STATE OF OHIO
STATE PERSONNEL BOARD OF REVIEW

William R. Loetz Jr.,

Appellant,

v.

Geauga County Engineer,

Appellee.

Case Nos. 08-ABL-03-0074
08-LAY-03-0075
08-INV-03-0078

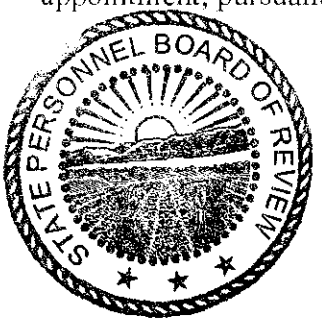
ORDER

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

This Board has reviewed the Report and Recommendation of the Administrative Law Judge; any objections to that report which were timely and properly filed; the entire record; and the oral arguments of the parties which were presented to this Board on July 22, 2009.

After careful and thorough consideration of all of the above, the Board hereby adopts the recommendation of the Administrative Law Judge.

Wherefore, it is hereby **ORDERED** that the abolishment of Appellant's position and his subsequent layoff be **AFFIRMED**. It is **FURTHER ORDERED** that the investigation appeal be **TERMINATED**, as Appellee's actions regarding the selection of candidates to fill the newly created Technician positions did not constitute an abuse of the power of appointment, pursuant to O.A.C. §§ 124-7-01 and 123:1-41-1 O(B).



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 30, 2009.

Michelle Hussey
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

William R. Loetz, Jr.,	Case Nos. 08-ABL-03-0074 08-LAY-03-0075 08-INV-03-0078
Appellant	
v.	May 19, 2009
Geauga County Engineer,	
Appellee	Jeannette E. Gunn *Administrative Law Judge*

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

The above-referenced matters came on to be heard on December 15, 2008, due to Appellant's timely appeal from an abolishment of his position as Surveyor 2 and subsequent layoff from employment. Appellant was present at record hearing, and was represented by Jessica L. Johnson, attorney at law. Appellee Geauga County Engineer, Robert L. Phillips, was present at record hearing and was represented by Bridey Matheney, Assistant Prosecuting Attorney.

The subject matter jurisdiction of this Board was established pursuant to R.C. 124.03 and R.C. 124.328.

STATEMENT OF THE CASE

Robert Phillips testified that he presently holds the elected office of Geauga County Engineer and confirmed that he held that office at the time of Appellant's job abolishment and subsequent layoff in March 2008. He indicated that the Engineer's administrative office was reorganized in early 2008 for reasons of economy and efficiency (Appellant's Exhibit A) and recalled that as part of the reorganization, employee position descriptions were reviewed and job duties were realigned. The witness stated that four positions, including the Surveyor 2 position occupied by Appellant, were abolished as a result of the reorganization and two new positions, Technician 1 and Technician 2, were created. Mr. Phillips testified that as a result of the reorganization of the Engineer's Office, Appellee was able to perform the same work with fewer people, which resulted in a better economic situation for the office.

The witness explained that the four positions that were abolished, Project Inspector 1 and 2 and Surveyor 1 and 2, did not have a constant level of work throughout the year; most of their duties are performed in the field, but because construction slows down during the winter months, the need for inspection and surveying work is not as great. He confirmed that the Inspectors and Surveyors did have paperwork and other in-office projects that they worked on during the winter months, and that they assisted other employees during that time.

Mr. Phillips indicated that the newly created Technician 1 and 2 classification specifications included not only surveying and inspection duties, but also drafting and design responsibilities; he testified that knowledge of AutoCAD design software was a requirement of the new positions. The witness observed that adding drafting and design responsibilities to the new Technician positions allowed incumbents to take on additional projects during winter months in order to maintain the same level of productivity throughout the year. He noted that two of the employees whose positions were abolished, Mr. Delfs and Mr. Melaragno, were hired to fill the newly created positions of Technician 1 and Technician 2 and acknowledged that both of those individuals had fewer retention points than Appellant.

The witness acknowledged that shortly before the job abolishments took place, the position description for the Project Inspector 2 position occupied by Peter Seliskar (Appellant's Exhibit 2) was reviewed and rewritten to reflect the incumbent employee's actual job duties. He confirmed that Mr. Seliskar's position was reclassified as a Subdivision Right of Way Coordinator (Appellant's Exhibit 1). Mr. Phillips explained that the Subdivision Right of Way Coordinator position differed from the Project Inspector 2 position in that the Right of Way Coordinator has supervisory responsibilities and the ability to acquire, rather than assist in acquiring, rights of way. He noted that Mr. Seliskar was the senior employee in the Project Inspector 2 classification prior to the reclassification of his position. The witness recalled that another employee in a different department also had a title change at about that same time.

The witness stated that prior to proceeding with the abolishment of positions and layoff of employees he did not consult with his Deputy Engineers, but did consult with Mr. Ron Geller, who is Appellee's Human Resources Administrator. Mr. Phillips noted that Appellant received notification of his job abolishment and subsequent layoff (Appellant's Exhibit B) and indicated that he personally signed the notification letter provided to Appellant.

Mr. Phillips confirmed that one of Appellant's responsibilities was to serve as a technical advisor for the Tax Map department. He noted that Appellant provided technical assistance to the Map Room as needed and confirmed that the duty was included in Appellant's job description as a Surveyor 2. The witness observed that several people in the office provide technical assistance to the Map Room when necessary, including himself.

Ron Geller testified that he is presently employed by Appellee as its Human Resources Administrator and has been so employed since approximately 1984. He confirmed that in 2008, he was asked by Mr. Phillips to reorganize Appellee's administrative office department, with the goal of reorganizing for greater efficiency. The witness recalled that upon examination, it was determined that the positions of Project Inspector 1 and 2 and Surveyor 1 and 2 had somewhat seasonal workloads, with minimal field work being performed during the winter months. Mr. Geller explained that a plan was developed to make minor adjustments to the duties assigned to a vacant Engineer 1 position, to abolish four positions, and to create two new positions. The witness confirmed that the Surveyor 2 position occupied by Appellant was one of the four abolished.

Mr. Geller explained that the reorganization was not only more efficient, as it allowed Appellee to perform the same duties with fewer people, but it also resulted in payroll savings. He indicated that he created the packet of information contained in Appellee's Exhibit A as a rationale and justification for the reorganization.

The witness testified that Appellant was notified of his job abolishment and pending layoff on March 17, 2008; the layoff was effective March 31, 2008. He noted that although Appellant informed him of his desire to exercise his displacement rights, there were no other employees in Appellant's classification series that he could displace and Appellant was not entitled to displace any Map Room employees.

Mr. Geller indicated that Appellant applied and was interviewed for the new Technician 1 and 2 positions, as well as the vacant Engineer 1 position, by Deputy Engineer Joe Cattell and himself. The witness recalled that he and Mr. Cattell asked Appellant some basic questions and discussed his background and skills. He testified that during the interview he provided Appellant with the job descriptions that had been previously posted (Appellant's Exhibits 6 and 7) and stated that he made Appellant aware that both of the Technician positions involved surveying work and

required CAD skills. Mr. Geller stated that he asked Appellant to take a CAD test, but Appellant refused to do so, stating that although he was able to use the software to prepare basic drawings, he did not want to be a draftsman. The witness confirmed that he sent Appellant a letter (Appellant's Exhibit 8) reflecting his understanding that Appellant had withdrawn his interest in the Technician 1 and 2 positions.

Mr. Geller stated that after he and Mr. Cattell had interviewed all of the applicants for the open positions, they determined that Mr. Delfs and Mr. Melaragno were the best candidates for the positions. He acknowledged that Appellant sent him a letter to clarify that he was still interested in the Technician positions (Appellant's Exhibit 10), but indicated that he and Mr. Cattell had already made their decisions by the time they received the letter.

Appellant Loetz indicated that he was employed by Appellee as a Surveyor 2 prior to his layoff in March 2008. He noted that he had been employed by Appellee since 1989 in a variety of positions and stated that in the course of his Surveyor 2 duties, he performed field survey work, engineering work, and created AutoCAD drawings as needed.

Appellant explained that AutoCAD is computer-aided design software, and noted that it is used as a somewhat generic term to refer to all computer-aided design programs (CAD). He stated that he has taken some CAD classes and prior to his layoff had used Appellee's software program to create boundary drawings, center line drawings and right of way drawings. Appellant indicated that he primarily used the AutoCAD 2000 program while employed by Appellee.

Appellant noted that although the months of May through November are generally considered "construction season," he performed field survey work year round and was able to perform topographical field work and GPS work during the winter months, even if there was snow on the ground. He stated that he always had work to be done. Appellant testified that he also served as a technical advisor to the Tax Map Room, which records property transactions and reviews surveys that accompany property sales, splits and subdivisions, and indicated that he occasionally performed duties in the Record Room.

Appellant confirmed that he participated in an interview with Mr. Geller and Mr. Cattell that lasted approximately twenty to twenty-five minutes. He testified that neither Mr. Geller nor Mr. Cattell asked him any questions regarding his experience

or qualifications for the open positions. Appellant stated that Mr. Cattell did not ask him any questions at all, and that the only question Mr. Geller asked him was whether or not he wanted to withdraw from consideration for the positions.

He recalled that Mr. Geller told him that the Technician positions required the employee to perform computer design work for six months out of the year but did not tell him that a CAD test was required and did not offer him the opportunity to take a CAD test. Appellant confirmed that he had a written copy of the position descriptions during the interview and confirmed that the description stated that CAD training was a requirement of the position. He indicated that Mr. Geller told him during their interview that the positions did not include surveying work, although the posted description he had in his possession stated that surveying duties were part of the position. Appellant testified that he told Mr. Geller he did not have a problem doing computer design work, and that he wanted to apply for the positions described in the job posting. He acknowledged that he told Mr. Geller he wanted to withdraw for consideration for the positions as they had been verbally described to him during the interview.

Patrick Murphy testified that he was employed by Appellee for approximately eighteen years and, at the time of his March 2008 layoff, held a position classified as a Project Inspector 2. He noted that he performed inspection duties year round, and occasionally assisted Appellant with surveying duties during the winter months.

Mr. Murphy confirmed that he interviewed for the newly created Technician positions with Mr. Geller and Mr. Cattell. He stated that he did not know how to use the AutoCAD software and declined their offer to take a CAD test; the witness recalled that Appellant told him that he had not been offered the opportunity to take a CAD test. Mr. Murphy testified that, to his knowledge, the two individuals who were hired to fill the Technician positions had AutoCAD experience.

Ken Folk testified that he was employed by Appellee as Deputy Engineer in charge of construction until his termination in March 2008. He stated that he was responsible for overseeing county construction projects that had been bid out, including managing projects, paying bills, overseeing inspectors and project engineers, and providing limited oversight for surveyors.

The witness confirmed that he had worked with Appellant on preparation for road projects, usually during the winter season, and explained that construction typically takes place during the summer months while preparations for the coming

year, including surveying and information gathering, are made during the winter months. Mr. Folk testified that based on his personal observations, he believed that Appellant was a good surveyor and was productive.

Mr. Folk indicated that he was not involved in the restructuring of Appellee's administrative office and first became aware of it on the morning of March 17, 2008. He recalled that Mr. Phillips called a staff meeting that morning and stated that he was going to restructure the office; the witness stated that he was asked by Mr. Phillips to leave at that time and was terminated two days later.

FINDINGS OF FACT

Based upon the testimony presented and evidence admitted at record hearing, I make the following findings of fact:

Appellee Geauga County Engineer reorganized its administrative office in March 2008 for reasons of economy and efficiency. The reorganization resulted from a review of the department's operations, employee job duties and position descriptions.

As a result of the reorganization, four existing positions classified as Project Inspector 1 and 2 and Surveyor 1 and 2 were subsequently abolished and the incumbent employees laid off. Appellee created two new Technician positions that combined the surveying and inspecting work performed by the incumbent Project Inspectors and Surveyors with additional computer design duties. CAD skills are a requirement of the Technician positions.

Appellant occupied a position classified as Surveyor 2. He was notified of the abolishment of his position on March 17, 2008; the layoff was effective March 31, 2008. Appellant was offered the opportunity to exercise his displacement rights, however, there were no available positions in his classification series into which he was able to displace. Appellant had no displacement rights into the positions in the Map Room.

All of the incumbent employees whose positions were abolished, including Appellant, were provided with the opportunity to interview for the newly created positions of Technician 1 and Technician 2; two of those employees were hired to fill the new positions.

CONCLUSIONS OF LAW

Abolishment means the permanent deletion of a position from the organization or structure of an appointing authority predicated upon a lack of continued need for the position due to reorganization for efficient operation, economy, or lack of work. R.C. 124.321 (D). This definition presents three tests that must be met in order to abolish a position. First, there must be a permanent (expected to last over one year, O.A.C. 124-7-01 (A)(1) deletion of a position from the organization. Second, that deletion must be made due to a lack of continued need for the position. Third, the lack of continued need must be justified by either reorganization for efficient operation, reasons of economy, or lack of work. O.A.C. 124-7-01 (A)(1). In order to successfully defend a contested abolishment, not only must an appointing authority demonstrate adequate justification for the abolishment of a position, it must also show compliance with the procedural requirements set forth in the Administrative Code.

In addition, an appointing authority must successfully rebut a valid *prima facie* showing of "bad faith," should one be demonstrated. Bad faith does not depend upon a finding that an employer acted with a political or personal animus, or failed to comply with procedural requirements, but may also be evidenced by an attempt to subvert the civil service system to allow the selection of handpicked employees to fill jobs that would have been available to workers based on seniority and retention points. See *Blinn v. Bureau of Employment Services* (1985), 29 Ohio App.3d 77.

Appellee provided sufficient testimony and evidence at record hearing to support a conclusion that it substantially complied with the applicable statutes in implementing the abolishment of Appellant's position. Accordingly, this Board may proceed to consider Appellant's remaining concerns. Appellant's contention at record hearing was that Appellee's justification for the abolishment of his position was faulty, and that Appellee acted in bad faith.

Revised Code Section 124.321(D)(1) provides that an appointing authority may abolish positions "for any one or any combination" of the three listed reasons: 1) reorganization for efficient operation; 2) economy; or 3) lack of work. In its rationale, Appellee cited reorganization for efficient operation and economy as justification for the abolishment of Appellant's position. Revised Code Section 124.321(D)(2)(a) notes that "economy" is to be determined at the time the abolishment is proposed, based on the appointing authority's estimated amount of

savings with respect to salary, benefits and other matters associated with the position abolishment.

Testimony and evidence demonstrated that Appellee's administrative offices were significantly reorganized, with the duties of four positions being consolidated and reassigned, along with the addition of CAD duties, to the two newly created Technician positions. I find that this reallocation of Appellant's duties was not improper, as the need to be considered in an abolishment is the need for a position to exist, not a need for duties to be performed. Appellee's reorganization allowed for the continued performance of existing job duties, as well as the performance of additional new duties, by fewer employees. I find that Appellant has produced sufficient evidence to justify its abolishment of Appellant's position both for reasons of efficiency and economy.

Appellant produced witness testimony alleging that the abolishment of his position was made in bad faith. Appellant, Mr. Murphy, and Mr. Folk all testified that Appellant had been treated unfavorably by Appellee in the past. Appellant argued that the abolishment of his position was a subterfuge designed merely to remove him from employment; he alleged that Appellee misrepresented the duties of the new Technician 1 and 2 positions to him, and that Appellee denied him the opportunity to take a CAD test as part of the interview process for the Technician 1 and 2 positions. I find that such evidence is sufficient to constitute a *prima facie* case of bad faith, which Appellee must successfully rebut.

Appellee produced testimony and evidence to establish that four employees were laid off as a result of its reorganization. No evidence was presented to establish that any of those four employees had the right to displace into the newly created Technician positions. Accordingly, I find that Appellee's selection of Mr. Delfs and Mr. Melaragno to fill the Technician positions did not constitute an attempt to subvert the civil service system, as neither of the Technician positions were available to Appellant based on either seniority or retention points

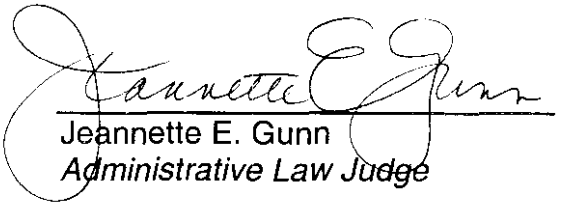
All of the employees whose positions were abolished were given the opportunity to apply and interview for the Technician positions. An appointing authority has discretion in who it hires, and the decision of how best to examine applicants for a position is left to the appointing authority. *State, ex rel. King v. Emmons* (1934), 128 Ohio St. 216. An appointing authority may employ a variety of methods of competitive examination and evaluation to determine an applicant's eligibility for appointment to a position. In a competitive examination, the candidates

match their qualifications, each against the others, and the final determination is made by rating and comparison. See, *State, ex rel. King v. Emmons*, supra.

This Board has no jurisdiction to substitute its judgment for that of Appellee in determining the best candidate to fill a position. Testimony and evidence established that Appellee chose successful candidates from among the individuals who applied for the positions. I find that there was no impropriety in the selection process used by Appellee, and that Appellee's actions did not constitute an abuse of its power of appointment.

Appellee presented testimony regarding the current business trend toward positions encompassing multiple responsibilities. Appellee also noted that by consolidating duties into the Technician positions, it was able to perform the same work with fewer employees, employing temporary employees to meet any increased seasonal demands. Upon a review of all of the evidence and testimony presented, I find that Appellee has produced sufficient evidence demonstrating a legitimate business reason for its reorganization to rebut Appellant's *prima facie* case of bad faith. Appellant failed to demonstrate either an attempt to subvert the civil service system or an abuse of the power of appointment by Appellee.

Therefore, because Appellee has demonstrated by a preponderance of the evidence that the abolishment of Appellant's position and Appellant's layoff were justified and were carried out in compliance with the requirements of O.A.C. 124-7-01 and O.A.C. 123:1-41-I O(B), I respectfully **RECOMMEND** that the State Personnel Board of Review **AFFIRM** the abolishment of Appellant's position and his subsequent layoff. I further **RECOMMEND** that the investigation appeal filed by Appellant be **TERMINATED**, as Appellee's actions regarding the selection of candidates to fill the newly created Technician positions did not constitute an abuse of the power of appointment.



Jeannette E. Gunn
Administrative Law Judge

JEG: