

OPINION NO. 81-003**Syllabus:**

1. The Director of the Department of Mental Retardation and Developmental Disabilities is the appropriate appointing authority to lay off employees of institutions under the Department's jurisdiction. He must decide in which classifications layoffs will occur and the number of employees to be laid off within each class.
2. The order of layoffs and displacement (bumping rights) prescribed in R.C. 124.32(C) and (D) must be followed by the Department of Mental Retardation and Developmental Disabilities within each district layoff jurisdiction established by the Department of Administrative Services, rather than within

each institution under the control of the Department of Mental Retardation and Developmental Disabilities. As a consequence, persons laid off from one institution of the Department of Mental Retardation and Developmental Disabilities have bumping rights at another institution of the Department located within the same district layoff jurisdiction.

To: Rudy Magnone, Ph.D., Director, Department of Mental Retardation and Developmental Disabilities, Columbus, Ohio
By: William J. Brown, Attorney General, February 24, 1981

I have before me your request concerning the proper procedures to be utilized in laying off employees. In your request you have explained that a number of positions at Columbus Developmental Center are being abolished, which will necessitate a layoff of employees. You pose the question whether employees being laid off at Columbus Developmental Center have the right to displace or bump employees at Orient Developmental Center. Your question necessarily involves a determination of whether both institutions are in the same layoff jurisdiction, and who the proper appointing authority is for purposes of implementing the layoff procedures.

R.C. 124.32 and 1 Ohio Admin. Code Chapter 123:1-41 deal with the layoff of employees in the classified service, and the abolishment of positions in the classified service. See R.C. 124.32(I). Division (C) of R.C. 124.32 sets out the order in which employees must be laid off when a position is abolished or made unnecessary, or when the person holding such position is laid off. See 1 Ohio Admin Code 123:1-41-01.

R.C. 124.32(D) discusses the concept of retention points, which reflect an employee's seniority and efficiency, and are assigned by the Director of Administrative Services. See 1 Ohio Admin. Code 123:1-41-06, 123:1-41-08. R.C. 124.32(D) provides that "[a] laid-off employee in the classified service has the right to displace the employee with the least retention points in a lower classification in the same classification series."¹ This right to displace another employee is commonly known as the right to bump that employee. Any employee so displaced or bumped has the right to displace or bump another employee with fewer retention points in a lower classification of the same classification series. This procedure continues "until the employee with the least retention points in the lowest classification of the classification series of the same appointing authority has been reached, and if necessary, laid off." It is clear, then, that an employee laid off from the Columbus Developmental Center may displace or bump an employee at Orient only if the two are appointed by the same appointing authority. As discussed in detail below, it is my conclusion that this is, in fact, the case.

Division (E) of R.C. 124.32 states that the order in which employees are to be laid off and displaced or bumped, as specified in divisions (C) and (D), respectively, must be applied within each of the layoff jurisdictions. Layoff jurisdictions are autonomous units established by the Director of the Department of Administrative Services. R.C. 124.32 expressly states that the order of layoff of divisions (C) (layoff order) and (D) (displacement or bumping) apply within each of the layoff jurisdictions and that "layoff procedures will apply only within the jurisdiction affected by the layoff." It is clear, then, that the bumping rights of laid off employees extend only within the layoff jurisdiction within which the person is employed. Hence, an employee laid off from the Columbus Developmental Center may displace or bump an employee at Orient only if the two centers are within the same layoff jurisdiction.

¹A classification series is any group of classification titles that have the identical name but different numerical designations, or identical titles except for designated levels of supervision. . . ." R.C. 124.32(D). See 1 Ohio Admin. Code 123:1-47-01(A)(11), (14). See also 1 Ohio Admin. Code Chapter 123:1-7.

There are three types of layoff jurisdictions—district, county and university jurisdictions. R.C. 124.32(E)(1) provides that within a district jurisdiction, "the order of layoff will be followed on a district-wide basis within each state agency, board, commission, and independent institution." 1 Ohio Admin. Code 123:1-41-02(A) states: "For each state agency, board, commission, department, institution and office, the layoff jurisdictions are the following counties." Fifteen districts are set out, each containing from four to ten counties. Thus, each district layoff jurisdiction consists of a specified geographical area for each state agency, board, commission, and independent institution. Division (A)(7) of rule 123:1-41-02 places Pickaway and Franklin Counties, where Orient Developmental Center and Columbus Developmental Center, respectively, are located, in the same geographical district. Therefore, if employees at those two institutions are under the control of a single "state agency, board, commission, [or] independent institution," they must be considered as one group for purposes of applying layoff procedures, including order of layoff and displacement or bumping rights. Conversely, if the two institutions are independent, layoffs at one will not directly affect layoffs at the other, and no bumping rights will exist from employees of one to employees of the other.

While R.C. 124.32(E)(1) does not state expressly that the "state agency, board, commission, [or] independent institution" is the appointing authority which is to implement layoffs under R.C. 124.32, that conclusion is implicit in the language of the statute. Compare R.C. 124.32(E)(1) ("each state agency, board, commission, and independent institution") with R.C. 124.32(E)(2) ("each county appointing authority"). The terms "agency" and "appointing authority" appear to be used interchangeably in R.C. 124.32. See R.C. 124.32(H) ("An employee who is laid off will retain reinstatement rights in the agency of layoff for a period of one year from the layoff date. During this one year period, that appointing authority shall not hire or promote. . . (emphasis added)).

R.C. 124.32(F) provides that the appointing authority will decide in which classification or classifications the layoffs will occur and the number of employees to be laid off within each class. The appointing authority is also responsible for laying off and displacing employees in the correct order. See 1 Ohio Admin. Code 123:1-41-01(A). Your request raises the issue whether the Director of the Department of Mental Retardation or the superintendent of each institution is the appointing authority for purposes of laying off employees and for making the decisions outlined in division (F). Another way of asking the question is whether it is the Department, as a "state agency," which is to carry out layoffs at the state institutions for the mentally retarded under R.C. 124.32(C), (D), and (E), or whether each institution of the Department is an "independent institution" within the meaning of R.C. 124.32(E)(1) for purposes of order of layoffs and displacement or bumping. If the former is the case, then any layoffs which occur at either Columbus Developmental Center or Orient Developmental Center will involve employees at both centers in the determination of order of layoffs and displacement or bumping rights, since both centers are located in the same geographical district of the agency. (As noted above, under R.C. 124.32(E), layoffs and bumping rights of employees of a single agency apply on the basis of the geographical districts established by the Director of the Department of Administrative Services.) If the latter is the case, then any layoffs which occur at either Columbus or Orient will affect only the institution at which they occur for purposes of determining order of layoff and displacement or bumping rights. (Under R.C. 124.32, layoffs and bumping rights of employees of an independent institution also apply on the basis of geographical districts established by the Director of the Department of Administrative Services. However, if an independent institution carries out layoffs under R.C. 124.32, the geographical area in which bumping rights apply will, as a practical matter, be restricted to the portion of the district in which the institution's employees work.) It is my opinion that the former is the case—that is, that the Department, as a state agency, is the appointing authority which is to carry out layoffs at the institutions about which you have inquired.

Pursuant to R.C. 5123.03, the Department of Mental Retardation must

"maintain, operate, manage, and govern," and "have control of" state institutions for the mentally retarded. The Department also exercises "executive, administrative, and fiscal supervision" over the institutions. R.C. 5123.03. The Director prescribes rules and bylaws for the institutions, and must require reports from the institution superintendent. R.C. 5123.04. Institutions are said to be under the jurisdiction of the Department. See, e.g., R.C. 5123.04(A); R.C. 5123.09. The superintendent of each institution is appointed by the Chief of the Division of Mental Retardation and Developmental Disabilities Programs, with the Director's approval. He serves at the pleasure of the Director or Chief. The superintendent has entire executive charge of the institution under the Director and Chief of the Division. R.C. 5123.09. Although the superintendent alone has the power to hire institution employees, the Chief determines the number of employees to be appointed, and the Director, Chief, and superintendent all have the power to remove employees. Thus, it is clear that the institutions in question are part of the Department.

While it might be argued that each institution for the mentally retarded is an "independent institution" for purposes of R.C. 124.32(E)(1) because R.C. 5123.09 grants to the managing officer, or superintendent, of each institution the exclusive authority to hire institution employees, I do not find such an argument persuasive. I believe "independent" refers to the nature of the institution as a whole, not to the institution in terms of a particular function. R.C. 124.32(E)(1) provides for the division of state agencies, boards, and commissions, as well as independent institutions, into district jurisdictions. Reading division (E)(1) as a whole, I see no alternative to interpreting "independent" as meaning independent of any agency, board or commission.² Agencies are geographically divided into district jurisdictions. However, there is no indication that the General Assembly meant to carve out subparts of agencies, such as divisions or institutions, to stand on their own for layoff purposes. In sum, it appears that the stronger legal analysis leads to the conclusion that institutions for the mentally retarded are not independent institutions for layoff purposes. The institutions here in question are part of a state agency, and the agency as a whole must be divided into geographical districts, pursuant to R.C. 124.32(E)(1) and rule 123:1-41-02(A).

R.C. 124.01 defines "appointing authority" as "the officer, commission, board, or body having the power of appointment to, or removal from, positions in any office, department, commission, board, or institution." (Emphasis added.) As noted above, the superintendent of an institution under the jurisdiction of the Department has the power to appoint and remove employees, pursuant to R.C. 5123.09. Thus, he is an "appointing authority," under R.C. 124.01(D). However, R.C. 5123.09 also grants the Director and Chief the power to remove employees who work at the institutions, so they, too, meet the definition of "appointing authority."

As I concluded earlier in this opinion, it is apparent from the organization of the Department that institutions for the care, treatment, and training of the mentally retarded are not autonomous, independent entities, but, rather, are subdivisions of the Department, under the joint control of the Director, Chief of the Division of Mental Retardation and Developmentally Disabled Programs, and a superintendent. See 1961 Op. Att'y Gen. No. 2647, p. 666; 1955 Op. Att'y Gen. No. 5065, p. 161. This organization of the Department, taken in conjunction with the fact that layoffs must be made in a specified order within each district jurisdiction, indicates that the Director, rather than each individual superintendent, is the

²The "independence" of an institution for the mentally retarded should be compared to that of the Veterans' Children's Home, an institution which fits neatly within the concept of "independent institution." The home is governed by a board of trustees. The trustees then employ a superintendent and other employees. The home is not under the control or jurisdiction of any state agency, committee, or board, and the trustees are solely responsible for governing the home. R.C. Chapter 5909. See also R.C. Chapter 5907 (concerning the Ohio Veterans' Home).

appropriate appointing authority for purposes of layoffs and transfers of employees within the various institutions. With the district-wide system of layoffs, it would appear that a central appointing authority, such as the Director or Chief, would be required in order to coordinate the layoff process. A superintendent does not have the authority or the overview of the Department needed to appropriately effectuate a district layoff. There is no statutory provision which indicates that the superintendent does have the power to order layoffs at the institution under his control.

This conclusion favoring the Director's authority to order layoffs is supported by two previous Attorney General opinions. In 1955 Op. Att'y Gen. No. 5065, p. 161, a former Attorney General comprehensively examined the nature of institutions under the control of the Department of Mental Hygiene and Correction for purposes of transferring classified employees from one institution to another. It was concluded that the Director of the Department of Mental Hygiene and Correction, or the Chief of the Division of Mental Hygiene, with the approval of the Director, rather than the superintendent of each institution, was the proper person to transfer employees between institutions. This conclusion was reached because the Director was the executive head of the entire Department with control over each institution within the Department. It was further concluded that, because the transfer was intradepartmental, a classified employee could be moved to another institution without his consent. As support for these conclusions, the opinion discussed the history of state benevolent institutions, tracing their development from existing as separate entities to being subdivisions of the Department of Mental Hygiene and Correction.

1955 Op. No. 5065 was subsequently approved by 1961 Op. Att'y Gen. No. 2647, p. 666. Quoting that part of 1955 Op. No. 5065 dealing with the history of institutions, the opinion impliedly refuted the assumption that the superintendent was the appointing authority of each institution for layoff purposes. It also mentioned the fact that the Director of the Department of Mental Hygiene and Correction, or Chief of the Division of Mental Hygiene, in addition to the superintendent, could remove employees of an institution. The opinion concluded that the several institutions within the Department were part of one system for layoff and transfer purposes under the civil service laws.

Although institutions for the mentally retarded are now under the control of the Department of Mental Retardation and Developmental Disabilities, rather than the Department of Mental Hygiene and Correction,³ the reasoning and conclusion of the above-mentioned opinions apply to the current organization of the Department and the institutions under its control. The relative functions and authority of the Director, Chief, and superintendent are comparable to those of the officers of the Department of Mental Hygiene and Correction. Thus the previous opinions still lend support for the proposition that the contemplated layoffs must be managed by the Director of Mental Retardation and Developmental Disabilities on a district-wide basis.

In further support of the conclusion favoring the authority of the Director, R.C. 5123.04(A) states in part: "In case of an apparent conflict between the powers conferred upon any managing officer [superintendent of an institution] and those conferred by such sections upon the Department, the presumption shall be conclusive in favor of the Department."

³In 1972 the Department of Mental Hygiene and Correction was abolished, and state institutions for the mentally retarded were placed under the control of the newly created Department of Mental Health and Mental Retardation. 1971-1972 Ohio Laws, Part II, 1724 (Am. Sub. H.B. 494, eff. July 12, 1972). In 1980 the Department of Mental Health and Mental Retardation was divided into two separate departments. The Department of Mental Retardation and Developmental Disabilities assumed jurisdiction over institutions for the mentally retarded. Am. Sub. H.B. 900, 113th Gen. A. (1980) (eff. July 1, 1980).

In summary, because Columbus Developmental Center and Orient are controlled by the same appointing authority, and because they are within the same geographical district established by rule 123:1-41-02(A), the two institutions are part of a single unit for layoff purposes. Consequently, a layoff at either institution will, to the extent required by the layoff order established under R.C. 124.32 and rule 123:1-41-01, involve employees at the other institution, and employees laid off from one institution will have bumping rights at the other institution.

Since you have not asked specifically about reinstatement and reemployment rights of persons laid off pursuant to R.C. 124.32(C), (D), and (E), I have not addressed them directly. Let me note, however, that even as displacement or bumping rights and order of layoff apply to each appointing authority and within each district jurisdiction, reinstatement rights also so apply. R.C. 124.32(H) provides for the recall rights of employees who have been laid off or reduced. Those employees are placed on layoff lists on which they are ranked in descending order, with the employees with the highest retention points being placed at the top of the list. Division (H) states that an employee retains reinstatement rights "in the agency of layoff" for one year. During that one year, "that appointing authority shall not hire nor promote anyone into the classification or classification series of layoff until all laid off employees are reinstated or decline the position when it is offered." See 1 Ohio Admin. Code 123:1-41-03, 123:1-41-05. See also 1 Ohio Admin. Code 123:1-47-01(A)(44).

In addition to reinstatement rights, a laid off employee has reemployment rights, whereby he may be hired by an agency other than the one from which he was laid off. These rights apply to all agencies hiring within the geographical district within which the layoff occurred. R.C. 124.32(H) provides expressly: "Even though a layoff itself applies only to one agency, reemployment rights extend across the entire layoff jurisdiction." 1 Ohio Admin. Code 123:1-41-04(A) elaborates as follows: "Each laid off or displaced employee, in addition to the reinstatement right set forth in 123:1-41-03 shall have the right to reemployment within the layoff jurisdiction but only in the same classification from which the lay off or displacement initially occurred." Procedures for establishing a jurisdictional layoff list for each classification are set forth in 1 Ohio Admin. Code 123:1-41-04. See also 1 Ohio Admin. Code 123:1-41-05, 123:1-47-01(A)(43).

In response to your question, then, it is my opinion, and you are so advised, that:

1. The Director of the Department of Mental Retardation and Developmental Disabilities is the appropriate appointing authority to lay off employees of institutions under the Department's jurisdiction. He must decide in which classifications layoffs will occur and the number of employees to be laid off within each class.
2. The order of layoffs and displacement (bumping rights) prescribed in R.C. 124.32(C) and (D) must be followed by the Department of Mental Retardation and Developmental Disabilities within each district layoff jurisdiction established by the Department of Administrative Services, rather than within each institution under the control of the Department of Mental Retardation and Developmental Disabilities. As a consequence, persons laid off from one institution of the Department of Mental Retardation and Developmental Disabilities have bumping rights at another institution of the Department located within the same district layoff jurisdiction.