

Director of ODJFS affirmed the determination that Fleet was a successor in interest to Stanley pursuant to 4141.24(F). On December 8, 2015, Fleet appealed the Director's Reconsideration Decision.

On February 25, 2016, the Commission held a hearing by telephone on Fleet's appeal. Both parties agreed that the Commission was to determine whether Fleet is a successor in interest to Stanley pursuant to 4141.24(F) and 4141.24(G). Neither Fleet nor ODJFS presented any witnesses. ODJFS presented Exhibits A through F which were admitted without objection. Counsel for both made closing arguments based on the exhibits. The Commission's decision set forth the following findings of fact:

1. Fleet Staff, Inc. is a national staffing company. Stanley Staffing, Inc. is a staffing agency which has at least one office in the Northern Ohio area.
2. On July 31, 2014, Fleet Staff, Inc. and Stanley Staffing, Inc. entered into a Purchase Agreement. Under the agreement, Fleet Staff, Inc. purchased Stanley Staffing, Inc.'s customer lists and brand name "Stanley Staffing". The specific assets being sold were all customers of Stanley Staffing, Inc., all Stanley Staffing, Inc. worksite employees and internal staff; Stanley Staffing, Inc.'s brand name and associated intellectual property; all client, employee, and marketing databases; all furniture and fixtures in acquired offices; all servers, desktops, laptops, printers and copiers in acquired locations, and all employment contracts which Fleet Staff, Inc. can affirm or deny. Excluded from the purchase were "all assets other than those described," including "cash and receivables."
3. The agreement provided that Fleet Staff, Inc. will initially hire all of the internal employees of Stanley Staffing, Inc. and evaluate them on their individual merits.
4. At the time of the purchase, Stanley Staffing, Inc. had 501 employees. Approximately thirty percent of these employees continued their employment with Fleet Staff, Inc. after the purchase. At the time of the purchase, David Stanley was the principal owner of Stanley Staffing, Inc. After the purchase, David Stanley became the Executive Vice President, and managed the Division that was created as part of the transfer. Mr. Stanley was to arrange for the assignment of the contracts of clients of Stanley Staffing, Inc. The agreement provided that Stanley

Staffing, Inc. would not compete with the Division or to solicit its employees or customers.

5. After the transfer, Fleet Staff, Inc.'s website listed Stanley Staffing, Inc. as one of its divisions.

6. Fleet Staff, Inc. has been assigned a contribution rate of 2.7% for the year 2014 and 6.0% for 2015. This rate is based on the finding that Fleet Staff, Inc. is a successor in interest to Stanley Staffing, Inc.

In affirming the Director's Reconsidered Decision, ODJFS stated the following reasoning:

1. The evidence presented establishes that all of the assets integral to the operation of the business of Stanley Staffing, Inc. were transferred to Fleet Staff, Inc. The transfer included all furniture, fixtures, equipment and all assets integral to the operation of the business.

2. The evidence further establishes that Fleet Staff, Inc. acquired a substantial portion of the work force of Stanley Staffing, Inc., including the principal and owner of the company. The facts indicate that the principal and owner of Stanley Staffing, Inc. became the Executive Vice President of the division created by the transfer. This supports a finding that there was common ownership, management, or control between these employers.

3. A review of the entire record in this matter supports a finding that Fleet Staff, Inc. is a successor in interest to Stanley Staffing, Inc. It has been established that the trade or business of Stanley Staffing, Inc. was transferred to Fleet Staff, Inc.

II. FACTUAL BACKGROUND

The parties agree that the factual background of the case is straightforward and not in dispute. In essence, the relevant facts are as follows:

Fleet is a national staffing company which provides temporary employees to clients in various states including Ohio. Stanley was an Ohio staffing company whose principal and owner was David Stanley. On July 31, 2014, Fleet and Stanley entered

into a Purchase Agreement (“Agreement”). (Ex. A). Attachment A to the Agreement set forth that the following assets were being sold:

1. All customers of Stanley;
2. All Stanley worksite employees and internal staff;
3. Stanley Staffing brand name and associated intellectual property;
4. All client, employee, and marketing databases;
5. All furniture & fixtures in acquired offices;
6. All servers, desktops, laptops, printers and copiers in acquired locations;
7. All employment contracts which Fleet can affirm or deny

The Agreement also specified that Stanley retained all assets other than those listed above on their respective balance sheet, including cash and receivables. (Id.).

The Agreement set forth that Stanley assigned all of its prospective rights to Fleet and Fleet assumed all of Stanley’s prospective obligations under Stanley’s customer contracts. (Id at ¶9). The Agreement also required Fleet to initially hire all of Stanley’s internal employees and evaluate them on their individual merits. (Id). 29.9% of Stanley’s employees moved to Fleet. (Ex. F). The Agreement stated that Stanley agreed to not compete with Fleet’s Stanley Division (“Division”) or to solicit its employees or customers. (Ex. A. at ¶5). Indeed, Fleet’s website reveals that Stanley Staffing became one of Fleet’s divisions. (Ex. E).

The Agreement set forth that Fleet agreed that Stanley’s owner, David Stanley, would be the executive vice president and manage the Division for at least the initial 5 year period after the closing and that David Stanley warranted that he could and would successfully arrange for the assignment of the contracts of Stanley’s clients. (Id at ¶3 and 12).

III. STANDARD AND REVIEW

The standard of review for appeals from the Unemployment Compensation Review Commission is found in R.C. 4141.26(D)(2), which states that a common pleas court may affirm Review Commission's decision where, upon consideration of the entire record, it is "supported by reliable, probative, and substantial evidence and is in accordance with law." *Resource Title Agency, Inc. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 14AP-39, 2014-Ohio-3427, ¶8. That quality of proof was articulated by the Ohio Supreme Court in *Our Place v. Liquor Control Comm.* (1992), 63 Ohio St. 3d 570 as follows:

(1) "Reliable" evidence is dependable; that is, it can be confidently trusted. In order to be reliable, there must be a reasonable probability that the evidence is true. (2) "Probative" evidence is evidence that tends to prove the issue in question; it must be relevant in determining the issue. (3) "Substantial" evidence is evidence with some weight; it must have importance and value. *Id.* at 571.

This appeal also deals with the interpretation of a code and/or statute. Please note the following relevant case law:

Moreover, in *Lorain City Bd. of Edn. v. State Emp. Relations Bd.* (1988), 40 Ohio St.3d 257, 533 N.E.2d 264, we held that courts must accord due deference to the State Employment Relations Board's interpretation of R.C. Chapter 4117, since the General Assembly designated it to be the proper forum to resolve public employment labor disputes. Similarly, we hold in the cause sub judice that courts must accord due deference to the State Board of Psychology in its interpretation of R.C. Chapter 4732 and the relevant provisions of the Ohio Administrative Code, given that the General Assembly has deemed it to be the proper forum to determine licensure matters concerning psychologists. *Leon v. Ohio Bd. of Psychology*, 63 Ohio St.3d 683, 687, 590 N.E.2d 1223 (Ohio 1992)

Said line of authority was followed in *Salem v. Koncelik*, 2005-Ohio-5537, 164 Ohio App.3d 597, 843 N.E.2d 799 (Ohio App. 10 Dist. 2005). Please note the following language from *Salem*:

We are cognizant that courts must give due deference to an administrative agency's interpretation of its own administrative rules. See *Hamilton Cty. Bd. of Mental Retardation & Developmental Disabilities v. Professionals Guild of Ohio* (1989), 46 Ohio St.3d 147, 545 N.E.2d 1260. The General Assembly created these administrative bodies to facilitate certain areas of the law by placing the administration of those areas before boards or commissions composed of individuals who possess special expertise. See *Pons v. Ohio State Med. Bd.* (1993), 66 Ohio St.3d 619, 614 N.E.2d 748, paragraph one of the syllabus. Thus, the Ohio Supreme Court has held that unless the construction is **unreasonable or repugnant** to that statute or rule, this court should follow the construction given to it by the agency. *Leon v. Ohio Bd. of Psychology* (1992), 63 Ohio St.3d 683, 590 N.E.2d 1223. (emphasis added)

“Administrative agencies have discretion to promulgate and interpret their own rules, and a reviewing court should give due deference to statutory interpretations by an administrative agency that has substantial experience and been delegated enforcement responsibility.” *Id.* See *Weiss v. Pub. Util. Comm.*, 90 Ohio St.3d 15, 17-18 (2000), citing *Collinsworth v. W. Elec. Co.*, 63 Ohio St.3d 268, 272 (1992).

IV. FINDINGS AND CONCLUSIONS

The allocation of unemployment compensation tax liabilities to the purchaser of a business is governed by R.C. 4141.24. At issue in this case are R.C. 4141.24(F) and 4141.24(G).

A. R.C. 4141.24(F)

Generally, R.C. 4141.24(F) provides two methods by which an employer may qualify as a successor in interest: (1) by operation of law or (2) through voluntary application. This appeal concerns whether Fleet acquired successor-in-interest status by operation of law. R.C. §4141.24(F) reads in part:

(F) If an employer transfers all of its trade or business to another employer or person, the acquiring employer or person shall be the successor in interest to the transferring employer and shall assume the resources and liabilities of such transferring employer's account, and continue the

payment of all contributions, or payments in lieu of contributions, due under this chapter.

If an employer or person acquires substantially all, or a clearly segregable and identifiable portion of an employer's trade or business, then upon the director's approval of a properly completed application for successorship, the employer or person acquiring the trade or business, or portion thereof, shall be the successor in interest. The director by rule may prescribe procedures for effecting transfers of experience as provided for in this section.

“Pursuant to [the] first method, successor-in-interest status arises automatically upon the transfer of the entire business of the predecessor.” *Resource Title*, 2014-Ohio-3427 at ¶10, quoting *All Star Personnel, Inc. v. Unemp. Comp. Rev. Comm.*, 10th Dist. No. 05AP-522, 2006-Ohio-1302, ¶ 16, (citing *Makkas v. Unemp. Comp. Bd. of Rev.*, 18 Ohio St.3d 349, 350 (1985)).

Under the Ohio Administrative Code, a transferee is a successor in interest by operation of law where: “(1) [t]here is a transfer of all of the transferor's trade or business located in the state of Ohio; and (2) [a]t the time of the transfer the transferor is liable under Chapter 4141 of the Revised Code.” Ohio Adm.Code 4141-17-04(A)(1) and (2). The Ohio Administrative Code also states that for the purposes of R.C. 4141.24, an employer's “‘trade or business’ includes all real, personal and intangible property *integral* to the operation of the trade or business.” (Emphasis added.) Ohio Adm.Code 4141-17-01(A).

Appellant Fleet contends that is not a successor in interest by operation of law because Stanley did not transfer all of its integral operational assets to Fleet. Specifically, Fleet argues that because only 29.9% of Stanley's employees moved over to Fleet and less than one-half of Stanley's clients were retained by Fleet, “the record

shows that the two most integral assets, labor and clients, were not acquired in total.” Appellant’s Br. pp. 5-7.

The record demonstrates that the Commission based its decision under 4141.24(F) on reliable, probative, and substantial evidence in affirming the Director’s Reconsideration Decision that Stanley transferred all of its trade or business that was integral to the operation of its business to Fleet. The transferred assets included the Stanley Staffing brand name and associated intellectual property, all furniture and fixtures, and all servers, desktops, laptops, printers and copiers.

With regards to Fleet’s specific argument, the Agreement also states that the transferred assets included: all customers of Stanley; all Stanley worksite employees and internal staff; all client, employee and marketing databases; and all employment contracts which Fleet could affirm or deny. Although Fleet only ultimately retained 29.9% of Stanley’s employees and less than one-half of their clients, the Agreement unequivocally provides that Fleet acquired, and Stanley relinquished, 100% rights to all employees and clients and their information. This is further evidenced by Stanley’s agreement not to compete with Fleet’s Stanley Division or to solicit its employees or customers.

B. R.C. 4141.24(G)

Appellant Fleet contends that evidence does not exist in the record that establishes that Fleet was a successor in interest pursuant to R.C. 4141.24(G). R.C. 4141.24(G)(1) provides in relevant part:

If an employer transfers its trade or business, or a portion thereof, to another employer and, **at the time of the transfer**, both employers are under substantially common ownership, management or control, then the unemployment experience attributable to the transferred trade or

business, or portion thereof, shall be transferred to the employer to whom the business is so transferred. The director shall recalculate the rates of both employers and those rates shall be effective immediately upon the date of the transfer of the trade or business. (emphasis added).

