

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

Teri L. Ruffner,

Appellant,

Case Nos. 08-ABL-06-0318
08-LAY-06-0319
08-RED-06-0321
08-MIS-06-0322

v.

Department of Rehabilitation and Correction,
Parole and Community Services,

Appellee.

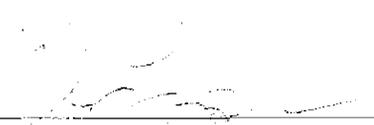
ORDER

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 instant appeals (Case Nos. 08-RED-06-0321 and 08-MIS-06-0322) be **DISMISSED** since Appellant was not reduced in pay or position. It is further **ORDERED** that Appellee's abolishment of Appellant's position and her resultant layoff (Case Nos. 08-ABL-06-0318 and 08-LAY-06-0319) be **AFFIRMED**, pursuant to O.R.C. § 124.321 *et seq* and O.A.C. § 123:1-41.

Lumpe - Aye
Sfalcin - Aye
Tillery - Aye

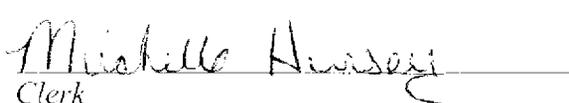


J. Richard Lumpe, *Chairman*

CERTIFICATION

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

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



Clerk

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

11-9-09

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Case No. 08-ABL-06-0318
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September 29, 2009

Marcie M. Scholl
Elaine K. Stevenson
Administrative Law Judges

REPORT AND RECOMMENDATION

To the Honorable State Personnel Board of Review:

This cause came on for consideration upon Appellant Ruffner's timely filing of the above-captioned appeals regarding the abolishment of her position and her resultant layoff. A record hearing in this matter was held on December 8, 9, 11, and 12, 2008. Appellant Ruffner 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 Timothy M. Miller and Joseph N. Rosenthal.

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 stated 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 he indicated 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 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.

Upon cross examination, Mr. Stockdale explained that the exempt pay increase received in July 2009, were mandated by statute, so the Appellee did not have a choice in the matter. He also explained that mileage reimbursement and clothing allowances for the union employees were usually something that was bargained for and was part of the bargaining agreements.

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 explained that Appellee purchases approximately eighty-five percent of the products OPI manufactures.

Mr. Forbes confirmed 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 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.

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 that this can lead to duplicative positions in some institutions, and when a job abolishment is undertaken, typically the most recently created duplicative position is the position eliminated. Mr. Burrus acknowledged that this practice sometimes resulted in a formerly unclassified employee being placed into a classified position and then laid off from that position shortly thereafter, but he indicated Appellee was legally required to proceed in that manner.

Mr. Burrus indicated that once the positions to be abolished had been identified, it was necessary for Appellee to identify the layoff jurisdiction for each position and calculate retention points for each of the incumbent employees. He noted that retention point lists were posted in several locations and any alleged

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errors were checked by referring to information contained on the OAKS system; DAS also certified Appellee's calculations. The witness explained that retention points are calculated based on years of continuous service, with no break in service. He confirmed that prior service was also considered in the calculation of retention points, but that DAS would not consider the issue of an error in awarding prior service credit unless it was raised prior to or at the same time that the layoff rationale was submitted. Mr. Burrus testified that an employee may only challenge the calculation of his or her own retention points.

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

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

Ms. Pickens explained that continuous service means that an employee has had no more than a thirty-day break in service. She indicated that accrual of retention points starts over if an employee has a break in service. The witness noted that it is the agency's obligation to provide information regarding an employee's prior

service to DAS, although agencies argue that it is onerous for employees to provide information regarding their prior service. She observed that prior service also affects the calculation of employees' vacation and sick leave.

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

Appellee's next witness was Linda Janes, Deputy Director for the division of Parole and Community Services (PCS) for approximately one and one-half years. She has been employed by Appellee for approximately seventeen years. PCS is comprised of approximately 1,000 employees statewide, divided into seven regions and approximately seventy district or satellite offices. The employees cover all eighty-eight counties.

Ms. Janes testified she was told in February 2008 that positions needed to be abolished. Her first goal was to cut costs without cutting positions. They saved two million dollars by eliminating ancillary contracts, reducing duplicate phone lines, and eliminating drug tests and desktop printers. The lease costs were also reduced and an Early Retirement Incentive Plan was offered. Ms. Janes testified she was the sole decision maker with regard to which positions were abolished. She wanted consistency and did not want the decision to be personal, so she did not ask the managers who worked with employees everyday for any input. Ms. Janes stated she looked at the duties that were not mission critical or at duties that could be absorbed by another position. She testified she did not look at the people who occupied positions and she is not aware of any pre-positioning that took place.

Ms. Janes testified that the duties of a Supervising Secretary vary from region to region, but usually the position supervised other support staff, managed the office, provided technical and secretarial support, ordered supplies and was involved in the residential placement process. She stated she abolished this classification throughout the state as it was a mid-management position and the supervisory duties could be assumed by other positions. The duties of the position were not critical nor crucial to the mission. She stated there were no managerial duties given to union employees. Ms. Janes testified Appellant Ruffner's duties

were redistributed in accordance with the rationale she wrote, with a few minor modifications.

On cross examination Ms. Janes testified she went with a seven to one ratio for Word Processing Specialists 2, in that if they typed for seven people or more, they were kept. If they typed for less than seven, then their position was abolished.

Appellee's next witness was Ronald L. Stevenson, Cleveland Regional Administrator. Mr. Stevenson testified he did not talk to Deputy Director Janes regarding the positions to be abolished and he did not give her any recommendations. He stated the Supervisory Secretary in his office oversaw the Office Assistant 3 and a Word Processing Specialist and also stated that no supervisory duties were assigned to any union employee.

Appellant Ruffner's first witness was Rebecca L. Fair, Personnel Manager for PCS since approximately 1993. Ms. Fair explained that originally all Supervisory Secretaries had Secretaries reporting to them. At some point, they were all asked to change to Word Processing Supervisors 1. Some of them agreed, some did not. Eventually, through attrition, the position classifications were changed. Ms. Fair testified that Appellee knows the Supervisory Secretaries were incorrectly classified as they should have been classified as Word Processing Supervisors 1. There were five Word Processing Supervisors 2 vacancies at the time of the abolishments.

On cross examination, Ms. Fair testified that if Appellant Ruffner would have agreed to change her classification to a Word Processing Supervisor, the Appellee would have reclassified her.

Appellant Ruffner testified she began her employ at Appellee in 1983. She opined she should have been taken care of given her years of service and the fact that she was a good worker.

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 Secretary Supervisor position encumbered by Appellant Ruffner 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 Ruffner held a position with Parole and Community Services classified as Supervisory Secretary. On or about June 3, 2008, Appellant Ruffner received notice that the position she encumbered would be abolished effective June 21, 2008.

Appellant Ruffner chose not to exercise her displacement rights and, consequently, Appellant Ruffner 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 Ruffner 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 Ruffner's displacement rights were effectuated in accordance with sections 124.321 to 124.327 of the Ohio Revised Code and the rules of Ohio Administrative Code Chapter 123:1-41 *et seq.* Additionally, because Appellant Ruffner also filed a miscellaneous and a reduction appeal, the Board must consider whether Appellant Ruffner was reduced in pay and/or position within the meaning of O.A.C. 124-1-02(Y) and (Z).

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 Ruffner'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 Ruffner 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 position and her resultant layoff.

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 Ruffner 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 Ruffner's position took place in June 2008.

The appointing authority has the discretion to decide, based on operational needs, which positions to abolish. There is no statute nor regulation which mandates that higher paying positions must be abolished in place of lower paying positions. As Deputy Director Janes testified, she determined which positions she could abolish without compromising the core functions of the division. She was adamant in her testimony that she looked only at positions and the duties of a position and not at people. Appellant Ruffner did not present any evidence to rebut Ms. Jane's testimony, therefore there has been no showing of bad faith on the part of the Appellee. Ms. Janes testified that Appellant Ruffner's position was a mid-management level position, whose duties could be absorbed by others. The

testimony of the witnesses established that is exactly what happened and Appellant Ruffner's duties were redistributed in accordance with the rationale created by Ms. Janes. The focus of this Board's determination is if the abolishment was done for the stated reasons of economy, and as already discussed, Appellee has met its burden of proof in that regard.

Appellant Ruffner expressed her disappointment with the abolishment and layoff process because she believed she did a great job and had many years of service. She felt that because of those reasons, her position should not have been abolished. Had Ms. Janes made her decision to abolish positions based on who held those positions, or how many years of service an employee had, then bad faith would have existed. The fact that Appellant Ruffner's position was abolished is not a reflection on how good or bad of an employee she was; it simply had to do with the duties of her position, the relationship of those duties to the mission of PCS and the amount of money that would be saved in salary and benefits.

The issue of the classification of Appellant Ruffner's position as Supervisory Secretary was also raised. Sometime prior to the abolishment process, employees in Supervisory Secretary positions which were incorrectly classified were asked to voluntarily change classification to Word Processing Supervisor 1 (WPS). Appellant Ruffner did not agree to change to a WPS, so she was unable to displace into vacant WPS positions. The law provides that an employee can displace into a classification within the same series as the employee's classification. The classification series is designated as the first four digits of the classification number. As a Supervisory Secretary, the first four digits of that series are 1255. The first four digits of the WPS series are 1261. They are not in the same series and therefore, Appellant Ruffner had no displacement rights into those classifications or vacancies.

Appellant Ruffner also filed a reduction and miscellaneous appeal. Appellant Ruffner was not reduced in pay or position; her position was abolished. She was not reduced in pay or position by action of the appointing authority to specifically reduce her classification or pay. Technically speaking, her pay and position were reduced to zero but that happened as a result of her position being abolished and she choosing not to exercise her displacement rights. Appellant Ruffner appealed both of those actions and had a chance to present her case on those issues. The reduction and miscellaneous appeals are without any foundation. Therefore, case

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numbers 2008-RED-06-0321 and 2008-MIS-06-0322 are both **RECOMMENDED** to be **DISMISSED**.

Inasmuch as Appellee has met its burden of proof and has proved by a preponderance of the evidence that Appellant Ruffner's abolishment and resultant layoff was done in accordance with sections 124.321 *et seq.* of the Ohio Revised Code, it is our **RECOMMENDATION** that her abolishment be **AFFIRMED** pursuant to section 124.03 of the Ohio Revised Code.



Marcie M. Scholl
Administrative Law Judge



Elaine K. Stevenson
Hearing Officer