they recommended the next step to be taken in the disciplinary process. They served as management representatives in the pre-disciplinary and grievance processes. They served as hearing officers at pre-disciplinary hearings. In *Twinsburg Firefighters, Local 3630 v. SERB*, 2001 SERB 4-19 (CP, Franklin, 10-23-01), the court found it significant that the fire captains had significant personnel administration duties. "...Probably most revealing is their role in the implementation of the collective bargaining agreement, their involvement on the side of management in the grievance procedure, and the intention of the chief to have the captains participate at the bargaining table on the management team." *Id.*

In this case, the evidence establishes that the Manager of Employee Benefits has a major role in personnel administration as the manager of one of five sections within YSU's Human Resources Office. As noted above, this position manages and administers medical, dental, prescription drug, group life, accidental death, and disability benefits plans, flexible spending accounts and tax deferred annuities. This position works with providers of YSU's deferred compensation plans, oversees tuition remission, and manages voluntary benefits plans. The Manager of Employee Benefits makes recommendations regarding insurance carriers' products. YSU's Chief Human Resources Officer relies on the Manager of Employee Benefits to review YSU's procedures and practices regarding employee benefits and to provide recommendations where operations could be made more effective and efficient. The Chief Human Resources Officer also relies on the Manager of Employee Benefits to ensure that

YSU's procedures and processes regarding employee benefits matters are compliant with all pertinent university, state, and federal regulations. These duties demonstrate that the Manager of Employee Benefits is extensively involved in a key aspect of personnel administration, employee benefits, and thus has a "major" role in personnel administration under O.R.C. § 4117.01(L).

With respect to assisting in the preparation for the conduct of collective negotiations, the evidence establishes that this job function has been assigned to the Manager of Employee Benefits position since 2002. Kathy Ferguson, who served as the Manager of Employee Benefits from 1996 until 2007, testified that she served on YSU's health care advisory committee during contract negotiations in 2002 and 2005. She gathered information regarding employee benefits for YSU's management team and she was present during the negotiation sessions that involved employee benefits. As part of the management team, Ms. Ferguson reviewed YSU's benefit plans and the unions' proposals for additional employee benefits and she worked with vendors to ensure the proposed benefits could be administered. The current Manager of Employee Benefits was hired in June 2012, and she has not yet been involved in collective negotiations. However, a review of the position descriptions submitted for this position and the testimony presented at hearing regarding the job duties assigned to this position indicate that the employee holding this position is the individual that YSU may reasonably require to assist the University in the preparation for the conduct of future collective negotiations involving employee benefits. The Manager of Employee Benefits would be the primary position to provide employee benefits information during negotiations, review unions' employee benefits proposals, and meet with vendors to determine whether new employee benefits proposals can be administered.

Lastly, it is noted that YSU relies to a large extent on *In re Nimishillen Township Board of Trustees, Stark County*, SERB 2010-004 (2-22-10) to support its argument that the employees in question are management level employees, and supervisors, within the meaning of O.R.C. § 4117.01. In *In re Nimishillen*, SERB stated as follows:

In determining whether a particular individual is a "supervisor" pursuant to O.R.C. 4117.01(F) and/or a "management level employee" pursuant to O.R.C. 4117.01(L) *in situations that involve small governmental bodies* *** the Board will take into consideration the following factors: (1) the size of the public employer; (2) the chain of command within distinct departments of the Employer's organizational structure; and (3) the scope and nature of the job duties assigned to the position alleged to be a supervisory and/or management level position*** [Emphasis added.]

In re Nimishillen is distinguishable. A critical factor considered by the Board in *In re Nimishillen* was the size of the public employer: "At the outset, we note that the public employer in this case, the Nimishillen Township Board of Trustees, is a small, part-time legislative body. We also note that this case involves the Nimishillen Township Road Department, which is a small public employer." *Id.* In *In re Nimishillen*, the Township Board of Trustees relied solely upon the road superintendent to direct the activities of the road department. The road superintendent reported department activities directly to the Township's Board of Trustees. In *In re Nimishillen*, there were no other supervisors or management level employees above the superintendent in the organizational structure of the road department. The present case involves a relatively large employer with a complex organizational structure that contains several divisions, departments, offices, and sections and a chain of command that includes supervisors, managers, directors, chiefs, department heads, vice presidents, a provost, and a president. There are five sections with five managers who report to Chief Human Resources Officer in YSU's Human Resources Office. There are four sections with four managers that report to the Director of the Student Accounts and University Receivables Department. The Human Resources Office and the Student Accounts University Receivables Department are two offices/departments that fall under the Office of the Vice President of Finance and Administration. Given YSU's complex organizational structure and its size, *In re Nimishillen* is inapplicable. Moreover, it is important to note that the Board did not intend *In re Nimishillen* to be applied in such a manner as to negate the long-standing principle that exclusions set forth in O.R.C. Chapter 4117 must be narrowly construed to facilitate employees' rights to organize and bargain collectively. See *In re University of Cincinnati*, SERB 86-023, *supra*.

In summary, the Manager of Employee Benefits in the Human Resources Office and the Administrative Assistant 4 in the Student Accounts and University Receivables Department use independent judgment when assigning work to the employees they oversee and when responsibly directing these employees; therefore, the employees in question are "supervisors" within the meaning of O.R.C. § 4117.01(F). Additionally, the Manager of Employee Benefits has a major role in YSU's personnel administration and may reasonably be required to assist in the preparation for the conduct of collective negotiations; therefore, the employee who holds this position is a management level employee pursuant to O.R.C. § 4117.01(L).

IV. CONCLUSIONS OF LAW

1. Youngstown State University is a "public employer" as defined in O.R.C. § 4117.01(B).
2. The Association of Classified Employees, OEA/NEA is an "employee organization" as defined in O.R.C. § 4117.01(D).

3. The Manager of Employee Benefits in YSU's Human Resources Office and the Administrative Assistant 4 in YSU's Student Accounts and University Receivables Department are "supervisors" pursuant to O.R.C. § 4117.01(F).
4. The Manager of Employee Benefits in YSU's Human Resources Office also is a "management level employee" pursuant to O.R.C. § 4117.01(L).

V. RECOMMENDATIONS

1. The Board adopt the Findings of Fact and Conclusions of Law set forth above.
2. The Board issue an Order granting Youngstown State University's Petition for Clarification of Bargaining Unit, and clarify the bargaining unit to exclude the Manager of Employee Benefits position in the Human Resources Office and the Administrative Assistant 4 position in the Student Accounts and University Receivables Department, pursuant to O.R.C. §§ 4117.01(C)(7) and (10).

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*Youngstown State University Association of Classified Employees, OEA/NEA
and
Youngstown State University
SERB Case No. 2012-REP-06-0070*

CERTIFICATION

I, the undersigned General Counsel for the State Employment Relations Board, hereby certify that the attached document is a true and exact reproduction of the original Order of the State Employment Relations Board entered on its journal, on the 9th day of October, 2014.

DONALD M. COLLINS
General Counsel