Specifically, Appellant Fleet argues that “(t)he owner and principal of Stanley Staffing (Dave Stanley) only became an Executive Vice President of Fleet as a result of the asset purchase. Mr. Stanley was not an owner, or manager nor did his exercise any control within Fleet **at the time of purchase**. Fleet concedes that had Mr. Stanley been employed by Fleet in a substantially common management position prior to and at the time of the execution of the purchase agreement then a transfer would be supported under R.C. 4141.24(G)” (emphasis added). Appellant’s Br. pp. 9-10.

As pointed out in Appellee Stanley’s brief, Fleet’s argument directly conflicts with controlling case law on this issue. In *Ohio Dep’t of Job & Family Services v. Delphi Auto. Sys., LLC*, 10th Dist. No. 14AP-971, 2017-Ohio-809, the Court explicitly rejected the common pleas courts’ conclusion that “at the time of transfer” is limited to the exact moment of transfer, neither pre-transfer nor post-transfer. *Id.* Rather, the Court reasoned that transfers of business assets between corporations can take more than a mere instant and referenced a prior decision where they upheld imposition of a prior rate to a successor under R.C. 4141.24(G)(1) on the grounds of common management where executives transferred from an old company to a new company even though they were never simultaneously employed by both companies during the transaction. *Id.* at ¶18, citing *Senco Brands, Inc. v. Ohio Dept. of Job & Family Servs.*, 10th Dist. No. 15AP-796, 2016-Ohio-4769.

The “appropriate understanding of the phrase ‘at the time of transfer’ is the ‘period’ of the transfer (by which acts necessary to complete the transfer), not just an

arbitrarily determined singular date that is perhaps set forth as a legal effective date in company or asset transfer documents.” *Id* at ¶18. “(T)ransfer’, according to its definition, is a process, not simply a blip in time.” *Id* at ¶20.

As indicated at length above, a portion of the business of Stanley was transferred to Fleet. Prior to the July 31, 2014 execution of the Agreement, David Stanley was the principal and owner of Stanley. Pursuant to the terms of the Agreement, David Stanley, upon transfer of Stanley’s trade or business, became executive vice president of Fleet’s Stanley Division which was created by the transfer. From the record, the effective date of the transfer was August 11, 2014. *Tr.* at 10. As such, the Commission’s Decision finding Fleet to be a successor in interest to Stanley pursuant to 4141.24(E) is based on reliable, probative, and substantial evidence.

After a review of the entire record and based on the above evidence and law, the Court finds that the State of Ohio Unemployment Compensation Review Commission’s March 30, 2016 Decision that Fleet Staff, Inc. is the successor in interest to Stanley Staffing, Inc. and that Fleet Staff, Inc. was properly assigned contribution rates of 2.7% for 2014 and 6.0% for 2015 was supported by reliable, probative and substantial evidence and is in accordance with law.

The Decision of the State of Ohio Unemployment Compensation Review Commission is **AFFIRMED**. Judgment in favor of Appellee with costs to be paid by Appellant. Pursuant to Civil Rule 58, the Clerk of Court shall serve upon all parties notice of this judgment and its date of entry.

THIS IS A FINAL APPEALABLE ORDER

JUDGE JULIE LYNCH

Electronic copies to all counsel of record

Franklin County Court of Common Pleas

Date: 09-11-2017
Case Title: FLEET STAFF INC -VS- OHIO STATE DEPARTMENT JOB &
FAMILY SERVI
Case Number: 16CV004168
Type: DECISION/ENTRY

It Is So Ordered.


The image shows a handwritten signature in black ink that reads "Julie M. Lynch". The signature is written in a cursive style. To the right of the signature is a circular blue ink stamp. The stamp contains the text "COMMON PLEAS COURT" at the top, "FRANKLIN COUNTY, OHIO" in the middle, and "ALL THINGS ARE" at the bottom. There is also a small emblem in the center of the stamp.

/s/ Judge Julie M. Lynch

Court Disposition

Case Number: 16CV004168

Case Style: FLEET STAFF INC -VS- OHIO STATE DEPARTMENT
JOB & FAMILY SERVI

Case Terminated: 18 - Other Terminations

Final Appealable Order: Yes