

STATE OF OHIO  
STATE PERSONNEL BOARD OF REVIEW

Hilary A. Patterson,

Case Nos. 08-ABL-06-0260

08-LAY-06-0261

*Appellant,*

v.

Department of Rehabilitation and Correction,  
Mansfield Correctional Institution,

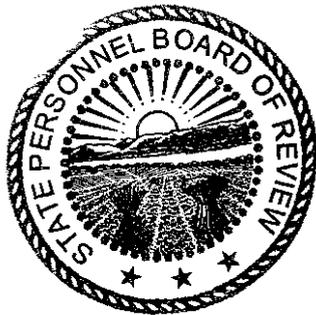
*Appellee*

**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 Appellee's abolishment of Appellant's position and Appellant's resultant layoff 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, December 31, 2009.

  
\_\_\_\_\_  
Michelle Hursey  
*Clerk*

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

12-31-09  
MH

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

Hilary A. Patterson,

Case Nos. 08-ABL-06-0260  
08-LAY-06-0261

*Appellant*

v.

September 29, 2009

Department of Rehabilitation and Correction,  
Mansfield Correctional Institution

Marcie M. Scholl  
Elaine K. Stevenson  
*Administrative Law Judges*

*Appellee*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant Patterson's timely filing of a notice of appeal of her job abolishment and resultant layoff. A record hearing in this matter was held on December 8, 9, 11, and 12, 2008. Appellant Patterson was present at record hearing and appeared *pro se*. 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 Joseph N. Rosenthal and Nicole S. Moss.

This Board's jurisdiction to hear these appeals 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 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 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 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 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 several alternatives were discussed.

The witness testified 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 ultimately 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 testified he did not know if all vacant positions were abolished.

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 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 he 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 offered 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 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 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 stated each Warden submitted a plan for abolishments at their institution. When asked why so many positions were abolished at Mansfield Correctional Institution (MCI), Mr. Forbes testified that it was due to the change from a unit management structure to a social services structure.

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 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 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 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 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 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 Appellee was legally required to proceed in that manner.

Mr. Burrus explained 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 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 denied that any classification series was targeted for abolishment. When asked if he felt the process was subjective, he replied that there is subjectivity involved when there are thirty different institutions and thirty different ways of doing things. Mr. Burrus denied Appellee was looking to abolish only positions which had senior employees in them.

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 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 an employee can only challenge his or her own retention point calculation.

Appellee's next witness was Stuart Hudson, an employee of Appellee for approximately fourteen years. He stated he has been Warden of Pickaway Institution since approximately October 2008 and prior to that, he was Warden of Mansfield Correctional Institution (MCI) since November 2005. He explained MCI is a level three prison, meaning it houses the long term, most violent offenders who have an average stay of approximately five years. In October 2008, MCI had approximately 2,450 inmates and at the level one camp, located on the grounds, there were approximately 400 inmates. One unit was comprised of four pods with 120 inmates in a pod.

Warden Hudson testified he was briefed by the Director in January or February 2008 that abolishments were needed due to a revenue shortfall. He was told that the level three and four institutions were going to move to a social service model, which meant doing away with unit managers. He was told to look deep for excesses, redundancy, etc. in making his cuts. Warden Hudson stated he analyzed his table of organization and was told he had to identify one unclassified deputy warden for abolishment. He chose the Deputy Warden of Administration. Warden Hudson testified he spent a lot of time reviewing his table of organization as he was

not told what the social services model would look like. He was given a certain number of positions to abolish and was told to look only at positions, not people. He had to look at what would better the institution. Warden Hudson testified he was also told to come up with all the positions that he could to be abolished without considering the unit managers.

Warden Hudson testified he did not want to open Appellee up to any impropriety or malicious intent claims, so he was very careful and looked at all the duties and classification specifications of the positions. He met with his Regional Director and the person who oversees the prisons and at that point, he was still told to do nothing with the unit managers. He also could not look at the medical services, the food service, the education and recovery sections or at the corrections officers. That left him with the general operation line items and there were limited choices. From a previous position he held as deputy warden, he knew how the business office operated and he looked at those classification specifications.

The Business and Cashier's Offices were comprised of a Business Administrator 3 and 1; the Deputy Warden of Administration; a Secretary to the Deputy Warden; four Account Clerks; a Cashier Supervisor and a vacancy for an Account Clerk. He stated the business office and cashier's office were connected. Warden Hudson testified he knows Appellant Patterson, as she was a Business Administrator 1 at MCI and her position was abolished. He stated he had to separate the bargaining unit from management and had to look to see what positions could be absorbed. His first consideration was the safety and security of the institution so that left him with the ancillary services to consider.

Warden Hudson testified he knew that a Business Administrator 1 could not "work up" and was limited in scope as to what duties could be performed. The Business Administrator 3 was responsible for the overall operations and could "work down" in the series. There was a redundancy between the two positions and he decided that the duties of the Business Administrator 1 position, Appellant Patterson's position, could go to the Account Clerk, the Account Clerk Supervisor and the Business Administrator 3. He stated that a Business Administrator 1 cannot do the duties of a Business Administrator 3 on a day to day basis, as that would leave them open to a possible exempt grievance.

Warden Hudson testified he has known Appellant Patterson for a long time and stated she was a great employee who knew the Business Office. He testified he did not consider the Business Administrator 3 position due to the fact that that position could pick up duties. Warden Hudson testified he absolutely did not look at people but instead looked at the duties of positions and what was best for the institution.

On cross examination Warden Hudson stated that to his knowledge, Business Administrator 1 positions were not cut across the state. He denied choosing her position because she had no bumping rights and he reiterated that he choose her position because it was the lowest in the series. Warden Hudson testified he took the person out of the mix when making his decision and he looked only at the duties of a position. He testified he was not aware what other institutions did with their Business Administrator 1 positions as his only concern was MCI.

Warden Hudson testified he felt Appellant Patterson was a great employee. He stated he left the splitting of the Business Administrator 1 duties to the Business Administrator 3 since he knew what had to be done and who would be best to do what. He stated that at first, during the transition time, there were some problems but by the time he left, there were no complaints and the office was running well without the Business Administrator 1 position.

Appellant Patterson's first witness was Karen Denman, an Account Clerk 2 in the Business Office at MCI for approximately six or seven years. Ms. Denman testified she did not absorb any of Appellant Patterson's duties and that to her knowledge, Appellant Patterson's duties were being done by the Business Administrator 3. On cross examination, Ms. Denman testified she processes and codes purchase requests and assists with telephone vendor calls.

Appellant Patterson's next witness was Karen Biglin, an Account Clerk at MCI for approximately ten years. She testified she did not absorb any of the duties of Appellant Patterson's abolished position, as the Business Administrator 3 was doing all of those duties. On cross examination, Ms. Biglin testified she processes and codes purchase requests and assists with telephone follow-up of vendors.

Appellant Patterson's next witness was Penney Doerrler, a Secretary at MCI in the Business Office and the Deputy Warden's office. She testified she has worked with Deputy Warden Hendershot for approximately two or two and one-half

years. Ms. Doerrler testified he approves purchase orders, vouchers and requests to purchase. She stated she has not seen him do analytical reports.

Appellant Patterson's next witness was Janet Hamilton, Account Clerk 2 in the Business Office at MCI for approximately two and one-half years. She testified Appellant Patterson approved purchase orders and vouchers, did phone follow-up with vendors, statistical and analytical reports, worked with OBM, served on committees and did performance evaluations and discipline. Ms. Hamilton testified she does follow up with vendors now and coding. She stated she does not know who absorbed Appellant Patterson's duties.

Appellant Patterson testified all of her duties are being completed by one person, the Business Administrator 3. She questioned how an Account Clerk and the Cashiers can "work up" and do exempt work when she could not. Appellant Patterson testified she trained the Business Administrator 3 and did those job duties. She stated Ms. Hamilton had offered to leave and Appellant Patterson opined that Ms. Hamilton would have been the better choice to have her position abolished. Appellant Patterson stated twelve other institutions kept their Business Administrator 1 positions and that with her twenty-three years of seniority, the whole thing made no sense to her. She testified she was basically running the Business Office and received many letters of commendation. Appellant Patterson testified she was not informed of the decision making and felt she was targeted. She opined that the Business Administrator 3 is overwhelmed and cannot do the cost savings measures.

### **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 held by Appellant Patterson and her resultant layoff.

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. Appellee estimated that the average total payroll cost of each position is approximately \$70,000. Appellee initially identified 701 positions for abolishment, which would result in 37M in cost savings.

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 Patterson held a position classified as Business Administrator 1 at Madison Correctional Institution. On June 3, 2008, Appellant Patterson was notified that her position was to be abolished.

There were no available positions Appellant Patterson could displace into in her layoff jurisdiction and consequently, Appellant Patterson was laid off effective June 21, 2008.

### CONCLUSIONS OF LAW

In the present appeals the Board must consider: (1) Whether Appellee has proven by a preponderance of the evidence that the abolishment of the position encumbered by Appellant Patterson 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 Patterson's layoff was 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.

\* \* \* \* \*

Appellee has met its burden of proving by a preponderance of the evidence that Appellant Patterson's abolishment was due to reasons of economy and that all procedural requirements of effectuating such abolishment were satisfied. Prior to the record hearing, Appellant Patterson 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 her Business Administrator 1 position at Mansfield Correctional Institution.

The evidence established that on January 31, 2008, the Governor issued an Executive Order requiring agencies, Appellee included, to reduce their GRF expenditures. Specifically, Appellee was ordered by OBM to cut their expenditures by six to ten percent. The evidence also established that approximately eighty-five percent of Appellee's budget is made up of GRF funding.

Section 124.321(2)(a) of the Ohio Revised Code allows an appointing authority to abolish positions based on the estimated savings of an employee's salary and benefits if the appointing authority's operating appropriation has a

projected deficiency or if the appropriation has been reduced by executive action. Appellee proved that both of those are true. Appellant Patterson offered no evidence to dispute either of those facts. Appellee had a budget deficit and was ordered by executive action to reduce their expenditures. Appellee abolished 701 positions in order to reduce its expenditures. The statute provides that the savings in salary and benefits can be the basis for an abolishment due to economy if the abolishment takes place within one year of such executive action and projected deficit. In the instant case, the Executive Order was issued in January 2008 and the abolishment of Appellant Patterson's position took place in June 2008.

Appellant Patterson's primary argument at record hearing was that she disagreed with the analysis and, ultimately, the decision to abolish her position. That argument is not enough to defeat the abolishment. Appellee had a budget shortfall and had to eliminate positions. Appellee was able to abolish Appellant Patterson's position, redistribute her duties and still get the work done, all the while saving money. That is exactly what the purpose of the abolishment was. If Appellee had abolished Appellant Patterson's position due to a lack of work, then she may have had an argument, but that was not the stated rationale. This Board cannot second guess the Appellee's choosing of positions for abolishment, as the law provides that an appointing authority has the sole discretion to choose what positions to abolish.

Appellant Patterson argued that all of her duties after the abolishment were being performed by the Business Administrator 3. The evidence established that some of her duties were being performed by the other employees in the office, with the majority of her duties going to the Business Administrator 3. Once again, because Appellee has proved that the abolishment of Appellant Patterson's position was for reasons of economy, the distribution of her duties is not relevant. Her position was abolished for cost savings measure, not because the work that she did was not needed any longer. Warden Hudson testified that her duties could be absorbed by the Business Administrator 3 and that is what has happened.

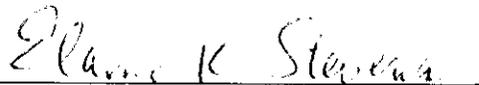
Appellant Patterson testified she was doing all of the duties of the Business Administrator 3 position. If that was true, then she should have filed for a job audit. She could have done that at any time prior to her retention points being calculated. There was no evidence that she filed for a job audit and this Board cannot consider that argument without a job audit having been done. She also argued that Ms. Hamilton's position should have been abolished instead of hers. Once again, the

appointing authority has the discretion to decide which positions to abolish and Warden Hudson's testimony was that he carefully considered each position and the duties performed and decided which positions to abolish based on his considerations of safety, security and what was best for the institution. He made it clear that he took the person out of the equation and focused on duties. Appellant Patterson presented no evidence whatsoever that she was targeted for abolishment or that there was any bad faith on the part of the Appellee in effectuating the abolishment of her position.

Therefore, since Appellee has met its burden of proof and there has been no evidence of bad faith on the part of the Appellee, it is our **RECOMMENDATION** that Appellee's abolishment of Appellant Patterson's Business Administrator 1 position at MCI be **AFFIRMED**, pursuant to sections 124.03 and 124.321, *et seq.* of the Ohio Revised Code.



Marcie M. Scholl  
*Administrative Law Judge*



Elaine K. Stevenson  
Hearing Officer