

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

Ernest B. Unholz,

Appellant.

Case Nos. 08-ABL-07-0465

08-LAY-07-0466

v.

Lucas County,
Department of Job and Family Services,

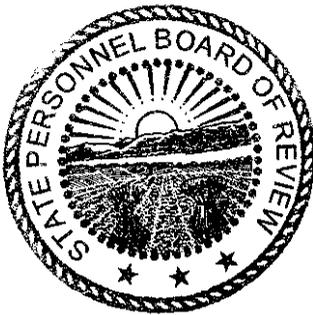
Appellee.

ORDER

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

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 the abolishment of Appellant's Trainer I position and Appellant's subsequent layoff, be **AFFIRMED**, pursuant to O.R.C. §§ 124.03 and 124.328.



Lumpe - Aye

Sfalcin - aye

Tillery - Aye

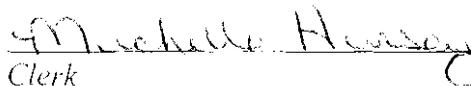


J. Richard Lumpe, *Chairman*

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, July 24, 2009.



Michelle Hensley
Clerk

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

STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

ERNEST B. UNHOLZ,

Case Nos. 08-ABL-07-0465
08-LAY-07-0466

Appellant

v.

May 15, 2009

LUCAS COUNTY DEPARTMENT OF JOB AND FAMILY SERVICES,

Appellee.

JAMES R. SPRAGUE
Administrative Law Judge

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

These causes came to be heard at pre-hearing and record hearing on April 9, 2009. Present at the pre-hearing and record hearing was Appellant, who appeared *pro se*. Appellee, Lucas County Department of Job and Family Services (LCDJFS), was present through its designee, Megan Hupp, LCDJFS Director of Employee Services, and was represented by Brenda G. Meyer, Assistant Prosecuting Attorney.

These causes come on due to Appellant's July 30, 2008 filing by postmark and hard copy of appeals from the abolishment of his position of Trainer 1, and from his subsequent layoff therefrom, effective August 11, 2008, effectuated through Lucas County Board of Commissioners' (LCBOC) Resolution No. 08-899. Appellant received actual notice of this action on or before July 30, 2009.

Appellee's and Appellant's respective written closing statements were filed on or before May 7, 2009.

Jurisdiction over the subject matter of these appeals was established pursuant to R.C. 124.328 *et seq.*

CONSOLIDATED STATEMENT OF THE CASE AND FINDINGS OF FACT

ERNEST B. UNHOLZ

Case Nos. 08-ABL-07-0465 and 08-LAY-07-0466

Page 2

At hearing, six witnesses testified: **Adam Nutt**, Fiscal Officer 3 with LCDJFS; **Brian Cunningham**, Director of the Lucas County Personnel Department (LCPD); **Megan Hupp**; LCDJFS Director of Employee Services and Appellee's designee in the two instant appeals, who was called by both parties and also testified on rebuttal; **Jack Manos**, a Trainer 2 with the Summit County Department of Job and Family Services and northeast Regional Training Coordinator for the Ohio Human Services Training System (OHSTS); **Natalie Edwards**, Training and Staff Development Supervisor and Regional Training Coordinator with LCDJFS; and **Keith Beerbower**, a Trainer 1 with LCDJFS.

Prior to commencing the record hearing in these matters, a pre-hearing was conducted. At the pre-hearing, the undersigned and the parties initially reviewed the question of whether Appellee had substantially complied with the pertinent procedural prerequisites for abolishing a classified position and laying off the incumbent in that position. Further, at the pre-hearing, the parties set forth their respective order of presentation of witnesses and the parties sequentially numbered and finalized their exchange of documents for the hearing.

Appellant's concerns focused more on issues that could be described as substantive (*i.e.* challenging Appellee's rationale) and as "bad faith" as versus as challenging Appellee's substantial procedural compliance with the pertinent Revised Code and Ohio Administrative Code. Following an initial review of Appellee's activities regarding substantial procedural compliance, the undersigned initially determined that Appellee had established its *prima facie* case in this area and could proceed to hearing on same.

In regard to substantive compliance, Appellee's **asserted rationale of "for reasons of economy"**, which Appellee utilized to justify the abolishment of Appellant's position, was reviewed. As is also reflected in Appellant's opening statement, Appellant set forth several of his challenges to Appellee's stated rationale.

Appellant asserted that Appellee exhibited poor fiscal and budget practices in 2006 when the agency's budget expanded by hundreds of thousands of dollars, an unsustainable amount, in Appellant's opinion. This increase and poor fiscal and budget management, Appellant contends, inevitably led to layoffs. Appellant further contends that flawed agency personnel policies led to flawed decisions, including the decision to lay off Appellant, the one person available and tasked to train for a

ERNEST B. UNHOLZ

Case Nos. 08-ABL-07-0465 and 08-LAY-07-0466

Page 3

23-county human services area of the OHSTS. Appellant also contends that funds specifically for this training were not exhausted. Finally, Appellant contends, placing regional training duties with the agency's internal training staff was inappropriate or utilized faulty task grouping.

In its opening, Appellee asserted that Appellant's position of Trainer 1 was abolished for reasons of economy; due to a substantial reduction in state funding and a corresponding reduction in federal matching funding. As a result, Appellee asserted, Appellant's position and that of a part-time Trainer 1 were abolished.

Following an initial review of Appellee's substantive compliance, the undersigned determined that Appellee had established its *prima facie* case in this area and could proceed to hearing on same.

First to testify was **Adam Nutt**, Fiscal Officer 3 for LCDJFS. Mr. Nutt indicated that he has held his current position since July 2004 and that, prior to that time, he served as a Fiscal Coordinator. In his position, he averred, he provides advice to the LCDJFS Director (Deb Ortiz-Flores) regarding financial matters and prepares financial reports for the Director.

Mr. Nutt then set forth the duties of the LCDJFS. He noted that he is the person who is primarily responsible for preparing the agency's budgets and corresponding plans. He confirmed that he regularly meets with Director Ortiz-Flores.

Mr. Nutt explained that LCDJFS has two principal sources of funding. The first is an Income Maintenance allocation. The second is a federal dollar-for-dollar match regarding, for example, Food Stamps, Medicaid, and the TANF block grant. He also noted that the LCDJFS receives a small statutorily-mandated share from the LCBOC. Mr. Nutt explained that the LCDJFS receives money from the state based on the state's Fiscal Year (FY) running from July 1 through June 30.

Mr. Nutt identified Appellee's Exhibit 1 as a cover letter to the LCDJFS Director from Michael B. Colbert, Deputy Director of the Office of Fiscal Services, Ohio Department of Job and Family Service (ODJFS) on the subject "PRELIMINARY PA [Preliminary Allocations] STATE FISCAL YEAR 2009 ALLOCATIONS (JULY 1, 2008 – JUNE 30, 2009)" along with three attachments that

ERNEST B. UNHOLZ

Case Nos. 08-ABL-07-0465 and 08-LAY-07-0466

Page 4

relate to the state funding that was preliminarily expected to be available to the LCDJFS for FY 2009.

The attachments are described in the cover letter as follows. "Attachment A: provides comments on SFY [State Fiscal Year] 09 Preliminary Allocations". "Attachment B: your county's Preliminary Allocations along with the Catalog of Federal Domestic Assistance (CFDA) numbers associated with each grant." and "Attachment C: statewide amounts for Preliminary Federal Pass-through Budgets along with the CFDA numbers associated with each budget. NOTE; statewide amounts are not county specific as they are statewide totals."

Mr. Nutt explained the agency would normally see a document such as the Preliminary Letter for State Allocation cover letter in Appellee's Exhibit 1 on an annual basis. The letter and attachments set forth various allocations of state and federal funds to the LCDJFS, he noted. Mr. Nutt testified that Attachment B. was new with FY 2009 and represented a new and more specific method of disbursement for each grant. The federal government's Fiscal Year is on a different cycle than the state Fiscal Year, he explained, and some of the numbers are combined in the document, with grants divided into two portions due to federal and state FY differences, he stated.

He indicated Attachment C. represents pass-through dollars from the federal government to the state pool from which all counties may issue vouchers. He noted this is not an assigned county-by-county fund.

Mr. Nutt emphasized that the overall level of funding represented in the FY 2009 Preliminary Report in comparison to the FY 2008 Preliminary Report dropped significantly. He added that the FY 2009 Final Report (Appellee's Exhibit 2.) represents no change in this reduction from the FY 2009 Preliminary Letter and a small change in the LCBOC mandated share.

Mr., Nutt averred that, at the time the agency was receiving Appellee's Exhibit 1. and 2, the agency was contemplating abolishments. In that regard, he identified Appellee's Exhibit 3. as a spreadsheet that he created that shows FY 2008 and FY 2009 information including projections of expenses and revenues. He indicated that the spreadsheet was prepared on June 17, 2008 and that the numbers were accurate at that time. Mr. Nutt indicated that, when taking into account the 50/50 federal-state match, the nine percent reduction in the IM Control funding line

ERNEST B. UNHOLZ

Case Nos. 08-ABL-07-0465 and 08-LAY-07-0466

Page 5

actually resulted in an 18 percent reduction in funding ($\$400,153.28 \times 2 = \$800,306.56$). He offered that this is mainly comprised of expenses for salaries, benefits, and supplies, with some salary expense reflected in other lines as well. He noted there was actually a one percent increase in the LCBOC mandated share that the LCBOC had to allocate to the LCDJFS.

Mr. Nutt next offered testimony regarding the "OHSTS Operating" funding line for the Regional Training Center. He noted that funding had stayed consistent for FY 2006 and FY 2007 at \$43,750 but had dropped in FY 2008 to \$37,500 and then was initially zero funded in FY 2009 and ultimately funded at the lower FY 2008 level. This funding can be used for salaries, benefits, and supplies and includes internal training, he stated.

The "OHSTS Instruction" line went up from its FY 2006 and FY 2007 levels of \$81,250 to \$87,500 for FY 2008 and FY 2009. Yet, Mr. Nutt averred, this line can only be used for outside trainers. Internal trainers can coordinate outside trainers employed by the county, he stated.

Appellant's salary and, indeed, the salaries of all of the LCDJFS Trainer 1s and all those employed in LCDJFS's Employee Services Division are considered to be "shared employees" across several budget lines, but most of the source is found in the IM Control funding source, about 70 percent, Mr. Nutt indicated. He added the funding also comes from TANF at about 10 percent, from Adult Protective Services at about 10 percent, and the remainder allocated based on quarterly random surveys/time moment studies.

He indicated that normally, all funds are allocated and available on a one-year basis. He contrasted this with FY 2009, where, on a one-time basis, ODJFS allowed counties to carry over only OHSTS Instruction line funds but not OHSTS Operating line funds.

Mr. Nutt offered that the LCDJFS had implemented a number of cost control measures prior to seeking the abolishment of Appellant's and others' respective positions. He stated these included: reducing overtime from \$500,000 or \$600,000 to less than \$20,000; instituting a hiring freeze and restructuring; and reducing the overall supplies and training budget by \$120,000.

ERNEST B. UNHOLZ

Case Nos. 08-ABL-07-0465 and 08-LAY-07-0466

Page 6

On cross, Mr. Nutt averred that the Regional Training Center was funded by ODJFS as a state pass-through and that the state designates certain counties to host. Mr. Nutt was directed to Appellee's Exhibit 4. and explained that, while the state gave the LCDJFS more money for Instruction, the state gave them less money for training (*i.e.* Operating).

He stated Instructional funds have to be used to pay Trainers. Instruction expenses have to be tied directly to the services, he offered. For example, he noted that the expenses to bid and place an advertisement in the paper concerning a training would be allowable but the development and operating expenses of an operational informational internal website could not be applied to this funding source. He also indicated that Appellee's Exhibit 3. shows OHSTS Operating at zero funding but that the funding did finally come, the FY 2009 figure is only a projection of spending, and the ODJFS did not actually spend that amount.

Mr. Nutt agreed that Appellee's Exhibit 26, a document Appellant prepared (as a Proposal for Reduction of Services to The Northwest Region, and containing a Northwest Region Summary Report) identifies Appellant as the Northwest Regional Training Coordinator. Mr. Nutt agreed that for FY 2005, 2006, and 2007, Title XX funds were not exhausted. Mr. Nutt indicated that, as of the date of record hearing, there was a minimal positive balance in the Instructional Grant, perhaps \$50,000 to \$60,000 of that Grant had already been spent in FY 2009, and there was no projection for any remainder to be in the Grant by the close of FY 2009, based on projected trainings for the rest of the year.

Mr. Nutt was then directed to Appellee's Exhibit 8., the "LCJFS PROPOSED 2009 BUDGET IMPACT JOB ABOLISHMENT LIST". Here, a savings of \$700,677.22 is set forth, which does not include a charge for unemployment compensation, currently running at about \$8,000 per month, he testified. He agreed that, at the time this document was created, these were projected figures concerning total spending on these positions, and noted that the agency had already limited supplies, travel, *et cetera* prior to this point.

Next to testify was **Brian Cunningham**, Director of the Lucas County Personnel Department. Mr. Cunningham testified that he has been an employee of the LCBOC for more than 20 years, and that for the past two years has served as the LCPD Director. He identified Appellee's Exhibit 13. as a letter from LCDJFS Director Ortiz-Flores to the LCBOC concerning SFY 2009 allocations and requesting

permission to begin the process to abolish 11 LCDJFS positions, including Appellant's. Mr. Cunningham stated that he reported back to the LCBOC and issued a letter (Appellee's Exhibit 14.) titled "Statement of Rationale for Proposed Layoffs" to Michael J. Beazley, Lucas County Administrator, for compliance with the requirements set forth in R.C. 124.321 (D). Mr. Cunningham confirmed that the LCPD verified the pertinent retention point calculation and that he reviewed it personally. Mr. Cunningham then went on to discuss various actions that the LCPD undertook to ensure Appellee's substantial procedural compliance.

Next to testify was **Megan Hupp**, Director of Employee Services for the LCDJFS for perhaps the last four years. Ms. Hupp noted that she was hired by the County in 1994 and most recently served as Performance Manager prior to beginning her current engagement. Ms. Hupp indicated that she currently oversees Human Resources, staff development, payroll, and Information Services for the agency.

Ms. Hupp indicated that she met numerous times with Director Ortiz-Flores in Directors' meetings regarding an approximate \$800,000 drop in the agency's funding. She explained that, before the abolishments, the agency had cut overtime and travel costs. She further averred that Director Ortiz-Flores was looking to abolish positions that did not impact client services, and this included her own area of Employee Services. Ms. Hupp indicated that Trainers were ultimately in her chain of command.

She further noted that bargaining unit positions were more directly involved with client services, whereas non-bargaining unit positions were more tangentially involved with client services and that non-bargaining unit employees all had some contact with clients.

She indicated that Appellant did not appeal his change in classification and that Appellant, himself, provided a proposal to curtail or modify his travel (see Appellee's Exhibit 26). Ms. Hupp identified Appellee's Exhibit 29 as an email that includes a communication from Natalie Edwards, Training and Staff Development Coordinator, indicating that Appellant would be assuming the agency's Microsoft Word training duties and that he would be authoring a curriculum for same. Ms. Huff also confirmed that all part-time positions were abolished and that a part-time Trainer was laid off. She also confirmed that, prior to the reclassification of

ERNEST B. UNHOLZ

Case Nos. 08-ABL-07-0465 and 08-LAY-07-0466

Page 8

Appellant's position, Appellant's position was classified as Regional Training Coordinator.

Ms. Hupp then referenced Appellee's Exhibit 8 (the proposed budget impact abolishment sheet), which was created based on Mr. Nutt's spreadsheet, she stated. The purpose, she noted, was to try to identify options to get as close as possible to the agency's projected \$800,000 shortfall. She also referenced Appellee's Exhibit 12 as the Personnel Action reclassifying Appellant's position from Regional Training Liaison to Trainer 1, with no impact in Appellant's pay of \$24.30 per hour. She noted that one of the cost savings measures the agency was undertaking was to reduce travel and that Appellant's position had utilized a lot of travel, so the recommendation was to curtail same.

Ms. Hupp stated that, as Regional Training Coordinator, Appellant would go out, set up training sites, meet with various individuals, and, self-evidently, physically go to the locations of the trainings. She noted that, once there was no longer extensive travel involved, as a Trainer 1, Appellant remained in-house and did internal training. He then found people to go to the site, set up, *et cetera*, she stated.

Next to testify was **Jack Manos**, an employee of the Summit County DJFS, who was called by Appellant. Mr. Manos indicated that he has served for the past five to six years as the Regional Trainer for the Northeast Region. He identified the OHSTS as a state funded program. He noted there are 20 counties in his region and that he has a liaison within each of those counties.

He stated that they also have a pool of trainers that they utilize in the trainers' respective areas of expertise. He indicated that trainers are available who have been certified by the Ohio Institute of Human Services and the Ohio Child Welfare Training Program. He stated, in addition, if an agency is seeking an expert in a certain area, an application package can be completed and a process then begins to facilitate obtaining an approved trainer.

Mr. Manos averred that trainings have included, among other subject matter areas, systematic training regarding Adult Protective Services, management, self-defense, and teaming. Mr. Manos then provided details regarding the administrative components of his job with the Summit County DJFS. He confirmed that he was not laid off nor had his position abolished. Mr. Manos stated that the Northeast Region received \$87,500 for Instructional purposes and \$37,500 for

ERNEST B. UNHOLZ

Case Nos. 08-ABL-07-0465 and 08-LAY-07-0466

Page 9

Operating purposes. He noted the Instructional grant can be used for pretty much anything used in a training, including an LCD projector, a DVD player, folders, name tags, pens, *et cetera*.

Mr. Manos indicated that his classification is Training Officer 2 and that his working title is Training Coordinator Northeast Ohio. He confirmed that he never worked for Lucas County and that the northeast coordinator is employed by Summit County. Mr. Manos was directed to Appellee's Exhibit 7., a spreadsheet showing budget reductions by county, and confirmed that, for the pertinent time period, Summit County is shown taking a 1.01 percent cut while Lucas County is shown taking a nine percent cut. He further confirmed that he did not have direct knowledge of Lucas County's internal procedures.

He testified that Summit County DJFS was within his work area. He agreed that Summit County utilizes a separate form of government (charter county) from Lucas County and that Summit County is obviously a separate county.

He averred that the \$87,500 Instructional grant is to go to direct training costs and is not to go to pay salaries. He also noted that the \$37,500 Operating grant would not cover his salary and benefits entirely but could be used for this purpose.

Offering further testimony was **Megan Hupp**, who was called by Appellant. She reiterated that, due to cuts, the intent of the agency's training reorganization was to limit travel associated with the regional training liaison service. Ms. Hupp confirmed that, as of the date of hearing, the Title XX subsidy for Lucas County was in the black and that all of the \$125,000 was budgeted for. She noted that the Fiscal Year had not yet ended, but that, at that point in time, there was still money available, according to her communications with LCDJFS fiscal personnel.

When questioned about the northwest Ohio regional training system, Ms. Hupp opined that keeping LCDJFS as the northwest regional coordinator was not warranted and that the money that could be saved could be utilized in other areas.

Next to testify was **Natalie Edwards**, LCDJFS Training and Staff Development Supervisor and Regional Training Coordinator. Ms. Edwards noted that, at the time of hearing, she was performing Spring calendar three-month scheduling for April, May, and June, 2009 and was about to close the State Fiscal year.

ERNEST B. UNHOLZ

Case Nos. 08-ABL-07-0465 and 08-LAY-07-0466

Page 10

She indicated that LCDJFS was offering 40 to 45 workshops and that, as of Mr. Nutt's last report, the agency had spent approximately \$60,000 for the Fiscal Year. Ms. Edwards confirmed that she knew Appellant as the Regional Training Coordinator. She indicated that she had visited the northwest Ohio regional training website and that Appellant's picture was on the site. She stated that she could not remember Appellant's biography or a title for Appellant being present on the website. She agreed that Appellant send quarterly reports in his capacity of northwest Regional Training Coordinator and that she not tell him to stop or counsel him regarding this activity. Ms. Edwards indicated that she currently supervises four employees. She confirmed that the agency had purchased a laptop, projector, supplies, *et cetera* out of the Instructional fund.

Ms. Edwards confirmed that her classification is Training and Staff Development Supervisor and that her working title is Regional Training Coordinator. She reiterated that, as of the date of record hearing, about \$60,000 of the previously-available fund balance of \$87,500 had been spent so far this Fiscal Year and that time remained in the Fiscal Year to spend the remaining balance. She also reiterated that the fund was to be used to purchase laptops, projectors, and other items, which were to be used at the training site and not in the office.

She indicated that, as the coordinator, she develops schedules, meets with directors regarding their respective needs, meets with trainers, *et cetera*. She also indicated that she takes care of administrative housekeeping issues, CEU issues, provides information to the Information Services Department for updates of the internal website, attends steering committee meetings, has contact with other trainers, and sends out invoices concerning trainings.

She offered that a lot of the duties were administrative or clerical in nature. She noted that, with the 2007 reclassification, travel mostly stopped, except for annual trips to Columbus and quarterly regional coordinator meetings. She indicated that Appellant received a mileage reimbursement for travel and that travel was not reimbursed by state or federal funds and had to be taken out of whatever was available from the annual initial \$37,500 fund balance.

She averred that since she has assumed the regional training work, she has absorbed additional duties beyond her prior duties.

Next to testify was **Keith Beerbower**, a Trainer 1 with the LCDJFS. Mr. Beerbower confirmed that his work had centered upon child care training and long-term care training. He confirmed that he attended OHSTS workshops. He agreed that these were very different from other trainings, for example in-house trainings. He also confirmed that he has not coordinated regional training activities. Finally, he confirmed that the classification of his position is Trainer 1.

Last to testify was **Megan Hupp**, on rebuttal. Ms. Hupp was directed to page 2. of Appellant's Exhibit 5, which is an August 15, 2008 dated Memo from Ms. Hupp concerning reassignment of duties. She reconfirmed that Stephanie Kaiser (Trainer 2) was reassigned from the IS Division to the Staff Development Department. The Memo reiterates that the LCDJFS will continue to function as the regional training center and that Natalie Edwards will assume the task of coordinating the training for LCDJFS' area of the state. She noted that Stephanie Kaiser is the same person as Stephanie Stoler, a Trainer 2 whose position is contained on the table of organization that constitutes Appellee's Exhibit 31.

When questioned about this reassignment, Ms. Hupp indicated that this was not a new position on the agency's table of organization and that all the agency did was to change Ms. Kaiser's reporting structure.

When questioned as to why the LCDJFS had reassigned someone to a Department in which a Trainer had just been laid off, Ms. Hupp responded that abolishments are based on the Trainer 1 classification and that it did not matter where the Trainer 1 position was within the agency. She further asserted that the salary costs for these positions were distributed throughout the agency.

Ms. Hupp reiterated that only Ms. Kaiser's reporting structure changed; from reporting to the IS Director to reporting to Ms. Hupp. She reaffirmed that Ms. Kaiser's work duties did not change. Thus, she declared, Ms. Kaiser's reassignment was budget neutral in its result.

Based on the testimony presented and evidence admitted at hearing and upon the written closing statements submitted by the parties, I make the following Findings:

First, I note that I incorporate, herein, any finding set forth above, whether express or implied.

ERNEST B. UNHOLZ

Case Nos. 08-ABL-07-0465 and 08-LAY-07-0466

Page 12

Next, I find that Appellee acted in substantial procedural compliance with the various pertinent prerequisites contained with the Revised Code and Ohio Administrative Code, including all notice provisions set forth therein.

Further, I find that Appellee demonstrated that it was facing an approximate \$800,306.56 projected shortfall for FY 2009, if Appellee has not taken a number of cost containment measures which, unfortunately, necessitated abolishing a number of encumbered positions, including Appellant's full-time Trainer 1 position and another part-time Trainer 1 position.

Additionally, I find that Appellee had already attempted to address previous shortfalls through various means including severely restricting overtime accumulation, instituting a hiring freeze, through restructuring, through restricting travel, and through restricting supplies purchases,

However, as was shown, some of these measures had a more positive effect on previous Fiscal Years than on the Fiscal Year in question. Moreover, even the cumulative effect of all these efforts was insufficient to satisfactorily address the projected \$800,000 plus shortfall that Appellee faced.

Additionally, Appellee demonstrated that it made a deliberate and contemplated decision not to abolish positions that had direct and sustained contact with clients but only those from for example Employee Services that had corollary but not sustained contact with clients. As well, Appellee demonstrated that the Employee Services personnel budget was assigned to and drawn from various places in Appellee's organization. Appellee also demonstrated that Instructional grant training funds were substantially restricted in their application and could not have gone to pay salaries and benefits for employee positions, including Appellant's. Moreover, Appellee demonstrated that it could accomplish the core component of the regional coordinator training by utilizing existing personnel and by conducting much of that work without needing to go offsite and perform extensive (and expensive) travel.

Accordingly, I find that Appellee demonstrated that it faced a projected deficiency in its funding and identified at hearing through its documentary and testimonial evidence savings to be achieved through the abolishment of Appellant's position, in accordance with R.C. 124.321.

We are left, then with the questions of whether Appellee acted in good faith and not as a subterfuge for discipline (now a statutory requirement), acted without personal animus toward Appellant in effectuating this process, and did not act in an attempt to subvert the state's civil service laws in effectuating this process.

As to the first question, it appears that Appellee acted in good faith and there is no evidence of note that Appellee abolished Appellant's position as a subterfuge for disciplining Appellant.

As to the second question, there is no evidence of note that Appellee acted with personal animus in abolishing Appellant's position along with perhaps 10 other positions during this process.

As to the last question, I find that Appellee did not act in an attempt to subvert the state's civil service laws in effectuating the abolishment of Appellant's position. We note that Appellant specifically questioned Appellee's personnel practices and also its fiscal and budget decision-making. It is understandable that Appellant may wish to second-guess Appellee's reassignment of a Trainer 2 to the Staff Development Department so close on the heels of the abolishment of Appellant's position. Yet, it must be remembered that abolishments select certain positions or classifications for elimination from the table of organization and, unfortunately, when funds are tight, the positions that are selected for abolishment are usually encumbered.

Here, Appellee made a focused decision to abolish its Trainer 1 positions (both Appellant's and a part-time Trainer 1 as well). This decision (as to Appellant's position) was driven by: the need to save on travel expenses; the determination that the agency's training funds were not necessarily being spent in the most cost effective manner; the determination that this was a position that did not offer direct services to clients; and the determination that the duties performed by this position could be performed by another position that was already encumbered – saving the funds necessary to fund the position minus unemployment compensation.

To summarize, Appellee has demonstrated its substantial procedural compliance with the prerequisites set forth in the Revised Code and Ohio Administrative Code, has demonstrated the validity of its rationale, and has

demonstrated that it acted in good faith, in accordance with R.C. 124.321 and R.C. 124.328,

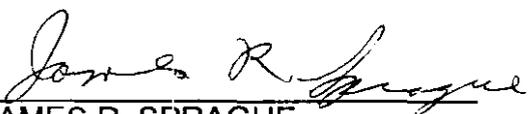
CONCLUSIONS OF LAW

These cases present this Board with the question of whether Appellee met its burden of proof by demonstrating its substantial procedural compliance and its substantive compliance with all pertinent statutory requirements (including the good faith statutory requirement set forth in R.C. 124.321 (D))? These cases also present this Board with the question of whether Appellee successfully rebutted any assertion by Appellant that Appellee acted in bad faith, as that term is defined by case law?

Based on the Findings, above, we may answer both of these questions in the affirmative. I have found that Appellee met its burden of proof regarding both substantial procedural compliance and substantive compliance. I have also found and reiterate that Appellee successfully met its burden of production regarding any of Appellant's additional bad faith assertions. Accordingly, I find that Appellee has successfully defended its determination to abolish Appellant's position and the resultant layoff that occurred due to that abolishment.

RECOMMENDATION

Therefore, I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the abolishment of Appellant's Trainer 1 position and Appellant's subsequent layoff therefrom, pursuant to R.C. 124.03 and R.C. 124.328.



JAMES R. SPRAGUE
Administrative Law Judge

JRS: