

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

Stephen C. Keeney,

*Appellant,*

v.

Case No. 09-LAY-01-0002

Hamilton County Board of Commissioners,

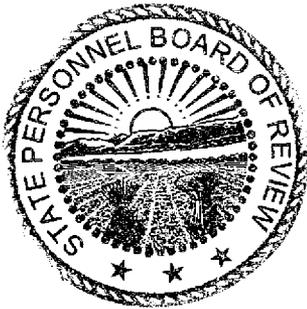
*Appellee.*

**ORDER**

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

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

Wherefore, it is hereby **ORDERED** that Appellants instant layoff be **AFFIRMED**, pursuant to O.A.C. § 123:1-41-10 (B).



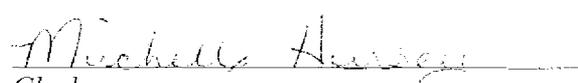
Lumpe - Aye  
Sfalcin - Aye  
Tillery - Aye

  
\_\_\_\_\_  
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, December 10, 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.

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

Stephen C. Keeney,

Case No. 09-LAY-01-0002

*Appellant*

v.

October 30, 2009

Hamilton Co., Board of Commissioners,

Christopher R. Young

*Appellee*

*Administrative Law Judge*

**REPORT AND RECOMMENDATION**

To the Honorable State Personnel Board of Review:

This cause came on for record hearing on October 26, 2009, at approximately 10:00 a.m., following a pre-hearing held on August 12, 2009, at 11:00 a.m. The Appellant, Stephen C. Keeney, was present and appeared *pro se*. The Hamilton County Board of Commissioners was present through its designee, Kim Serra, a Senior Human Resources Manager, and the Hamilton County Board of Commissioners was represented by Kathleen H. Bailey, Assistant Prosecuting Attorney.

On January 9, 2009, the Appellant, Stephen C. Keeney, received a notice of layoff from the Appellee. This action was to be effective January 23, 2009. Thereafter, the Appellant timely filed his appeal on January 16, 2009, as well as timely filing of the appeal being stipulated to by the parties. Further, at the pre-hearing, the jurisdiction of this Board to proceed with this matter was established.

At the pre-hearing an initial finding was made by the undersigned that the Appellee agency substantially complied with the procedural requirements set forth under Ohio Revised Code Section 124.321 and Ohio Administrative Code Section 123:1-41-10(B) as follows:

- 1) The Appellee informed the Appellant of the reason for the layoff;
- 2) The Appellee informed the Appellant of the effective date of the action;
- 3) The Appellee informed the Appellant of his accumulated retention points;

4) The Appellee informed the Appellant of his right to appeal to the State Personnel Board of Review within ten (10) days after receiving notice;

5) The Appellee informed the Appellant of his right to request and receive a copy of Ohio Administrative Code Section 123:1-41;

6) The Appellee informed the Appellant of his right to displace other employees if available and to exercise those rights within five (5) days;

7) The Appellee informed the Appellant of his right to reinstatement or reemployment

8) The Appellee informed the Appellant that he was responsible for maintaining his current address with the Appellee;

9) The Appellee informed the Appellant that he had the option to convert accrued leave if the opportunity existed.

Therefore after, the pre-hearing, an initial finding was made by the undersigned that the agency substantially complied with the procedural requirements set forth under Ohio Revised Code Section 124.321 and Ohio Administrative Code Section 123:1-41-10(B). Further, a finding was made that this hearing should proceed on to a full record hearing on the merits.

At the start of Ms. Serra's testimony the parties entered into a stipulation that the agency's rationale that was provided to the Appellant regarding lack of funds was not going to be contested by the Appellant and that the rationale was fine.

### **STATEMENT OF THE CASE**

The Appellee began its case-in-chief by calling Ms. Kim Serra, a Senior Human Resources Manager to the witness stand. Ms. Serra testified she has held her present position for approximately the last eight years, and that she reports directly to Gary Berger, the Hamilton County Board of Commissioners Human Resources Director. Further, when questioned, Ms. Serra testified that she was familiar with the Appellant, Stephen C. Keeney, and the resultant layoff which had occurred. The witness testified that she supervised the Human Resource Officer

who reported directly to her, and checked all of her gathering of all of the Appellant's information pertaining to the instant layoff, including but not limited to, the notice of layoff, the retention points calculation, and the employee's displacement rights, and agreed with the same.

The witness, when questioned, testified that in the case at hand, the agency abolished an Inventory/purchasing specialist position, occupied by Ms. Bonita Wiechman, who displaced Mr. Keeney from his position as an Inventory/purchasing clerk, a lower position in the same classification series.

The witness, when questioned, identified Appellee's Exhibit 1 as the January 9, 2009, notice to the Appellant regarding the layoff at issue. Ms. Serra then identified Appellee's Exhibit 2 as a classification specification of an Inventory/purchasing clerk. The witness then identified Appellee's exhibits 3A and 3B as the table organizations in effect prior to the layoff and subsequent to the layoff. The witness further identified Appellee's Exhibit 4 as the instant statement of rationale evidencing that the inventory/purchasing specialist position was abolished due to a lack of funds, along with various other positions. The witness additionally agreed, when questioned, that Appellee's Exhibit 5 was a letter dated December 3, 2008, from the Hamilton County Human Resources Department approving of the statement of rationale for the layoff of employees under the Board of Commissioners due to a lack of funds.

The witness identified Appellee's Exhibit 6 as a layoff list and retention point calculations of the classification series beginning with 53212, that included both the inventory/purchasing specialist position and the inventory/purchasing clerk position. The exhibit revealed that Ms. Bonita Wiechman, as an inventory/purchasing specialist, had 172.27 retention points, while Mr. Keeney, as an inventory/purchasing clerk, had 117.69 retention points. The witness identified Appellee's Exhibit 7 as a retention point calculations of the classification series beginning with 53212 which evidenced that the inventory/purchasing specialist position, having been abolished, was allowed to bump into the inventory/purchasing clerk's position. The witness further identified Appellee's Exhibit 8, as a retention point calculation of the classification series beginning with 53212 verification of evaluations only list. It was noted by the witness that Mr. Keeney scored a perfect 10 points for relative efficiency, but that he was still short retention points to displace anyone, and that he was displaced by Ms. Bonita Wiechman.

Ms. Serra identified Appellee's Exhibit 9 as a personnel action form revealing Mr. Keeney's June 24, 2002, date of continuous service and separation from service of effective January 23, 2009. The witness then identified Appellee's exhibits 10 and 11 as performance evaluations for Mr. Keeney for the years 2008 and 2007, respectively. The witness identified Appellee's Exhibit 12 as a class plan which was in effect for the Hamilton County Board of Commissioners during the time period in question. It was noted on page 16 of 49 that under the 53200 Purchasing and Sales Group the inventory/purchasing clerk's position classification specification number 53211 and the inventory/purchasing specialist's position classification specification number 53212 were in the same classification series.

The witness then identified Appellee's Exhibit 13 as the Hamilton County Personnel Department's Administrative Regulations, and specifically noted that under chapter 41 of said regulations the layoff at issue was governed.

The witness identified Appellee's Exhibit 14 as the position description of the inventory/purchasing clerk dated and signed by Bonita Wiechman August 18, 2009. Further, the witness noted that under the other duties and responsibilities listed on the position description one is to provide snow removal as necessary and laundry services, as needed.

On cross-examination, the witness re-identified Appellee's Exhibit 14 and explained that Ms. Wiechman was given this position description and it was explained to her that she was going to be required to provide snow removal and laundry services, as needed, in addition to all the other job duties listed thereon for an inventory/purchasing clerk. When questioned, the witness testified that there is no administrative regulation or rule that requires one to sign any position description within a certain amount of time and/or days.

Ms. Serra was then questioned about Appellant's exhibit B. The witness stated that Appellant's exhibit B is an outdated position description for an inventory supply clerk, a position which is no longer utilized, but was Mr. Keeney's position when he first started working for the Hamilton County Board of Commissioners on or about February 8, 2007. The witness identified Appellant's exhibit C as an additional position description for inventory supply clerk, a position which was signed off by Mr. Keeney on July 18, 2007. The witness then identified appellant's exhibit D, as a position description for an inventory/purchasing clerk, Mr. Keeney's last held position, which was signed off on September 17, 2008. Upon further

questioning, the witness reaffirmed that there is no administrative regulation or rule that requires one to sign any position description within a certain amount of time and/or days.

The Appellant, Stephen C. Keeney, began his case-in-chief by calling himself to the witness stand. When questioned, the Appellant testified that he held the position of inventory purchasing clerk from September 17, 2008 to January 23, 2009; that he held the position of inventory supply clerk from February 8, 2007 through September 16, 2008 and that he worked in the Juvenile Court as a laundry/stockroom clerk from December 2002 to February 2007.

The witness then identified Appellant's exhibits A, B, C, D, E, F, G, H, J K, M and N as a series of position descriptions and/or classification specifications relative to the two positions, that being, the inventory purchasing specialist and the inventory purchasing clerk. Further, the witness identified Appellant's exhibit I as his notice of the layoff which he received on or about January 9, 2009. Additionally, the witness identified Appellant's exhibit L as a letter he received on or about January 6, 2005, from the Administrative Team of the Juvenile Court recognizing his efforts and spectacular job in removing over 17 inches of snow.

The witness then questioned the fact that he had only 10 days to sign most of the paperwork that was provided to him regarding any position description, when he went from the Facilities Department to working under the County Commissioners. The witness noted that with respect to Bonita Wiechman, the person displacing him from his position of inventory purchasing clerk, she did not sign off on her new position description until August 2009, some seven months after the fact.

On cross-examination, the witness testified that he was told that Ms. Wiechman did not have to perform snow removal or laundry services. The witness then identified Appellant's exhibit D and reaffirmed that this was Ms. Wiechman's new position description wherein it was noted that snow removal and laundry services and/or duties were on her position description.

### **FINDINGS OF FACT**

1. I find that the Appellant, Stephen C. Keeney, was employed by the Hamilton County Board of Commissioners within the County Facilities Department

as an Inventory/Purchasing Clerk and that he was laid off effective January 23, 2009, as a result of being displaced.

2. The reason for the resultant layoff of the Appellant position was for lack of funds. At the start record hearing the parties entered into a stipulation that the Hamilton County Board of Commissioners rationale that was provided to the Appellant was not going to be contested by the Appellant and that the rationale was fine.

3. I find that the Appellee followed all the substantial procedural requirements set forth in Ohio Revised Code and the Ohio Administrative Code pertaining to an abolishment resulting in a layoff of the Appellant. Further, that compliance included providing materials to its own Human Resource Department, including the calculation of the Appellant's retention points which the Human Resource Department verified and which demonstrated that there were no employees in the Appellant's classification series in which the Appellants could have displaced.

4. The Hamilton County Personal Department Administrative Regulations regarding the layoffs and verification of retention points is noted under chapter 41-08. In this matter, the evidence revealed that Ms. Wiechman's position, who was employed as an Inventory/Purchasing Specialist, was abolished, and that she displaced into Mr. Keeney's position as an Inventory/Purchasing Clerk, and that he was eventually laid off, as she had more retention points than Mr. Keeney. Further, it is the finding of the undersigned that the Appellant, Stephen C. Keeney, as an Inventory/Purchasing Clerk did not have a position in which he could displace into.

5. The issue of bad faith was raised by the Appellant in that his fellow co-worker, Bonita Wiechman, who was previously classified as an Inventory/Purchasing Specialist, whose position was actually abolished, displaced the Appellant as an Inventory/Purchasing Clerk, but was told that she did not have to perform the snow removal and laundry services that he had as part of his custodial duties when he occupied that position. The evidence, on the other hand, revealed by a preponderance thereof, that Ms. Wiechman did indeed sign off on a position description noting that she would be responsible for snow removal and laundry services as part of her duties as an Inventory/Purchasing Clerk. Thus, the undersigned finds that the Appellant did not prove by a preponderance of the

evidence that the agency acted in bad faith in the layoff of the Appellant in this case.

### **CONCLUSIONS OF LAW**

In this layoff appeal, the Appellee must prove by a preponderance of the evidence that Appellant Keeney'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.* Appellee has met its burden.

Pursuant to the Hamilton County Personnel Department Administrative Regulations Chapter 41 covers the procedures for effectuating layoffs within Hamilton County. Regulation 41-01(A) states that employees in the classified civil service of county offices may be laid off whenever a reduction in force is necessary due to a lack of funds, lack of work, or the abolishment of positions. Regulation 41-01 (C) states if an appointing authority abolishes positions in the civil service, the abolishment of positions and any resulting displacement of employees shall be made in accordance with sections 124.321 to 124.327 of the Ohio Revised Code and the regulations of this chapter.

The reason for the layoff of the Appellant's position was for lack of funds. At the start record hearing the parties entered into a stipulation that the Hamilton County Board of Commissioners rationale that was provided to the Appellant was not going to be contested by the Appellant and that the rationale was fine. As such, the undersigned will not go into any analysis regarding the basis for the rationale for lack of funds. However, what was contested by the Appellant was the belief he had regarding his fellow co-worker Ms. Wiechman in that, when she displaced into his position, she did not have to perform the same duties as he did previously in that position as an Inventory/Purchasing Clerk.

Further, it should be noted that the Appellant did not contest Ms. Wiechman's right to displace in his position as an Inventory/Purchasing Clerk or the calculation and determination of the retention points in this matter. As such, the undersigned concludes that Ms. Wiechman properly displaced the Appellant into the position of an Inventory/Purchasing Clerk as she had more retention points and the Appellant's position was a lower position in the same classification series.

As a review, section 124.324 of the Ohio Revised Code governs the layoff and displacement procedures. That statute states as follows:

(A) A laid-off employee has the right to displace the employee with the fewest retention points in the following order:

- (1) Within the classification from which the employee was laid off;
- (2) Within the classification series from which the employee was laid off;
- (3) Within the classification the employee held immediately prior to holding the classification from which the employee was laid off, except that the employee may not displace employees in a classification if the employee does not meet the minimum qualifications of the classification or if the employee last held the classification more than three years prior to the date on which the employee was laid off.

If, after exercising displacement rights, an employee is subject to further layoff action, the employee's displacement rights shall be in accordance with the classification from which the employee was first laid off.

The director of administrative services shall verify the calculation of the retention points of all employees in an affected classification in accordance with section 124.325 of the Revised Code.

(B) Following the order of layoff, an employee laid off in the classified civil service shall displace another employee within the same appointing authority or independent institution and layoff jurisdiction in the following manner:

- (1) Each laid-off employee possessing more retention points shall displace the employee with the fewest retention points in the next lower classification or successively lower classification in the same classification series.
- (2) Any employee displaced by an employee possessing more retention points shall displace the employee with the fewest retention points in the next lower classification or successively lower

classification in the same classification series. This process shall continue, if necessary, until the employee with the fewest retention points in the lowest classification of the classification series of the same appointing authority or independent institution has been reached and, if necessary, laid off.

(C) Employees shall notify the appointing authority of their intention to exercise their displacement rights, within five days after receiving notice of layoff. This division does not apply if the director of administrative services has established a paper lay-off process pursuant to division (E) of section 124.321 of the Revised Code that includes a different notification requirement for employees exercising their displacement rights under that process.

(D) No employee shall displace an employee for whose position or classification there are certain position-specific minimum qualifications, as established by the appointing authority and reviewed for validity by the department of administrative services, or as established by bona fide occupational qualification, unless the employee desiring to displace another employee possesses the requisite position-specific minimum qualifications for the position or classification.

(E) If an employee exercising displacement rights must displace an employee in another county within the same layoff district, the displacement shall not be construed to be a transfer.

(F) The director of administrative services shall adopt rules under Chapter 119. of the Revised Code for the implementation of this section.

\* \* \* \* \*

Additionally, during to the pre-hearing, the undersigned found that the Appellee complied with the relevant procedural and notice requirements of the Ohio Revised Code and Ohio Administrative Code in implementing their respective layoffs.

#### **COMPLIANCE WITH THE PROCEDURAL REQUIREMENTS**

The Appellee had the burden of proof to establish that the layoff was procedurally correct. The appointing authority must comply with the administrative procedures set forth in Ohio Revised Code Section 123:1-41-10(B) in addition to presenting adequate justification for the layoff of the Appellant's position. These procedures require that the appointing authority inform the employee, whose position is laid off, of the following:

1. The reason for the action;
2. The effective date of the action;
3. The employee's accumulated retention points;
4. The employee's right to appeal to the State Personnel Board of Review within ten (10) days after having received the notice;
5. The employee's right to a copy of Administrative Code Section 123:1-41 upon request;
6. The employee's right to displace another employee if exercised within five (5) days;
7. The employee's right to of reinstatement or reemployment;
8. The employee's responsibility to maintain a current address with the appointing authority;
9. The employee's option to convert accrued leave if the opportunity exists.

The Ohio Administrative Code Section 124-7-01(A) (3) states that:

Abolishments may only be affirmed if the appointing authority has substantially complied with the procedural requirements set forth in sections 124:321 through 124.328 of the Ohio Administrative Code and the administrative rules promulgated pursuant to statutes.

See, *Jacko v. Stillwater Health Center* (1982), PBR 82-LAY-03-0876, where an employer has substantially complied with the rules regarding layoffs, the employee's rights were not violated, and the abolishment of their positions will be affirmed.

As was previously stated, it was the finding of this Administrative Law Judge initially that the Appellee substantially complied with all of the applicable statutes and rules pertaining to an abolishment with a resultant lay off is implemented. Therefore, this Board concludes that the Appellee has substantially complied with all of the applicable statutes and rules. (See, Ohio Administrative Code Section 123:1-41-10(B) and Ohio Administrative Code Section 124.321 through 124.328).

#### **APPELLANT KEENEY'S BAD-FAITH ARGUMENT REJECTED**

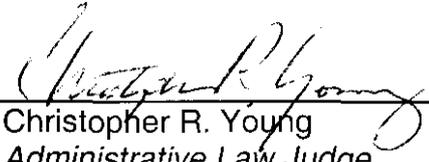
Appellant Keeney raised the notion of bad faith in his testimony and in his argument with regard to the abolishment and resultant layoff of his position. Appellant Keeney's primary argument at record hearing was that his fellow co-worker, Bonita Wiechman, who was previously classified as an Inventory/Purchasing Specialist, whose position was actually abolished, displaced the Appellant as an Inventory/Purchasing Clerk, but was told that she did not have to perform the snow removal and laundry services that he had as part of his custodial duties when he occupied that position. The evidence, on the other hand, revealed by a preponderance thereof, that Ms. Wiechman did indeed sign off on a position description noting that she would be responsible for snow removal and laundry services as part of her duties as an Inventory/Purchasing Clerk. Thus, the undersigned finds that the Appellant did not prove by a preponderance of the evidence that the agency acted in bad faith in the layoff of the Appellant in this case.

#### **RECOMMENDATION**

The Appellee has demonstrated by a preponderance of the evidence that the resultant layoff of the Appellant position was made in compliance with the requirements regarding layoffs and displacement that 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.*, and that the Appellee substantially complied with all the procedural requirements set forth in Ohio

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Administrative Code Section 123:1-41-10(B). Additionally, the Appellant did not meet his burden of proving by a preponderance of the evidence that bad faith was present in his displacement and layoff. Therefore, it is **RECOMMENDED** that the instant layoff of the Appellant be **AFFIRMED**.

  
\_\_\_\_\_  
Christopher R. Young  
Administrative Law Judge

CRY: