

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Robert J. Peterson,

Appellant,

v.

Case No. 08-ABL-06-0428

Department of Rehabilitation and Correction,
Pickaway Correctional Institution,

Appellee.

ORDER

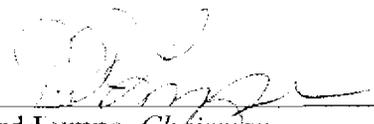
This matter came on for consideration on the Report and Recommendation of the Administrative Law Judge in the above-captioned appeal.

After a thorough examination of the record and a review of the Report and Recommendation of the Administrative Law Judge, along with any objections to that report which have been timely and properly filed, the Board hereby adopts the Recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that abolishment of the position encumbered by Appellant and his displacement into a Business Administrator I position be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.321 *et seq.*

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye



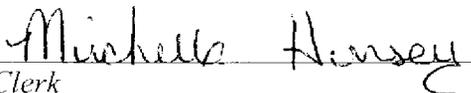


J. Richard Lumpe, *Chairman*

CERTIFICATION

The State of Ohio, State Personnel Board of Review, ss:

I, the undersigned clerk of the State Personnel Board of Review, hereby certify that this document and any attachment thereto constitute (the original/a true copy of the original) order or resolution of the State Personnel Board of Review as entered upon the Board's Journal, a copy of which has been forwarded to the parties this date, November 9, 2009.



Michelle Hansey
Clerk

NOTE: Please see the reverse side of this Order or the attachment to this Order for information regarding your appeal rights.

11-9-09

**STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW**

Robert J. Peterson,

Case No. 08-ABL-06-0428

Appellant

v.

September 17, 2009

Department of Rehabilitation and Correction,
Pickaway Correctional Institution

Appellee

Marcie M. Scholl
Elaine K. Stevenson
Administrative Law Judges

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant Peterson's timely filing of a notice of appeal of his job abolishment. A record hearing in this matter was held on December 1 through December 3, 2008. Appellant Peterson appeared at record hearing and was represented by Marc E. Myers, Attorney at Law. Appellee Department of Rehabilitation and Correction was present through its designee, Human Resources Legal Counsel Amy C. Parmi, and was represented by Assistant Attorneys General Nicole S. Moss and Joseph N. Rosenthal.

This Board's jurisdiction to hear the instant appeal was established pursuant to R.C. 124.03(A) and R.C. 124.328.

STATEMENT OF THE CASE

Appellee's first witness was Kevin Stockdale who testified he is presently employed by Appellee as Chief of Budget Planning and Analysis, and has held that position for approximately three months. He indicated that prior to accepting his present position, he was employed by the Office of Budget Management (OBM) as a Budget Management Analyst for approximately one year; in that position he was responsible for working with assigned agencies to prepare and monitor budgets. The witness noted that he worked with Appellee, Department of Youth Services and the Department of Public Safety to prepare budgets and budget requests for the 2008-2009 budget cycle.

The witness recalled that on January 31, 2008, Governor Ted Strickland issued an Executive Order (Appellee's Exhibit 1), requiring state agencies receiving general revenue funds (GRF) to reduce their expenditures in order to close a budget deficit. Mr. Stockdale indicated that agencies were required to take a number of actions to reduce their budgets and that some agencies, such as Appellee, were required to reduce their payrolls, as payroll costs are generally the largest component of agency budgets. He explained that payroll costs include employees' base pay, along with additional costs, such as fringe benefits and step increases.

Mr. Stockdale recalled that his role as a Budget Management Analyst was to provide Appellee with guidelines regarding budget reductions; he noted that Appellee was required to cut its budget by six to ten percent. The witness stated he reviewed the plan submitted by Appellee to OBM for viability and impact, and submitted a report to his supervisor. He noted that Appellee was somewhat restricted in what it could and could not cut from its budget stating, for instance, that Appellee could not cut food service, and indicated that they discussed several alternatives.

The witness testified that Appellee's initial budget reduction plan was rejected by OBM. Mr. Stockdale indicated he worked with Appellee and OBM's Director provided Appellee with guidelines for budget reduction (Appellee's Exhibit 11, Book 3) to prepare a revised plan that implemented OBM's agency budget directives. He stated that the budget reduction plan submitted by Appellee and approved by OBM encompassed a total budget reduction of \$71.7M, which included a reduction in payroll of \$52M and affected institutional and administrative operations agency-wide.

On cross examination Mr. Stockdale stated he did not have any input into the preparation of the FY08-09 budget. He testified the Governor's office made the decision that the shortfall was to be made up by GRF funded agencies under the authority of OBM. Mr. Stockdale stated he did not have a hand in determining the percentage of the agencies' cuts. Certain line items that were proposed to be reduced by Appellee were taken off the table by OBM and OBM reduced the payroll of Appellee and Appellee had to find a way to live within that amount. Mr. Stockdale stated that OBM did not choose the positions to abolish, as that was left up to Appellee to determine.

Appellee's next witness was Douglas Forbes. He has been employed by Appellee as Deputy Director of Administration for approximately three years and supervises approximately two hundred employees in that position. He indicated he is responsible for Appellee's budget and supervises approximately seven employees who work on that budget. The witness confirmed that he prepares Appellee's biennial budget and prepares budget allocation plans for each year. Mr. Forbes explained that Appellee has three

funding sources: General Revenue Funds (GRF), which comprise approximately eighty-five percent of Appellee's funding; Prisoner Program Funds; and OPI Funds.

Mr. Forbes explained that OPI (Ohio Penal Industries) makes items such as license plates, furniture, and clothing, and has its own budget; OPI is funded through customer sales to state agencies and local government agencies. He noted that OPI funds pay entirely for commissary staff salaries and no GRF funds are used. The witness observed that OPI sales decreased from \$3M to \$1M, and explained that Appellee purchases approximately eighty-five percent of the products OPI manufactures.

Mr. Forbes confirmed that he participated with the other Deputy Directors in the overall budget reduction planning process, but did not determine which positions should be cut at each institution. He recalled that Appellee saved approximately \$39M in payroll expenses and was able to save more than \$9M in areas other than payroll, such as reductions in ancillary services, lease agreements, and travel expenses, but still fell short of its \$71M goal. The witness observed that Appellee had also begun offering an Early Retirement Incentive in May of 2007 for approximately 1,400 eligible positions but, to date, only two hundred sixty employees had taken advantage of the incentive.

Mr. Forbes confirmed that payroll expenditures are Appellee's largest expense. He indicated that seven hundred and one positions were abolished, which included one hundred sixty-two positions that were vacant at the time of abolishment. Mr. Forbes stated that, in his opinion, Appellee had to cut positions in order to realize the necessary amount of savings mandated by the Governor's order to reduce the budget. He noted that Appellee looked to positions other than security and medical staffing when determining which positions should be abolished but, to his knowledge, no guidelines were provided to wardens.

On cross examination Mr. Forbes confirmed that the 701 positions that were abolished included 162 vacancies, which were also figured into the average cost of a position for determining the total amount saved. He also stated he did not play a role in the determination of what positions to abolish, as that was left to the wardens and the regional director.

Appellee's next witness was David Burrus. He was employed by Appellee for approximately twenty-seven years and retired from the position of Labor Relations Administrator in September 2008. In that position he administered three collective bargaining agreements and oversaw the disciplinary process for union employees. The witness confirmed that he was familiar with and participated in the abolishment process; he

oversaw the abolishment process for both union and exempt employees that resulted in the June 2008 layoffs.

Mr. Burrus stated that the directors and assistant directors made the decision that job abolishments were necessary, and observed that the abolishments affected all of Appellee's institutions. He explained that in Central Office and the Division of Parole and Community Services, the Deputy Director with oversight for each specific area made the determination as to which positions would be abolished. The witness recalled that Director Terry Collins notified each Warden or Regional Director of the number of positions to be eliminated at their facilities, and the Wardens and Regional Directors used their discretion to select specific positions, based upon their facilities' operational needs. He confirmed that Wardens were repeatedly counseled to choose positions for abolishment, rather than people.

Mr. Burrus stated that Appellee took additional efforts to reduce the agency's budget, including offering an Early Retirement Incentive program, consolidating some programs, and reviewing contractual obligations. He testified that one unclassified Deputy Warden position at each institution was eliminated, as well as other unclassified positions within Central Office and the Division of Parole & Community Services. The witness noted that some affected unclassified employees exercised their fallback rights to classified positions.

Mr. Burrus confirmed that unclassified position eliminations were implemented prior to the job abolishment of exempt positions because of the issue of fallback rights. He explained that when an unclassified employee exercises his or her fallback rights it is sometimes necessary to create a position for them to "fall back" into; the witness noted that this can lead to duplicative positions in some institutions, and when a job abolishment is undertaken, typically the most recently created duplicative position is the position eliminated. Mr. Burrus acknowledged that this practice sometimes resulted in a formerly unclassified employee being placed into a classified position and then laid off from that position shortly thereafter, but indicated that Appellee was legally required to proceed in that manner.

Mr. Burrus indicated that once the positions to be abolished had been identified, it was necessary for Appellee to identify the layoff jurisdiction for each position and calculate retention points for each of the incumbent employees. He noted that retention point lists were posted in several locations and any alleged errors were checked by referring to information contained on the OAKS system; DAS also certified Appellee's calculations. The witness explained that retention points are calculated based on years of continuous service, with no break in service. He confirmed that prior service was also considered in

the calculation of retention points, but that DAS would not consider the issue of an error in awarding prior service credit unless it was raised prior to or at the same time that the layoff rationale was submitted. Mr. Burrus testified that an employee may only challenge the calculation of his or her own retention points.

Mr. Burrus stated that once DAS had certified Appellee's retention point calculations, the next step was to determine how each of the affected employees would be impacted by the displacement process; a notification letter was sent to employees (Appellee's Exhibit 4B). He noted that an exempt employee could displace into a vacant bargaining unit position in their classification, but that employees already in the bargaining unit whose positions were abolished would take priority in filling those vacancies. The witness recalled that employees were also notified of some vacancies that would be filled, and were given the option of applying for those positions or for Corrections Officers openings.

The general rationale for the job abolishments and subsequent layoffs was for reasons of economy, which resulted from the projected budget shortfall. Mr. Burrus noted that a separate rationale was prepared for each abolished position, showing how the position's duties would be absorbed.

On cross examination Mr. Burrus stated the wardens were not given a dollar figure to work with in implementing the abolishments, but instead were given a number of positions to abolish. He testified he did not know exactly what the wardens were told about vacancies but stated that he and others repeatedly told the wardens they were to choose positions to abolish and not people. Mr. Burrus testified no one asked him about being able to reduce someone's classification if a warden thought an employee was overclassified. He stated the position descriptions were not reviewed to determine if they were accurate to the duties being performed, nor was there any independent investigation afterward by his office to ensure that what was supposed to happen, actually did.

Appellee's next witness, Chris Lambert, testified he is presently employed by Appellee as a Labor Relations Officer 3 and is responsible for working with labor unions regarding the grievance process, arbitration and mediation. He confirmed that he was assigned to write the general rationale for the June 2008 job abolishments and subsequent layoffs and indicated he reviewed examples of past abolishments and layoffs, and discussed specific issues with other staff members in preparing the rationale. The witness noted he reviewed materials from OBM and met with Deputy Directors to learn how budget cuts would be made. Mr. Lambert stated that individual rationales for each position were created by the Warden of the institution at which the position was located.

Mr. Lambert recalled that Appellee did not have the option of closing institutions, due to an increase in inmate populations, and that the Director specified that no abolishments or layoffs should be made with regard to security and medical staff or parole officers. He observed that it was the Director's goal to preserve Appellee's core functions of security, medical services, parole services and education for rehabilitation.

The witness stated that the only basis for the job abolishments was the budget shortfall. He noted that the rationale addressed commissary staffing issues, the reduction of personal service contracts, and the increase in inmate population. Mr. Lambert testified that he was not involved in any determination as to which positions should be abolished.

On cross examination Mr. Lambert stated the wardens did the rationales for each abolished position. He testified that no one has gone back to the institutions to see what has happened with each positions since the abolishments.

Appellee's next witness, Rhonda Pickens, testified she is presently employed by the Department of Administrative Services as a Human Resources Analyst 2 and stated she is responsible for verifying retention points for agencies seeking to abolish positions. She indicated she works specifically with Appellee, the Department of Youth Services, the Rehabilitation Services Commission, the Department of Tax and other smaller agencies. The witness noted that the manner in which retention points are accrued and calculated is outlined by the Ohio Administrative Code. She observed that retention points are not accrued in certain situations, such as while an employee is on disability leave.

Ms. Pickens explained that continuous service means that an employee has had no more than a thirty-day break in service. She indicated that accrual of retention points starts over if an employee has a break in service. The witness noted that it is the agency's obligation to provide information regarding an employee's prior service to DAS, although agencies argue that it is onerous for employees to provide information regarding their prior service. She observed that prior service also affects the calculation of employees' vacation and sick leave.

The witness stated that DAS has to have a cut-off date for the submission of information regarding prior service credit in order to keep the abolishment and layoff process on track and that information must be submitted prior to the submission of the rationale. She indicated that an employee can only challenge his or her own retention point calculation.

Appellee's next witness was Alan Lazaroff. He testified he is presently employed by Appellee as the Chief of the Bureau of Labor Relations since October 14, 2008. Prior to that, he was warden of many institutions for the past sixteen years, with the most recent being in early 2008 as Warden of the Pickaway Correctional Institution (PCI). He stated he was instructed in early 2008 to abolish positions; he noted that he reviewed both filled and vacant positions in order to determine how to implement job abolishments while still maintaining operations.

Mr. Lazaroff stated he eliminated a Business Administrator 2 position, which was occupied by Appellant Peterson, and an Account Clerk Supervisor position in the PCI Business Office. He testified he considered the organizational structures used in other institutions and also consulted with Margaret Brown, who was familiar with the job duties assigned to each position, before making his decision.

Mr. Lazaroff stated the Business Office's table of organization also contained a Business Administrator 1 position, but that the incumbent employee had been reassigned to work with the former Warden on special projects and was not actually located in the Business Office. He noted that as Warden he did not have a need for a special projects person and had intended to return the position to the Business Office, but delayed doing so because the incumbent employee was planning to retire.

Mr. Lazaroff testified Appellant Peterson displaced into the Business Administrator 1 position; he indicated that some of Appellant Peterson's job duties were distributed to the Business Administrator 3 position and some of his job duties were simply eliminated.

On cross examination, the parties stipulated that the business office at Southeast Correctional had a Business Administrator 2 and 3 and neither position was abolished. Mr. Lazaroff testified the position description attached to the rationale for the abolishment of Appellant Peterson's position was not an accurate description of his duties. He stated he never thought in terms of "overclassification" of Appellant Peterson's position. Mr. Lazaroff testified Ms. Brown's office is on the first floor and the business office is on the second floor. In his rationale, Mr. Lazaroff planned that the Business Administrator 3 and 1 along with the Account Clerks, would pick up the duties of the Business Administrator 2 position.

In looking at the rationale, Mr. Lazaroff explained that when he said "committee duties would be eliminated", he knew Appellant Peterson was on a Receiving and Quarter Master offices moving ad hoc committee and a Use of Force committee from time to time. He stated he meant the term "committee" to be used generally such as committees that Appellant Peterson was on from time to time and not permanently. He testified that he does not know if the Business Administrator 3 picked up any duties of Appellant Peterson,

as it stated in his rationale that that position would supervise the Commissary. Mr. Lazaroff testified that as a Business Administrator 2, Appellant Peterson supervised the laundry and he continues to do so as a Business Administrator 1. He stated he does not know if Appellant Peterson's duties are the same as they were prior to the abolishment.

On redirect examination, Mr. Lazaroff confirmed that the warden at Southeast Correctional made the decisions regarding the abolishments at that institution and he had no input into those decisions. He testified he had no need for a special projects person, so it was always his intent to return that position to the business office. He stated he did not do it earlier as he knew Cox was going to retire, which took place in February 2008.

Appellee's next witness was Margaret Brown. She testified she is presently employed by Appellee at PCI and holds a position in the Business Office classified as Business Administrator 3. Prior to the June 2008 job abolishments, she held a position classified as Business Administrator Supervisor.

Ms. Brown testified the Business Administrator 1 position on Appellee PCI's table of organization had not been assigned to the Business Office since September 2004, as the incumbent worked with the Warden who held the post prior to Mr. Lazaroff.

Ms. Brown stated Mr. Lazaroff asked her to review the operations of PCI's Business Office; she testified she believed there were too many positions in the office and noted that PCI was the only institution that had a Business Administrator 3, Business Administrator 2 and Business Administrator 1 position. Ms. Brown noted that PCI also had two Account Clerk Supervisor positions prior to the job abolishments. She testified that although she did not make any recommendations to Mr. Lazaroff for specific positions to be abolished in the Business Office, she did recommend that one Account Clerk position in the Cashier's Office be eliminated.

Ms. Brown testified Appellant Peterson performs the same duties in his Business Administrator 1 position that he performed in his Business Administrator 2 position, and has been assigned additional duties as well. She stated the duties that he performed prior to the abolishment could have been considered Business Administrator 1 duties.

Appellant Peterson testified he is presently employed by Appellee at PCI in a position classified as Business Administrator 1. Appellant Peterson gave a detailed history of his employment with the Department of Rehabilitation and Correction and then another detailed description of his job duties. Appellant Peterson's description of his job duties reflects Ms. Brown's testimony. Appellant Peterson noted he has not been assigned to

perform any project duties and was not serving on an active committee at time of the abolishment of his position.

FINDINGS OF FACT

Based on the testimony presented and evidence admitted at record hearing, and the entirety of the information contained in the record, we make the following findings of fact:

The parties stipulated that Appellee complied with the relevant procedural and notice requirements of the Ohio Revised Code and Ohio Administrative Code in implementing the abolishment of the position encumbered by Appellant Peterson.

On January 31, 2008, The Governor of Ohio issued Executive Order 2008-10S, which instructed state agencies to implement General Revenue Fund (GRF) spending reductions within their agencies due to an impending state budget shortfall. The Governor also instructed the Office of Budget and Management (OBM) to issue directives to guide agencies in implementing GRF spending reductions.

Appellee took steps to reduce the agency's budget, including offering an Early Retirement Incentive program, consolidating some programs, and reviewing contractual obligations.

Payroll expenditures are Appellee's largest expense and Appellee determined that it had to abolish positions in order to realize the necessary amounts of savings mandated by the Governor's order to reduce the budget.

The Director of the Department of Rehabilitation and Correction, Terry Collins, notified each Warden or Regional Director of the number of positions to be eliminated at their respective facilities. The Wardens and Regional Directors used their discretion to select specific positions, based upon their facilities' operational needs.

On April 8, 2008, Appellee submitted its rationale for job abolishments to the Ohio Department of Administrative Services (ODAS). Appellee's rationale contained the agency's budget information, general cost savings measures, and the proposed abolishment of several hundred positions to save salary and benefits. Appellee's rationale contained several tables that outlined projected GRF savings based upon staff reductions and other cost savings measures.

Appellee calculated retention points for those employees affected by the abolishment and resultant layoffs. ODAS verified Appellee's calculation of retention points for all affected employees and authorized Appellee to proceed with the layoffs that resulted from the abolishment of positions.

In June 2008, Appellant Peterson held a position classified as Business Administrator 2 and he was assigned to the Business Office at Pickaway Correctional Institution (PCI).

Then PCI Warden Alan Lazaroff was charged with abolishing a specified number of positions throughout PCI. In PCI's Business Office, Mr. Lazaroff considered the organizational structures of the business offices of some of Appellee's other institutions and he considered his personal experience at other institutions and facilities overseeing business operations. Mr. Lazaroff also consulted with his Business Administrator 3, Margaret Brown, who was familiar with the specific job duties assigned to each position at PCI's Business Office. Mr. Lazaroff had general knowledge regarding the specific duties assigned to the Business Administrator 2 position encumbered by Appellant Peterson.

Mr. Lazaroff determined he did not need both a Business Administrator 3 position and a Business Administrator 2 position in PCI's Business Office. He also determined he did not have a need for a special projects person, and consequently, intended to return the Business Administrator 1 position to PCI's Business Office. Mr. Lazaroff made the decision to reassign the Business Administrator 1 position to PCI's Business Office and to abolish the Business Administrator 2 position. In making his decision as to which positions should be abolished at PCI, Mr. Lazaroff did not consider whether a position was "overclassified."

On June 3, 2008, Appellant Peterson received notice that his position was to be abolished effective June 22, 2008.

Appellant Peterson exercised his displacement rights and, as a result, displaced into the Business Administrator 1 position in the Business Office at PCI. Appellant Peterson currently performs the duties he performed in his Business Administrator 2 position and has been assigned additional duties as well.

CONCLUSIONS OF LAW

In the present appeal the Board must consider: (1) Whether Appellee has proven by a preponderance of the evidence that the abolishment of the position encumbered by Appellant Peterson was for reasons of economy and was effectuated in accordance with sections 124.321 to 124.327 of the Ohio Revised Code and the rules of the Ohio Administrative Code Chapter 123:1-41 *et seq.*, and (2) whether Appellant Peterson's displacement rights were effectuated in accordance with sections 124.321 to 124.327 of the Ohio Revised Code and the rules of Ohio Administrative Code Chapter 123:1-41 *et seq.*

Section 124.321 of the Ohio Revised Code governs the abolishment of positions. It states, in pertinent part:

(D)(1) Employees may be laid off as a result of abolishment of positions. As used in this division, "abolishment" means the deletion of a position or positions from the organization or structure of an appointing authority.

For purposes of this division, an appointing authority may abolish positions for any one or any combination of the following reasons: as a result of a reorganization for the efficient operation of the appointing authority, for reasons of economy, or for lack of work.

(2)(a) Reasons of economy permitting an appointing authority to abolish a position and to lay off the holder of that position under this division shall be determined at the time the appointing authority proposes to abolish the position. The reasons of economy shall be based on the appointing authority's estimated amount of savings with respect to salary, benefits, and other matters associated with the abolishment of the positions only, if:

- (i) Either the appointing authority's operating appropriation has been reduced by an executive or legislative action, or the appoint authority has a current or projected deficiency in funding to maintain current or projected levels of staffing and operations; and
- (ii) In the case of a position in the service of the state, it files a notice of the position's abolishment with the director of administrative services within one year of the occurrence of the applicable circumstance described in division (D)(2)(a)(i) of this section.

(b) The following principles apply when circumstance described in division (D)(2)(a)(i) of this section would serve to authorize an appointing authority to abolish a position and to lay off the holder of the position under this division based on the appointing authority's estimated amount of savings with respect to salary and benefits only:

- (i) The position's abolishment shall be done in good faith and not as a subterfuge for discipline.
- (ii) If a circumstance affects a specific program only, the appointing authority only may abolish a position within that program.
- (iii) If a circumstance does not affect a specific program only, the appointing authority may identify a position that it considers appropriate for abolishment based on the reasons of economy.

(3) Each appointing authority shall determine itself whether any position should be abolished. An appointing authority abolishing any position in the service of the state shall file a statement of rationale and supporting documentation with the director of administrative services prior to sending the notice of abolishment.

If an abolishment results in a reduction of the work force, the appointing authority shall follow the procedures for laying off employees, subject to the following modifications:

- (a) The employee whose position has been abolished shall have the right to fill an available vacancy within the employee's classification.
- (b) If the employee whose position has been abolished has more retention points than any other employee serving in the same classification, the employee with the fewest retention points shall be displaced.
- (c) If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall have the right to fill an available vacancy in a lower classification in the classification series.
- (d) If the employee whose position has been abolished has the fewest retention points in the classification, the employee shall displace the

employee with the fewest retention points in the next or successively lower classification in the classification series.

* * * * *

Prior to the record hearing, Appellant Peterson stipulated Appellee complied with the relevant procedural and notice requirements of the Ohio Revised Code and Ohio Administrative Code in implementing the abolishment of the Business Administrator 2 position he encumbered. Appellant Peterson's primary argument at record hearing was that Appellee acted in bad faith when it abolished his position in the Business Office at Pickaway Correctional Institution because Appellee's abolishment action was a subterfuge to assign Appellant Peterson to a position with a lower classification without utilizing the job audit process set forth in R.C. 124.14(D). Appellant Peterson argued that the fact he is performing all of the job duties he performed as a Business Administrator 2 in his position as a Business Administrator 1 proves that Appellee acted in bad faith.

Appellant Peterson cites case law in his written closing argument, relying primarily upon *Sweepston v. Board of Tax Appeals of Ohio* (1993), 89 Ohio App.3d 629, to support his argument. A careful review of the opinion in *Sweepston* reveals that the facts in *Sweepston* are distinguishable from the facts in this appeal, and the asserted rationale to justify the abolishment of the appellant's position in *Sweepston* is different than the rationale utilized in the present appeal. The rationale to justify the abolishment of the appellant's position in *Sweepston* involved the reorganization for the efficient operation of the appointing authority. The court in *Sweepston* specifically noted in its opinion that the abolishment was not due to a lack of work or for reasons of economy. Ultimately, the court's finding of bad faith in *Sweepston* was based upon a job abolishment rationale that was unsupported by the testimony and documentary evidence.

The present appeal does not involve the rationale of reorganization for efficient operation; rather, Appellee's *sole* rationale for the abolishment of Appellant Peterson's position was for reasons for economy. Section 124.321(D)(2)(a) of the Ohio Revised Code provides that an appointing authority may abolish a position for reasons of economy. The reasons of economy shall be based on the appointing authority's estimated amount of savings with respect to salary, benefits, and other matters associated with the abolishment of the positions. The testimony and documentary evidence presented established that the Governor ordered all state agencies including Appellee to reduce GRF expenditures. The evidence established that payroll expenditures are Appellee's largest expense and that Appellee determined it had to abolish positions in order to realize the necessary amounts of savings mandated by the Governor's order to reduce the budget. Appellee instructed its Wardens and Regional Wardens to select a specific number of positions for abolishment at

each institution and facility. The evidence established Appellant Peterson encumbered a Business Administrator 2 position assigned to the Business Office at Pickaway Correctional Institution (PCI). The Business Administrator 2 position Appellant Peterson encumbered was funded by funds from the GRF. The testimony and evidence established Appellee abolished several hundred positions, including Appellant Peterson's position, to reduce its GRF expenditures by Appellee's estimated amount of savings with respect to salary, benefits, and other costs of the positions abolished. Appellant Peterson presented no testimony or documentary evidence to rebut Appellee's reasons of economy rationale for the June 2008 job abolishments, which included the abolishment of the Business Administrator 2 position encumbered by Appellant Peterson. Accordingly, we find that Appellee has presented substantial, reliable, and probative evidence that the abolishment of the position encumbered by Appellant Peterson was for reasons of economy.

Appellee called then PCI Warden Alan Lazaroff to present testimony regarding the institution-specific rationale he used to select Appellant Peterson's position for abolishment. At the time Appellee proposed abolishment of the Business Administrator 2 position encumbered by Appellant Peterson, the Business Office at PCI included a Business Administrator 3 position, a Business Administrator 2 position, and other positions in the Account Clerk series.

Mr. Lazaroff presented credible testimony regarding his decision-making process to select positions for abolishment in PCI's Business Office. Mr. Lazaroff testified he eliminated the Business Administrator 2 position occupied by Appellant Peterson and an Account Clerk Supervisor position in PCI's Business Office. He testified that prior to making his decision as to which positions to abolish in PCI's Business Office, he considered the organizational structures of the business offices of some of Appellee's other institutions and he considered his personal experience at other institutions and facilities overseeing business operations. He also consulted with his Business Administrator 3, Margaret Brown, who was familiar with the specific job duties assigned to each position at PCI's Business Office. Mr. Lazaroff noted he had general knowledge but not detailed information regarding the specific duties assigned to the Business Administrator 2 position encumbered by Appellant Peterson. As a result of his review, he determined he did not need both a Business Administrator 3 position and a Business Administrator 2 position in PCI's Business Office. At record hearing, Mr. Lazaroff also noted that the Business Administrator 1 position had been assigned to the office of the former Warden of PCI to perform special projects as needed. Mr. Lazaroff testified he did not have a need for a special projects person and he intended to return the Business Administrator 1 position to PCI's Business Office. He made the decision to reassign the Business Administrator 1 position to PCI's Business Office and to abolish the Business Administrator 2 position. Mr. Lazaroff testified he never thought in terms of any position being "overclassified" in

determining which positions should be abolished at PCI. As Appellant Peterson's immediate supervisor, Ms. Brown testified Appellant Peterson displaced into the Business Administrator 1 position and currently performs the duties he performed in his Business Administrator 2 position and has been assigned additional duties as well. She also stated she felt the duties Appellant Peterson performed as a Business Administrator 2 were probably the duties of a Business Administrator 1.

After careful consideration of the testimony presented regarding the PCI Business Office and the analysis provided by Mr. Lazaroff, *supra*, we find that the testimony supports a conclusion that the decision to abolish the position encumbered by Appellant Peterson was effectuated in accordance with Section 124.321(D) of the Ohio Revised Code and was not undertaken in an effort to subvert Appellant Peterson's civil service rights.

Appellant Peterson, however, argues Appellee acted in bad faith and is prohibited by case law from abolishing a position for reasons of economy and assigning the job duties of the abolished position to one existing position. In considering the nature of the "for reasons of economy" rationale and the analysis put forth in *Sweepston*, we find that neither *Sweepston* nor the cases cited therein stand for the *irrefutable* principle that an appointing authority has acted in bad faith or has not abolished a position as a matter of law based solely upon the appointing authority's action of abolishing a position *for reasons of economy* and redistributing all of the job duties assigned to the abolished position to an existing position.

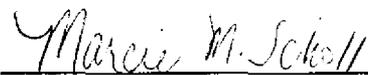
This is because an agency's need to eliminate a position for reasons of economy means the agency needs to reduce expenditures and cannot afford to continue to fund a position. It does not necessarily mean that the agency does not need the job duties assigned to the abolished position to be performed by another employee or employees. The particular circumstances of the agency contemplating job abolishments must be considered, along with circumstances that include the agency's economic situation, organizational structure, and operational needs. Based upon the circumstances particular to an agency contemplating job abolishments, the agency may need to eliminate a position or several positions, and the agency may need to reassign all or some of the duties from an abolished position to one existing position, or to more than one existing position. It is possible that an agency's circumstances are such that it may need to abolish a position for reasons of economy and redistribute the duties of the abolished position to an existing position in the same classification or at a lower level within the class series. Such a situation could arise in a small agency or small office within a larger agency. In that instance, if the agency abolishes one position but still needs to have the duties assigned to the abolished position performed, those duties may need to be absorbed by a single position.

In the present case, the circumstances within PCI's Business Office were that two positions were abolished for reasons of economy. As previously noted, PCI's Warden considered the operational needs of PCI's Business Office and selected an Account Clerk Supervisor position and a Business Administrator 2 position for abolishment. The job duties assigned to the Business Administrator 2 position still needed to be performed and were reassigned to the Business Administrator 1 position. Appellant Peterson exercised his displacement rights, and as a result, displaced into the Business Administrator 1 position. Appellant Peterson now performs the job duties assigned to that position. Those duties include the duties he previously performed in the Business Administrator 2 position and additional duties, as assigned by his immediate supervisor. The facts of Appellant Peterson's situation differ from those in *Sweepston*. Of particular significance is the court in *Sweepston* taking note that, instead of abolishing just one of its fiscal positions and making the remaining employee perform the necessary duties, the Board of Tax Appeals of Ohio eliminated both fiscal employees and hired a new employee. The court reasoned that those circumstances raised the inference that the abolishment of the appellant's position was an effort to subvert his civil service rights. The appellee in *Sweepston* did not rebut that inference with any substantial, reliable, and probative evidence. The testimony and evidence discussed, *supra*, has established that such a scenario as existed in *Sweepston* does not exist in the present appeal.

In summary, we find that Appellee has successfully rebutted Appellant Peterson's bad faith argument, as the weight of the testimony and documentary evidence presented does not support a conclusion that Mr. Lazaroff or the Department of Rehabilitation and Correction intended to subvert the civil service system by using the abolishment process to place Appellant Peterson in a position assigned a lower classification without the use of the job audit process found in Section 124.14 of the Ohio Revised Code. We further find that Appellee has proven by a preponderance of the evidence that the abolishment of the Business Administrator 2 position encumbered by Appellant Peterson and the displacement rights afforded Appellant Peterson were in compliance with sections 124.321 to 124.327 of the Ohio Revised Code and Ohio Administrative Code Chapter 123:1-41 *et seq.*

Robert J. Peterson
Case No. 08-ABL-06-0428
Page 17

Based on the foregoing, we respectfully **RECOMMEND** that the abolishment of the position encumbered by Appellant Peterson and his displacement into a Business Administrator 1 position be **AFFIRMED** pursuant to sections 124.03 and 124.321, et seq. of the Ohio Revised Code.



Marcie M. Scholl
Marcie M. Scholl
Administrative Law Judge



Elaine K. Stevenson
Elaine K. Stevenson
Hearing Officer

MMS:mlh